COUNCIL MEETING AGENDA
April 30, 2015

Members may attend in person or by telephone.

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

Eddie Cook
Victor Petersen
Jared Taylor

Jenn Daniels
Brigette Peterson

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

Regular Meeting
6:30 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

PRESENTATION OF STUDENT CITIZEN OF THE MONTH AWARD

INVOCATION AND PLEDGE OF ALLEGIANCE

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

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

Pledge of Allegiance and introduction and recognition of scouts.

Invocation by Councilmember.

ROLL CALL

PRESENTATIONS; PROCLAMATIONS

1. Proclamation declaring April 30, 2015 as Pay it Forward Day.

2. Proclamation declaring May 2015 as Brain Tumor Awareness Month.

3. Proclamation declaring the first week in May 2015 as Youth Week.

COMMUNICATIONS FROM CITIZENS

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

CONSENT CALENDAR

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

4. ANNEXATION A15-03 – consider adoption of an Ordinance annexing .52 acres of right-of-way along Baseline Road between the western side of the Consolidated Canal and Nielson Street contingent upon approval by the Maricopa County Board of Supervisors.

5. AGREEMENT – consider:

a) adoption of a Resolution to approve the Amended and Restated Development Agreement with Saint Xavier University providing for the establishment and operation of a four-year liberal arts university in Gilbert's Downtown Heritage District; and

b) approval of Lease Agreement No. 2015-2105-0700 with Saint Xavier University to occupy Town-owned facility at 92 West Vaughn Avenue and authorize the Mayor to execute all documents.

6. AGREEMENT – consider approval of Environmental Access Agreement No. 2015-2106-0698 with the Arizona Department of Environmental Quality to drill a monitoring well and sample groundwater near the intersection of Cambridge Street and Aspen Avenue and authorize the Mayor to execute the required documents.

7. AGREEMENT – consider approval of Amendment No. 1 to Agreement No. 2013-2106-0015 with Arizona Department of Transportation to connect to the ALISS crash database and authorize the Mayor to execute the required documents.

8. INTERGOVERNMENTAL AGREEMENT – consider approval of an amendment to Agreement No. 2015-4501-0672 with Regional Public Transportation Authority for FY2016 Transit, Dial-A-Ride, and Alternative Transportation Services, and authorize the Mayor to execute the required documents.

9. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-7008-0636 with the Arizona Department of Transportation for development of the Design Concept Report and Environmental Services for the proposed

Lindsay Road at State Route 202 Traffic Interchange and authorize the Mayor to execute the required documents.

10. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-2106-0694 with Maricopa County for improvements to 154th Street from Ocotillo Road to Appleby Road, Project No. ST119, and authorize the Mayor to execute the required documents.

11. HOME FUNDS - consider approval of Contract No. 2015-2105-0699 with Affordable Rental Movement of Save the Family in the amount of $375,634 utilizing FY2012-2013 and FY2014-2015 HOME Investment Partnership Funds and authorize the Mayor or designee to execute contract documents.

12. CONTRACT – consider:

a) approval of Engineering Services Contract No. 2015-7009-0685 with Brown and Caldwell in an amount not to exceed $339,928 for the Well Site Upgrades Project, Project No. WA093, and authorize the Mayor to execute the required documents; and

b) authorize a FY2015 Water Fund Contingency Transfer in the amount of $59,000.

13. CONTRACT – consider approval of Construction Services Contract No. 2015-7012-0649 with Talis Construction Corporation in an amount not to exceed $939,952 for the Western Canal Trail Project, Project No. PR011, and authorize the Mayor to execute the required documents.

14. CONTRACT – consider approval of Contract No. 2015-1105-0631 with Verizon in an amount not to exceed $391,000 for the voice and data cellular services, peripherals, and related equipment, and authorize the Mayor to execute the required documents.

15. GRANT – consider application and acceptance of a Grant from the 2015 State Homeland Security Grant Program in an amount not to exceed $131,000:

a) Contract No. 2015-3001-0696 for Urban Area Assessment Teams – Police and Fire Terrorism Liaison Officers (TLO) Program, in the amount of $13,500 to support Police and Fire TLO's and includes purchase of vehicle radio chargers, computers, satellite cell and data service, internet air card and pager service and travel to attend national conference for training;

b) Contract No. 2015-3001-0697 for Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) Response Team Gilbert Police Department, in the amount of $54,000 to support their team and includes purchase of ballistic helmets, radio headset accessories, and a medium size tactical robot;

c) Contract No. 2015-3002-0691 for Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) Response Team Gilbert Fire and Rescue Department in the amount of

$54,000 to support purchase of detection meter replacement, detection meter and software maintenance, hazardous materials tools and equipment, protective suits, research hardware, and travel to attend national conference for training; and

d) Contract No. 2015-3002-0692 for Citizen Corps Training in the amount of $9,195.00 to support of Citizen Corps - Community Emergency Response Team (CERT) training and development as well as deployment of volunteers including uniforms, backpacks, training booklets, and medical kits.

16. HUMAN RESOURCES – consider approval of:

a) the Town's medical and dental plan premiums;

b) implementation of a staged increase to retiree medical premiums over five (5) years; and

c) an amendment and restatement of the Town of Gilbert Medical Plan Summary Benefit Description effective July 1, 2015 and authorize the Mayor to execute the document.

17. STREETS - consider adoption of a Resolution to approve a street name change from East Avenida Del Valle Court to East Bella Vista Street.

18. MAP OF DEDICATION ST152 – consider approval of the Map of Dedication for "Higley and Warner" located at the northeast corner of Higley and Warner Roads.

19. FINAL PLAT SP1403- consider approval of the final plat for Gateway Church of Christ located south of the southeast corner of Greenfield Road and Queen Creek Road.

20. TEMPORARY EXTENSION OF PREMISES – consider approval of a temporary extension of premises for Cantina Laredo located at 2150 East Williams Field Road for an event to be held on May 4 & 5, 2015.

21. LIQUOR LICENSE –consider approval of an acquisition of control for the Series 12 Restaurant Liquor License for Temari Fine Japanese Cuisine located at 919 North Val Vista Drive #101.

22. BOARDS AND COMMISSIONS - consider ratifying the by-laws of the Parks, Recreation, and Library Services Advisory Board that were approved on April 7, 2015.

23. MINUTES – consider approval of the minutes of Regular Meeting of April 14, 2015.

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.

24. LIQUOR LICENSE – conduct hearing and consider approval of sampling privileges for an existing Series 9 Liquor Store License for Wal-Mart Supercenter #3861 located at 5290 South Power Road.

25. LIQUOR LICENSE – conduct hearing and consider approval of a Series 7 Beer and Wine Bar Liquor License for Cuisine & Wine Bistro located at 1422 West Warner Road #A100.

26. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for The Groves Bar & Grill located at 323 South Gilbert Road #111 -113.

27. GENERAL PLAN GP14-02 - conduct hearing and consider adoption of a Resolution approving the Gilbert 2014 Annual General Plan Update for a Minor General Plan Amendment to amend the Town of Gilbert General Plan: Chapter 10, Character Areas - Santan Character Area Update, to update the specific area plan to reflect the community's vision for the future of the character area.

28. GENERAL PLAN GP14-10/ZONING Z14-28 – conduct hearing and consider:

a) adoption of a Resolution approving a Minor General Plan Amendment for Legacy Point at Seville (Seville Tract T) to change the land use classification of approximately 19.17 acres of real property generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road from 19.17 acres of Residential > 1-2 DU/acre land use classification to 19.17 acres of Residential > 2-3.5 DU/acre land use classification. The effect of this amendment will be to change the plan of development for this property to allow for increased density of residential development; and

b) approval of the findings and adoption of an Ordinance amending Ordinance Nos. 1264, 1398, 1414, 1489, and 2188 and rezone approximately 19.17 acres of real property within Seville Tract-T Planned Area Development (PAD) and generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road, from approximately 19.17 acres of Single Family - 15 (SF-15) zoning district, all with a Planned Area Development overlay zoning district to approximately 19.17 acres of Single Family - 7 (SF-7) zoning district, all with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office, and to amend conditions of development in the Seville Tract-T Planned Area Development (PAD) as follows: to modify minimum lot area and lot dimensions; minimum front and rear setbacks; front yard stagger requirements; front facing garage recess requirements and to allow one-story homes only. The effect of the rezoning will be to allow a residential development with approximately 61 home lots.

29. PROPERTY ACQUISITION – conduct hearing and consider adoption of a Resolution approving the acquisition of right-of-way and easements on Parcel No. 304-28-006A for the Higley and Warner Improvement Project, Project No. ST152.

30. BUDGET — conduct hearing and adopt the budgets on the Parkway Maintenance Improvement Districts for July 1, 2015 - June 30, 2016 and establish May 14, 2015 as the date of the final public hearing and adopting a tax levy for the districts.

31. BUDGET - conduct a hearing and adopt the budgets on the 2015-2016 Street Light Improvement Districts (SLID) and establish May 14, 2015 as the final public hearing and adopting the tax levy for the districts.

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.

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

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

POLICY ITEMS

FUTURE MEETINGS

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

COMMUNICATIONS

Report from the TOWN MANAGER on current events.

Report from the COUNCIL on current events.

Report from the MAYOR on current events.

ADJOURN

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

Office of the Mayor
Town of Gilbert

Proclamation

WHEREAS, the aim of the Pay it Forward concept is to promote community spirit through acts of kindness; and

WHEREAS, the Pay it Forward novel, written by Catherine Ryan Hyde in 2000, has inspired the creation of a movie and a movement that has been vital in inspiring millions of good deeds all over the world; and

WHEREAS, Pay it Forward Day was created in 2007 in Australia to further the altruistic movement of goodwill; and

WHEREAS, Pay it Forward Day is a worldwide effort being supported by people in more than 70 countries on 6 continents; and

WHEREAS, Pay it Forward Day encourages people to do good deeds for others without asking for anything in return except for the recipients to pay it forward to others in need; and

WHEREAS, together we can make a difference by creating positive change in our community and world – one good deed at a time;

THEREFORE; I, John W. Lewis, Mayor of the Town of Gilbert do hereby proclaim Thursday, April 30, 2015 as:

PAY IT FORWARD DAY

in Gilbert and urge all citizens to observe this day with activities and acts of kindness that demonstrate and celebrate selfless giving.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Town of Gilbert to be affixed this 30th day of April, 2015.

_____
John W. Lewis, Mayor

Office of the Mayor
Town of Gilbert

Proclamation

WHEREAS, brain tumors both primary (originating in brain tissue) and secondary (originating in other parts of the body that metastasize to the brain) are diagnosed in more than 220,000 Americans of all ages, races, socio-economic status and gender each year and continue to rise annually; and

WHEREAS, malignant brain tumors are among the deadliest forms of cancer with just a 34% five-year relative survival rate and are the leading cause of cancer-related deaths in children under the age of 14; and

WHEREAS, 1,540 people in Arizona will be diagnosed with a brain tumor and 272 will die from a brain tumor in 2015; and

WHEREAS, Arizona is home to major facilities, such as Barrow Neurological Institute at both St Joseph's Hospital and Phoenix Children's Hospital, the Barrow Brain Tumor Research Center, Translational Genomics Institute, the University of Arizona's Arizona Cancer Center and others that focus on research to find better treatments, a cure for brain tumors and a higher quality of life for brain tumor patients; and

WHEREAS, increased public awareness of brain tumors through advocacy and support for targeted research, as well as education about the impact brain tumors have on patients' and their families' lives are critical to support and action for a cure.

NOW, THEREFORE, I, John Lewis, Mayor of Gilbert, Arizona, do hereby proclaim May 2015 as

BRAIN TUMOR AWARENESS MONTH

in Gilbert, Arizona.

In witness thereof, I hereby set my hand and affix the Official Seal of the Office of the Mayor, Town of Gilbert, Arizona, this 30th day of April 2015.

_____
John W. Lewis, Mayor

Office of the Mayor
Town of Gilbert

Proclamation

WHEREAS, the Benevolent and Protective Order of Elks has designated the first week of May 2015 as Youth Week to honor America's Junior Citizen's for their accomplishments, and to give fitting recognition of their services to Community, State and Nation; and

WHEREAS, Gilbert Elk's Lodge No. 2848 will sponsor an observance during that week in tribute to the Junior Citizens of this Community; and

WHEREAS, no event could be more deserving of our support and participation than one dedicated to these young people who represent the nation's greatest resource, and who in the years ahead will assume the responsibility for the advancement of our free society; and

WHEREAS, our Youth need the guidance, inspiration and encouragement which alone we can give in order to help develop those qualities of character essential for future leadership; and go forth to serve America; and

WHEREAS, to achieve this worthy objective we should demonstrate our partnership with Youth, our understanding of their hopes and aspirations and a sincere willingness to help prepare them in every way for the responsibilities and opportunities of citizenship;

NOW THEREFORE I, John W. Lewis, Mayor of the Town of Gilbert, do hereby proclaim the first week in May as **YOUTH WEEK**, and urge all departments of government, civic, fraternal and patriotic groups, and our citizens generally, to participate wholeheartedly in observance.

In witness thereof, I hereby set my hand and affix the Official Seal of the Office of the Mayor, Town of Gilbert, Arizona, this 30th day of April 2015

_____

John W. Lewis, Mayor

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: A15-03: Approval of an Ordinance for the annexation of rights-of-way along Baseline Road between the western side of the Consolidated Canal and Nielson Street.

STRATEGIC INITIATIVE: Infrastructure

This action supports Gilbert's Infrastructure Strategic Initiative as it establishes clear corporate boundaries for the Town, assisting Town Departments including Police, Fire, and Public Works in better defining jurisdictional responsibilities along this roadway corridor.

RECOMMENDED MOTION

A motion to adopt an Ordinance annexing approximately 0.52 acres of right-of-way along Baseline Road between the western side of the Consolidated Canal and Nielson Street, contingent upon approval by the Maricopa County Board of Supervisors.

BACKGROUND/DISCUSSION

This annexation impacts approximately 540 feet of right-of-way along Baseline Road which forms a common boundary with the City of Mesa (see Figure 1). The Ordinance under consideration impacts only right-of-way and does not include the annexation of private property.

A 2003 Intergovernmental Agreement between the Town of Gilbert and the City of Mesa assigns the responsibility for this segment of Baseline Road to the Town. Currently the Consolidated Canal bridge and an additional area on Baseline Road extending east to Nielson Street is within Maricopa County. Staff is recommending the annexation of this portion of Baseline Road at this time. This will simplify the review, approval, and permitting responsibilities for Baseline Road in this area to one agency, the Town of Gilbert. This will also identify Gilbert as the agency responsible for future maintenance and public safety on this segment of Baseline Road.

This action has been coordinated between Town of Gilbert and Maricopa County staff. Maricopa County staff has reviewed the legal description of the proposed annexation.

The Ordinance was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

Although Tthere is a minor increase in roadway inventory for the Town (along Baseline Road between the western side of the Consolidated Canal and Nielson Street) under this proposed action, maintenance of this area has been the responsibility of the Town since the. This will slightly increase Gilbert's maintenance responsibility; however, these jurisdictional boundaries were defined in 2003 via the Intergovernmental Agreement with Mesa. Therefore, no new impacts to the Streets maintenance budget are anticipated.

The financial impact has been reviewed by Cris Parisot, Office of Management & Budget.

STAFF RECOMMENDATION

The Planning and Engineering Divisions have reviewed this action and the associated legal descriptions, and recommend the adoption of this Ordinance.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Attachments: Figure 1
Ordinance with Exhibits

Approved By	Approval Date
Kenneth Morgan	4/16/2015 6:39 PM
Jack Vincent	4/20/2015 10:46 AM
Cris Parisot	4/20/2015 8:09 AM

FIGURE 1:
AREA TO BE ANNEXED

ANNEXATION A15-03
SRP CONSOLIDATED CANAL AND BASELINE ROAD

Portions of the Northwest quarter of Section 5, T1S, R6E and of the Southwest quarter of Section 32, T1S, R6E of the Gila and Salt River Base and Meridian Maricopa County, Arizona.

I, John W. Lewis, Mayor of the Town of Gilbert, Arizona do hereby certify the foregoing map is a true and correct map of the territory annexed under and by the virtue of the petition of the real and personal property owners in the said territory and by Ordinance No._____, annexing the territory described in Ordinance No._____ and as shown on said map as part of the corporate limits of the Town of Gilbert, Arizona.

_____
John W. Lewis, Mayor

_____
Catherine A. Templeton, Town Clerk

N

0 50 100
Feet

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, MARICOPA COUNTY ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, BY TRANSFERRING CERTAIN COUNTY RIGHTS-OF-WAY CONSISTING OF APPROXIMATELY 0.52 ACRES OF BASELINE ROAD RIGHT-OF-WAY, GENERALLY LOCATED FROM THE WESTERN SIDE OF THE CONSOLIDATED CANAL TO NIELSON STREET, CONTINGENT UPON APPROVAL BY THE MARICOPA COUNTY BOARD OF SUPERVISORS, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY

WHEREAS, A.R.S. § 9-471 as amended provides that a county right-of-way with no taxable real property and which is adjacent to a town may be transferred to the town by mutual consent of the governing bodies of the county and town;

WHEREAS, the property to be transferred is a county right-of-way with no taxable real property and is adjacent to Gilbert; and

WHEREAS, Gilbert consents to and approves of the proposed transfer contingent upon the county's consent to and approval of the proposed transfer pursuant to the provisions of A.R.S.§ 9-471(N);

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. <u>In General</u>.

1. Pursuant to the provisions of A.R.S. § 9-471(N); and contingent upon approval by the Maricopa County Board of Supervisors, the County right-of-way legally described in **Exhibit 1**, attached hereto, which is adjacent to the corporate limits of the Town of Gilbert, shall be transferred to the Town of Gilbert, and the Town of Gilbert corporate limits shall be extended and increased to include the county right-of-way, as shown on the map of the boundaries, attached hereto as **Exhibit 2**. The transfer to the Town shall be treated as newly annexed territory.

2. A copy of this Ordinance, together with documentation of approval by the Maricopa County Board of Supervisors and an accurate map of the County right-of-way to be transferred to the Town of Gilbert shall be filed and recorded in the Office of the County Recorder of Maricopa County, Arizona and sent to the Clerk of the Maricopa County Board of Supervisors.

3. Pursuant to A.R.S. Section 9-471(L) the zoning classification for the property shall be Public Facility/Institutional (PF/I), which permits densities and uses no greater than those permitted by the county immediately before the annexation.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 30th day of April, 2015.

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

_____
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 30th DAY OF APRIL, 2015, WAS POSTED IN FOUR PLACES ON THE _____ DAY OF _____, 20__.

_____
Catherine A. Templeton, Town Clerk

The following exhibits are attached hereto and incorporated herein:
1. Exhibit 1 - Legal Description
2. Exhibit 2 - Map

EXHIBIT 1

RIGHT-OF-WAY ACQUISITION AT
SRP CONSOLIDATED CANAL & BASELINE ROAD
AREA #1

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 6 EAST AND THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 1 SOUTH, 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 32, BEING MARKED BY A MARICOPA COUNTY BRASS CAP IN HAND HOLE, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 32, BEING MARKED BY A MARICOPA BRASS CAP IN HAND HOLE, BEARS NORTH 89 DEGREES 37 MINUTES 02 SECONDS EAST, 2630.08 FEET;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, NORTH 89 DEGREES 37 MINUTES 02 SECONDS EAST, 1222.34 FEET TO THE **POINT OF BEGINNING;**

THENCE DEPARTING SAID SOUTH LINE, NORTH 03 DEGREES 01 MINUTES 53 SECONDS WEST, 55.06 FEET TO A LINE 55.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE;

THENCE RUNNING ALONG SAID PARALLEL LINE, NORTH 89 DEGREES 37 MINUTES 02 SECONDS EAST, 120.30 FEET;

THENCE DEPARTING SAID PARALLEL LINE, SOUTH 02 DEGREES 53 DEGREES 23 SECONDS EAST, 55.05 FEET TO SAID SOUTH LINE;

THENCE ALONG SAID SOUTH LINE, NORTH 89 DEGREES 37 DEGREES 02 SECONDS EAST, 1.50 FEET;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 03 DEGREES 07 MINUTES 43 SECONDS EAST, 33.04 FEET TO A LINE 33.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH LINE;

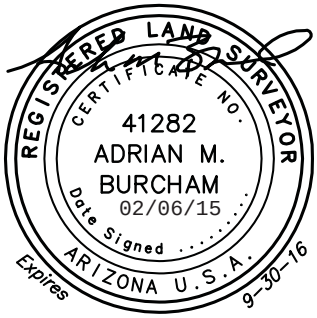
THENCE NORTH 89 DEGREES 37 MINUTES 02 SECONDS EAST, 417.51 FEET;

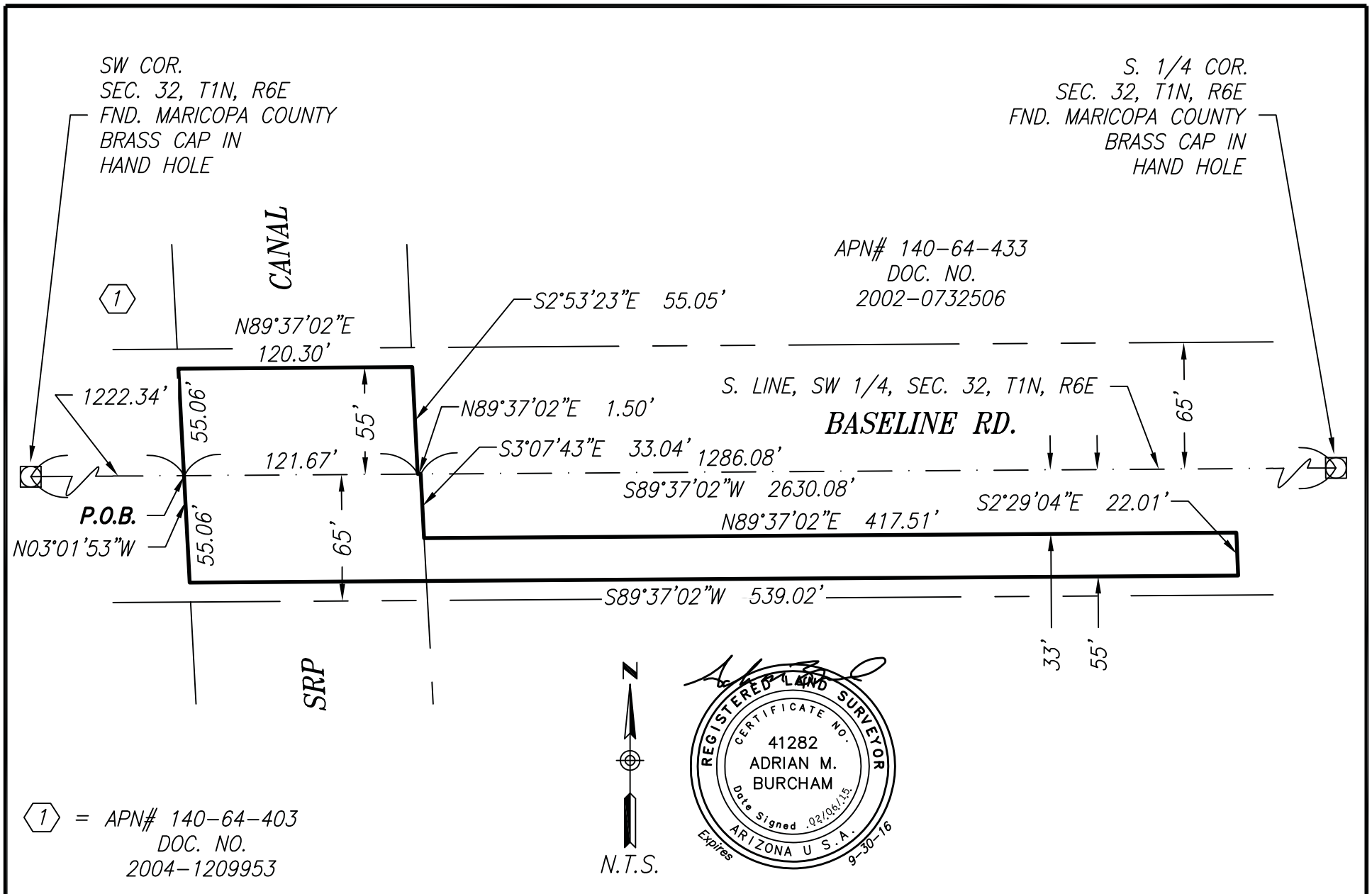
THENCE DEPARTING SAID PARALLEL LINE, SOUTH 02 DEGREES 29 MINUTES 04 SECONDS EAST, 22.01 FEET TO A LINE 55.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH;

THENCE ALONG SAID PARALLEL LINE SOUTH 89 DEGREES 37 MINUTES 02 SECONDS WEST, 539.02 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 03 DEGREES 01 MINUTES 53 SECONDS WEST, 55.06 FEET TO THE **POINT OF BEGINNING.**

SAID PARCEL CONTAINS 22,489 SQUARE FEET OR 0.5163 ACRES MORE OR LESS.





HUBBARD ENGINEERING
www.hubbardengineering.com

1840 S. Stapley Dr.
Suite 137
Mesa, AZ 85204
Ph: 480.892.3313

RIGHT OF WAY ACQUISITION
SRP CONSOLIDATED CANAL – AREA #1
EXHIBIT 2
Town of Gilbert, Maricopa County, Arizona

Project No. 15107	Date 2/6/15
Project Manager J. HAWS	Sht: 1 of 1

Council Communication

TO: Honorable Mayor and Councilmembers

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

MEETING DATE: April 30, 2015

SUBJECT: Amended and Restated Development Agreement and Lease between the Town of Gilbert and Saint Xavier University to Establish, Maintain and Operate a Four Year Liberal Arts University on Gilbert-Owned Property in Gilbert's Downtown Heritage District

STRATEGIC INITIATIVE: Economic Development

Gilbert owns real property in the Gilbert Heritage District and desires and previously approved that such real property be redeveloped 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) A motion to adopt the attached resolution to approve the Amended and Restated Development Agreement with Saint Xavier University providing for the establishment and operation of a four-year liberal arts university in Gilbert's Downtown Heritage District.

B) A motion to adopt Lease Agreement No. 2015-2105-0700 with Saint Xavier University to occupy Town-owned facility at 92 W. Vaughn, and authorize the Mayor to execute all documents (Exhibit E of the Amended and Restated Development Agreement).

BACKGROUND/DISCUSSION

The purpose of this Amended and Restated Agreement is to provide for the development of a four year liberal arts university campus in the Heritage District located at 92 W. Vaughn to set forth the agreements between the Town of Gilbert and Saint Xavier University to establish, maintain and operate a four year liberal arts University campus providing educational

opportunities to the residents of Gilbert and the region and to further the economic development of the Heritage District. The Development Agreement and the Lease have had insubstantial amendments to adjust to changing conditions evolving during the course of development that require Council review and approval. Also, included is the calculation of the rental rate.

Gilbert owns the real property and believes its use as a university as described in this Agreement will greatly benefit Gilbert's residents and enhance the redevelopment of the downtown by providing additional educational opportunities in Gilbert and furthering the economic development of the Heritage District. The operation of a university will provide significant full-time and part-time employment opportunities for the residents of Gilbert, with Gilbert and Saint Xavier University anticipating Saint Xavier University will hire certain full-time employees for office and administrative purposes at the university.

Saint Xavier University will open a university campus on the Gilbert property and at a minimum offer degree programs in nursing, business and education. Saint Xavier University is experienced in operating a private university campus and has operated programs as described in the Agreement for over 160 years. Saint Xavier University currently operates campuses in Chicago and Orland Park, Illinois with a total student population of approximately 2,925 undergraduates and 1,450 graduate students. Gilbert will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the establishment and operation of the university contemplated by this Agreement.

Gilbert has designed and nearly completed construction of an 87,000 square foot, four-story building on the Property. Gilbert will very shortly issue the April 14, 2015 Council approved revenue bonds for the cost. Saint Xavier University will enter into the attached Lease Agreement for the Property and the Improvements and reimburse Gilbert for its costs through its lease payments.

Saint Xavier University is required to meet performance criteria as set forth in Section 7 of the Agreement. The University is slated to open on October 1, 2015. Enrollment targets are included in the agreement. There are requirements for scholarships, grants and tuition reduction to Gilbert residents for undergraduate program. Saint Xavier University must establish a Capital Fund for expansion and an Endowment Fund. The Agreement sets forth requirements for such funds.

If the Agreement is breached by Saint Xavier University, there are cure periods, but there can be only two cure periods in any 15 year period for Academic breaches (defined in the Agreement). In other words, there is not an unlimited ability to fail to meet the performance criteria and then cure the breach. If the Agreement is terminated by Gilbert for breach of the Agreement in the first eight years of the Agreement, Saint Xavier University must pay Gilbert $250,000 in damages.

Gilbert is authorized pursuant to ARS Section 9-500.05 and 9-500.11 to enter into development agreements that include expenditures for economic development.

The Amended and Restated Development Agreement and Lease Agreement were reviewed for form by Susan D. Goodwin, Special Counsel and Michael Hamblin, Town Attorney.

FINANCIAL IMPACT

The Town is currently issuing the April 14, 2015 approved revenue bonds to cover the design and construction of the facilities and all related costs. Saint Xavier's lease payments shall be sufficient to cover the cost of the debt service and the land occupied. Exact numbers will be forthcoming from Management and Budget on finalization of the bond sale.

The financial impact was reviewed by Dawn Marie Buckland, Management and Budget Director.

STAFF RECOMMENDATION

A) Staff recommends adoption of the resolution to approve the Amended and Restated Development Agreement with Saint Xavier University to provide for the establishment and operation of a four-year liberal arts university in Gilbert's Downtown Heritage District.

B) Staff recommends adoption of Lease Agreement No. 2015-2105-0700 with Saint Xavier University.

Respectfully submitted,

L. Michael Hamblin
Town Attorney

Attachments and Enclosures: Resolution and Amended and Restated Agreement (Exhibit E – Lease Agreement)

Approved By	Approval Date
Michael Hamblin	4/20/2015 12:58 PM
Michael Hamblin	4/20/2015 12:59 PM
Dawn Buckland	4/20/2015 2:00 PM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND LEASE WITH SAINT XAVIER UNIVERSITY, A NOT-FOR-PROFIT 50l(c)(3) CORPORATION, RELATED TO THE DEVELOPMENT OF PROPERTY IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

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

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

WHEREAS, development of the property subject to the Development Agreement will result in significant benefits to Gilbert; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Amended and Restated Development Agreement and Lease between the Town of Gilbert and Saint Xavier University, a not-for-profit 501(c)(3) corporation, attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Development Agreement; and

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

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

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

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS ____ DAY OF _____, 20__.

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

_____
_____, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

WHEN RECORDED RETURN TO:

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

AMENDED AND RESTATED AGREEMENT

By and Between

TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation;

and

SAINT XAVIER UNIVERSITY, a not-for-profit 501(c) (3) corporation
_____, 2015

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AGREEMENT

This Agreement ("Agreement") is made by and between the Town of Gilbert, an Arizona municipal corporation ("Gilbert"), and Saint Xavier University, a 501(c)(3) corporation ("Saint Xavier University"). Gilbert and Saint Xavier University are sometimes referred to in this Agreement collectively as the "Parties**,**" or individually as a "Party."

RECITALS

A. Gilbert owns real property in the Gilbert Heritage District, a redevelopment area authorized by Arizona Revised Statutes Title 36 Chapter 12 Article 3 ("Heritage District"); Gilbert desires that such real property be redeveloped for a university use as described in this Agreement in order to provide additional educational opportunities in Gilbert and to further the economic development of the Heritage District.

B. Gilbert adopted a Redevelopment Plan for the Heritage District and the four-year liberal arts university to be operated by Saint Xavier University proposed in this Agreement will further the goals set forth in that Redevelopment Plan.

C. Saint Xavier University is experienced in operating a private university campus and programs as described in this Agreement; Saint Xavier University operates campuses in Chicago and Orland Park, IL, with a total student population of 2,925 undergraduates and 1,450 graduate students and now desires to establish a private university on the real property owned by Gilbert in the Heritage District.

D. Saint Xavier University, under no legal obligation or other compulsion to do so, now elects to open a new university campus within the corporate limits of Gilbert in accordance with the terms and conditions set forth in this Agreement and in the Lease as hereinafter defined).

E. Gilbert, acting through its Town Council, has determined in the exercise of its legislative discretion the establishment of the private university in the Heritage District would be an important community asset providing significant derivative economic benefits and community amenities for Gilbert's residents and businesses, as well as significant regional and state economic benefits.

F. The operation 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, which has suffered and continues to suffer from insufficient economic development.

G. The operation of a university in the Heritage District will provide significant full-time and part-time employment opportunities for the residents of Gilbert, with Gilbert and Saint Xavier University anticipating Saint Xavier University will hire certain full-time employees for office and administrative purposes at the university.

H. Gilbert will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the establishment and operation of the university contemplated by this Agreement.

I. Gilbert is authorized pursuant to ARS Section 9-500.05 and 9-500.11 to enter into development agreements that include expenditures for economic development.

J. The Gilbert Town Council has determined, in the exercise of its legislative discretion, and based upon independent economic analysis prepared by Applied Economics , the value of any benefit conferred on Saint Xavier University by Gilbert is far exceeded by the educational and economic benefits the university will bring to the Heritage District and to Gilbert as a whole.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, representations, mutual promises and agreements set forth herein, the Parties agree as follows:

1. **Definitions**. Capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.

Academic Year means the annual period of time from the commencement of classes in the Fall semester of any given year, whether occurring in the months of August or September, and continuing until the annual commencement or graduation occurring at the end of the first semester of a new calendar year, whether April, May or June. Saint Xavier University may supplement the Academic Year with a Summer Session, as required.

Academic Default means a Default by Saint Xavier University of its obligations under Sections 7.2.2 and 7.2.5.

Architect means the person or firm selected to design the Project pursuant to Section 4.6.2 of this Agreement.

Building means the approximate 87,000 square foot building to be constructed on the Property by Gilbert and leased to Saint Xavier University pursuant to Section 6 of this Agreement.

Change Orders for Unforeseen Circumstances means change orders during the course of design or construction of the Project that result from unforeseen circumstances related to the Project site, but not resulting from a change to the Project Scope requested by a Party.

Commencement of Construction means the occurrence of both: (i) the obtaining of a building permit for the Project; and, (ii) the actual commencement of physical construction of the Project pursuant to that building permit.

Completion of Construction issuance of a certificate of occupancy for the Building.

Construction Costs means all costs of engineering, design, construction, construction management, surveys, inspections, testing and other activities related to design and construction of the On-Site Improvements and the Off-Site Improvements, including but not limited to (i) permits and other approvals, (ii) third party costs incurred by Gilbert to perform design, construction, construction management, surveys and other activities related to design and construction of the On-Site Improvements and Off-Site Improvements, and (iii) insurance costs.

Default means the failure by either Party to perform its obligations under this Agreement.

Design Approval means approval of the Site Plan and design of the Building by the Gilbert Design Review Board.

Effective Date means the date this Agreement is recorded in the office of the Maricopa County Recorder's Office

Enforced Delay includes but is not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the federal or state government and acts of Third Parties (including contractors, subcontractors, and suppliers) beyond the reasonable control of the Party; (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (including the effect of petitions for initiative or referendum), and (3) failure of Gilbert to sell Revenue Bonds despite good faith efforts to do so. Notwithstanding the foregoing or anything in this Agreement to the contrary, Enforced Delay shall not include any delay in performance due to (i) economic conditions; (ii) financial infirmity or financial decisions made by Saint Xavier University; (iii) failure of Saint Xavier University to reach or maintain the Saint Xavier University Performance Criteria, or (iv) any act that constitutes a Default of the Party seeking the benefit of an Enforced Delay.

Full-Time Student means an undergraduate student at the University who is enrolled at the University at any given semester, based on the Federal Guidelines, which are currently, for not less than twelve (12) credit hours. A graduate student enrolled between 6 and 9 credit hours is considered full time.

Furniture, Fixtures and Equipment or FFE means the furniture, fixtures and equipment described in Exhibit F.

Gilbert's Representative means the person designated pursuant to Section 13.2.

Gilbert Project Budget Limit means the not to exceed amount approved by the Gilbert Town Council pursuant to Section 4.2.1.

Guaranteed Maximum Price means the negotiated fixed price for the construction services to be performed by the construction manager-at-risk pursuant to Section 4.7.2, subject to approved change orders.

Improvements means the Off-Site Improvements and the On-Site Improvements.

Lease Agreement means the lease entered into between Gilbert and Saint Xavier University for the lease of the Building and the Property as provided in Section 6 and which will be substantially in the form attached to this Agreement as Exhibit E.

Non-Academic Default means all Defaults by Saint Xavier University that are not Academic Defaults.

Notice of Final Completion of Construction means the written notice by Gilbert to Saint Xavier University that construction of the Improvements is complete.

Notice of Substantial Completion of Construction means the written notice by Gilbert to Saint Xavier University that the construction of the Improvements are substantially complete and further subject to substantial completion of punch list items.

Off-Site Improvements means the improvements described in Exhibit H.

On-Site Improvements means the improvements described in Exhibit G.

Plan of Operation means the plan of operation for Saint Xavier University pursuant to Section 4.3.

Project means Site Plan approval for the Project by Gilbert, issuance of building permits and design and construction of the On-Site Improvements and Off-Site Improvements in accordance with this Agreement. "Project" does not include the operation of the University.

Project Budget means the budget for the Project set forth in Exhibit C, attached to this Agreement

Project Committee means a group made up of the Parties' Representatives, one person appointed by the Gilbert Representative, one person appointed by the Saint Xavier University Representative and the Gilbert Town Manager or his designee.

Project Schedule means the schedule for the required approvals, design, construction and lease commencement described in Section 4.4 and in Exhibit D attached to this Agreement.

Project Specifications means the requirements of Saint Xavier University for the Project as set forth in Section 4.1 and in Exhibit B, attached to this Agreement.

Property means the real property described in Exhibit A, attached to this Agreement

Punch List Items means items existing at the time of Substantial Completion that are included in the contract documents for construction of the Improvements but which have not been completed.

Revenue Bonds Revenue Bonds means debt or obligations issued by Gilbert or its designee, including but not limited to the Town of Gilbert Industrial Development Authority, for the cost of design and construction of the Improvements.

Site Plan means the site plan required by Article 5.6 of the Gilbert Land Development Code.

Saint Xavier University Performance Criteria means the performance criteria set forth in Section 7.2 of this Agreement.

Saint Xavier University's Representative means the person designated pursuant to Section 13.2.

Substantial Completion of Construction means the date on which the construction of the Off-Site Improvements and On-Site Improvements is sufficiently complete so that they can be used for their intended purposes.

Town Council means the Common Council of the Town of Gilbert, Arizona.

University means the four-year private liberal arts university to be established, maintained and operated by Saint Xavier University pursuant to this Agreement open to enrollment by members of the general public.

2. **Purpose.** The purpose of this Agreement is to provide for the development of the Property and to set forth the agreements of the Parties with respect to the Project, the issuance of Revenue Bonds by Gilbert, the lease of the Property and the Building by Gilbert to Saint Xavier University, and the performance criteria for the operation of the University by Saint Xavier University. It is the goal of the Parties that Saint Xavier University establish, maintain and operate a four year liberal arts University campus in the Heritage District and comply with the Saint Xavier University Performance Criteria in order to provide educational opportunities to the residents of Gilbert and the region and to further the economic development of the Heritage District. It is the further goal of the Parties to create a capital fund for the future expansion of the University.

3. **General Description of the Project.** Subject to Enforced Delay, Saint Xavier University will open a University campus on the Property on or before October 1, 2015. At a minimum, Saint Xavier University will offer degree programs in nursing, business and education on the Property and comply with the Saint Xavier Performance Criteria. In return, Gilbert will design and construct the Improvements on the Property. Saint Xavier University and Gilbert shall execute a Lease Agreement for the Property and the Improvements.

4. **Development of the Project.**

4.1 **Project Specifications.** Saint Xavier University requires that the Project comply with the Project Specifications attached as Exhibit B. Gilbert relies on the Project Specifications in the design and construction of the Project. Any costs associated with change orders and/or modifications to the Project scope, including resultant delays, made by either party to this agreement that are not mutually agreed to shall be borne by the party requesting the

modifications. Such changes must be presented to both Gilbert and Saint Xavier University prior to approval by Gilbert of the change to the Project Specifications.

4.2 **Project Budget.**

4.2.1 The Parties acknowledge that the scope of the Furniture, Fixtures and Equipment, On-Site Improvements and Off-Site Improvements are not known at the time of execution of this Agreement. On or before the completion of the design development phase of the design of the Building, the scope of the Fixtures and Equipment, On-Site Improvements, Off-Site Improvements will be approved by the Parties' Representatives and attached as Exhibit F, Exhibit G and Exhibit H respectively. If the Parties' Representatives fail to approve the Furniture, Fixtures and Equipment, On-site Improvements and Off-Site Improvements prior to completion of the design phase of the design of the Building, then the Gilbert Project Budget Limit shall not be submitted for approval pursuant to Section 4.2.3 and this Agreement shall automatically terminate in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination

4.2.2 Except as provided in Section 4.2.1 for failure to approve the scope of the Furniture, Fixtures and Equipment and Off-Site Improvements, a proposed Project Budget will be prepared by the Parties' Representatives on or before completion of the design development phase of the design for the Building. The proposed Project Budget shall include costs of issuance of the Revenue Bonds and projected interest on the Revenue Bonds, Construction Costs, system development fees for the Improvements, cost of Furniture, Fixtures and Equipment, a ten percent (10%) contingency for Change Orders for Unforeseen Circumstances, and an amount equal to one year debt service on the Revenue Bonds to be used in the event the Lease Agreement is terminated prior to the end of its term. The proposed Project Budget will also include a recommended Gilbert Project Budget Limit.

4.2.3 The Gilbert Project Budget Limit shall be submitted for approval to the Gilbert Town Council and the Board of Directors of Saint Xavier University on or before June 30, 2014. If the Gilbert Town Council and the Board of Directors of Saint Xavier University approve the Gilbert Project Budget Limit, then the Project Budget prepared by the Parties' Representatives shall be attached as Exhibit C to this Agreement. If the Gilbert Town Council and the Board of Directors of Saint Xavier University fail to approve the Gilbert Project Budget Limit on or before June 30, 2014, or such later date as the Parties shall mutually agree in writing, this Agreement shall automatically terminate, in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination.

4.2.4 The Gilbert Representative is authorized to adjust the Project Budget within the Gilbert Project Budget Limit consistent with the most effective and efficient manner to complete the Project in accordance with this Agreement and shall be responsible to notify the University's representative of the modification, in writing, within forty eight (48) hours of the modification..

4.2.5 Gilbert shall issue its Revenue Bonds pursuant to Section 5 of this Agreement in the amount of the Project Budget plus any additional amounts deemed necessary

for the Project in the sole discretion of Gilbert. At any time Gilbert determines that the Project Budget will be exceeded, Gilbert shall immediately give written notice to Saint Xavier University of the amount of the anticipated exceedance and the reasons therefore. Saint Xavier University shall be solely responsible for and shall pay all costs that exceed the Project Budget. Gilbert shall have no obligation to issue additional Revenue Bonds or provide any funds to finance the Project over and above the Project Budget.

4.3 **Saint Xavier University Submittal of Budget.** Saint Xavier University shall submit to Gilbert evidence of the formal approval by its Board of Directors of this Agreement and its adopted budget for the first Academic Year of the University. Gilbert shall notify Saint Xavier University in writing at least five (5) days prior to its intended execution of the first agreements with an architect(s) or engineer(s) pursuant to Section 4.6.2 and if Saint Xavier University does not submit such evidence or budget as required by this Section within five (5) days of such notice, this Agreement shall automatically terminate. In the event of such automatic termination of this Agreement pursuant to this Section 4.3, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.4 **Project Schedule.** The Project Schedule is attached as Exhibit D to this Agreement. The Project Schedule may be modified or extended by mutual agreement of the Parties' Representatives. The Project Schedule may also be extended for Enforced Delays as set forth in Section 9.

4.5 **Project Site Plan Approval.** The Site Plan shall be prepared by Gilbert in collaboration with Saint Xavier University. The Site Plan shall comply with all requirements of the Gilbert Land Development Code and other applicable laws, regulations and rules. The Site Plan shall require Gilbert Design Review Board and Redevelopment Commission approval. If the Parties fail to agree to a Site Plan or if the Design Review Board and Redevelopment Commission fail to approve the Site Plan on or before March 31, 2014, or such later date as the Parties' Representatives shall mutually agree in writing, this Agreement shall automatically terminate, in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination.

4.6 **Project Design.**

4.6.1 The design of the Project shall comply with Gilbert's design guidelines and shall require Design Review Board and Redevelopment Commission approval.

4.6.2 Gilbert shall enter into a contract or contracts, as it deems appropriate, with a qualified engineer(s) and architect(s) to design the Project. The selection of engineers and architects shall comply with the requirements of Arizona Revised Statutes Title 34. Gilbert shall notify Saint Xavier University in writing of the selected engineer(s) and architect(s) and the proposed design fees. If within ten (10) days of the date of the notice, Saint Xavier University objects to an engineer or architect, Saint Xavier University shall notify Gilbert in writing of the objection and the basis for the objection. If no objection is received, Gilbert shall enter into a

contract with the selected engineer(s) and architect(s). If Saint Xavier University submits its written notice objecting to a selected engineer or architect, Gilbert or Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.6.2, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty-five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University. A detailed list of costs incurred with adequate support (invoices, etc.) must be maintained by Gilbert and readily available upon request.

4.6.3 Upon completion of each phase of the design of the Project, Gilbert shall provide the design documents for that phase to Saint Xavier University for review. Saint Xavier University shall have thirty (30) days within which to submit any comments to the design documents to Gilbert. If Saint Xavier University does not submit comments, Gilbert may proceed with the next phase or with construction of the Project, as the case may be. If Saint Xavier University submits comments, the comments will be reviewed for compliance with the Project Specifications and shall be reviewed by the engineer and/or architect. Such comments will be incorporated into the design unless the engineer or architect, as the case may be, in its sole discretion determines a design change based on the comments do not comply with sound engineering or architectural practices or do not comply with standards in the industry. If Saint Xavier University objects to a refusal by the engineer or architect to incorporate its comments into the design of the Project, Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.6.3, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within thirty (30) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.7 **Project Construction; Guaranteed Maximum Price.**

4.7.1 Gilbert shall use a construction manager-at-risk method of project delivery. Upon completion of the selection process for the construction manager-at-risk, Gilbert shall notify Saint Xavier University in writing of the selected construction manager-at-risk. If within ten (10) days of the date of the notice, Saint Xavier University objects to the construction manager-at-risk, Saint Xavier University shall notify Gilbert in writing of the objection and the basis for the objection. If no objection is received, Gilbert shall enter into a contract with the construction manager-at-risk for the design phase of the Project. If Saint Xavier University submits its written notice objecting to the selected construction manager-at-risk, Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.7.1, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within thirty (30) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University. A detailed list of costs incurred with adequate support (invoices, etc.) must be maintained by Gilbert and readily available upon request.

4.7.2 Gilbert shall negotiate a Guaranteed Maximum Price for the construction of the Project with the construction manager-at-risk at the end of the design development drawings phase of the Project. Gilbert shall submit notice of the negotiated Guaranteed

Maximum Price for the Project to Saint Xavier University for approval. Within twenty (20) days of the date of the notice, Saint Xavier University shall either approve the Guaranteed Maximum Price in writing or object to the Guaranteed Maximum Price. If Saint Xavier University approves the Guaranteed Maximum Price, Saint Xavier University shall notify Gilbert in writing and such approval shall be Saint Xavier University's authorization to Gilbert to proceed with the construction phase of the Project. If Saint Xavier University objects to the Guaranteed Maximum Price, Saint Xavier University shall notify Gilbert in writing of such objection prior to the expiration of the twenty (20) day period. In that event, the Parties' Representatives shall meet to discuss the reason for the objection. If agreement cannot be reached on the Guaranteed Maximum Price within thirty (30) days of the date of Saint Xavier University's written notice of objection, or such later date agreed to by the Parties' Representatives, this Agreement shall automatically terminate. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.7.2, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within thirty (30) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.7.3 Gilbert will use its best efforts to cause the Commencement of Construction to occur on or before the Commencement Date as set forth in the Project Schedule, and thereafter will diligently pursue and prosecute construction of the Project in accordance with the Project Schedule. In the event Commencement of Construction has not occurred on or before the date set forth in the Project Schedule, the Parties promptly thereafter shall meet and confer in good faith to attempt to resolve those matters that have delayed the Commencement of Construction and to determine whether the Project can be completed in a manner consistent with the Project Budget and Project Schedule and the expectations of the Parties. If the Parties are unable, in good faith and within ninety (90) days following the Commencement Date set forth in the Project Schedule, to resolve the issues, then this Agreement shall be terminated, and neither Party shall have any rights with respect to the other or in connection with or arising out of this Agreement. In the event of termination of this Agreement by either Party pursuant to this Section 4.7.3, each Party shall bear their own costs and expenses incurred prior to the date of termination.

4.7.4 Saint Xavier University shall be responsible for the cost of any change orders issued for the Project, except for change orders requested by Gilbert and Change Orders for Unforeseen Circumstances.

4.7.5 The Parties acknowledge that after Gilbert issues the Revenue Bonds as set forth in Section 5 of this Agreement, Gilbert will incur costs and become obligated to pay debt service on the Revenue Bonds. The Revenue Bonds issued will include an amount equal to one year debt service, which shall be used to pay debt service on the Revenue Bonds in the event the Lease Agreement is terminated for any reason prior to the expiration of the term of the Lease Agreement.

4.8 **Acceptance.** Upon Substantial Completion of Construction of the Project, Gilbert shall provide to Saint Xavier University a Notice of Substantial Completion of Construction. The representatives of Gilbert and Saint Xavier University shall conduct a walk-through of the

Project. Gilbert and Saint Xavier University shall mutually agree on any Punch List items that must be completed or remedied, consistent with the construction contract requirements. Upon Final Completion of Construction, Gilbert will provide to Saint Xavier University a Notice of Final Completion of Construction. If all of the items on the Punch List prepared for Substantial Completion of Construction have been completed, Gilbert may accept the Project.

4.9 **Project Committee.** The Project Committee shall be appointed within thirty (30) days of the Effective Date. The Project Committee shall oversee the design and construction of the Project and make recommendations to the Gilbert Representative or Town Council, as applicable, concerning all material aspects of the design and construction of the Project.

5. **Issuance of Revenue Bonds.** Gilbert shall issue Revenue Bonds in an amount equal to the Project Budget less interest. At Gilbert's discretion, Gilbert may identify an alternative revenue source for the items required to be included in the Project Budget pursuant to Section 4.2.2 and other obligations of Gilbert. The Revenue Bonds shall be issued in accordance with the Project Schedule, which shall provide that the Revenue Bonds shall not be issued more than sixty (60) days prior to the execution of the contract for construction services for the Project. Repayment of the Revenue Bonds shall remain the obligation of Gilbert.

6. **Lease Agreement.** Within five (5) days of the approval of the issuance of the Revenue Bonds by the Gilbert Town Council or the approval by Gilbert of this amendment, whichever comes first , Saint Xavier University shall execute the Lease Agreement in the form attached as Exhibit E. Gilbert's Representative is authorized to make non-substantial changes to the form of Lease Agreement prior to execution and shall provide Saint Xavier University written notice of such non-substantial changes prior to the execution of the lease. Failure to execute the Lease Agreement shall be a Non-Academic Default. Saint Xavier University understands and agrees that the lease payments shall be in an amount sufficient to cover the debt service on the Revenue Bonds and the fair value of rent for the Property. Saint Xavier University further understands and agrees that in the event the Property becomes subject to a government property lease excise tax pursuant to Arizona Revised Statutes Title 42 Chapter 6 Article 5, Saint Xavier University shall pay such excise tax and Gilbert shall have no responsibility whatsoever for such excise taxes. Further, if Saint Xavier University loses its 501(c)(3) status, the lease payments may be adjusted by Gilbert to cover any additional costs resulting from that loss.

7. **Saint Xavier University Performance Criteria.**

7.1 **Gilbert Agreements Contingent on Saint Xavier University Performance Criteria.** Saint Xavier University understands and agrees that Gilbert's willingness to enter into this Agreement is contingent on Saint Xavier University compliance with the Saint Xavier University Performance Criteria set forth in this Section 7.

7.2 **Performance Criteria.** In recognition of the benefits provided by Gilbert to Saint Xavier University:

7.2.1. Saint Xavier University shall open the University on or before October 1, 2015.

7.2.2 Saint Xavier University shall use its best efforts by means of its student enrollment experience and admission expertise to recruit and retain the number of students necessary to appropriately populate the undergraduate and graduate programs offered for the degree and degree-completion programs offered initially in Nursing, Business and Education, and subsequently in other fields (the "Programs"). Though enrollment for instruction in online or hybrid formats is not limited, for purposes of this section, "full time students" shall mean undergraduate students taking at least 9 credit hours a semester and graduate students taking at least 6 credit hours a semester, by personal attendance on the Property (or off the Property if participating in intern or externship programs) and taught by instructors physically present. Such best efforts shall be reflected in the development of reasonable and viable annual enrollment targets of Programs offered during the traditional academic year, during summer sessions, in on-site, online and in a hybrid classroom formats. The University shall use its best efforts to substantially increase enrollments in succeeding academic years. During Years One and Two of this Agreement, enrollment targets shall be contingent upon approval of prelicensure Nursing Programs by the AZ Board of Nursing, as well as the achievement of any other State approvals required for graduate or undergraduate Programs offered through the School of Education, the Graham School of Management, or the College of Arts and Sciences. In addition, as the AZ Board of Nursing approves prelicensure Nursing Programs in the fall of 2015 and spring of 2016, undergraduate enrollment targets in Nursing shall focus on the annual matriculation of 40 to 60 students. For Academic Year One therefore, enrollment targets shall focus on the matriculation of 50 to 75 full time students in graduate and degree-completion Programs. For Academic Year Two, the enrollment target shall be 100 to 150 full time students. For Academic Year Three, the enrollment target shall be 150 to 225 full time students. At the end of Year Three (during the spring semester 2018), the University and Gilbert Representative shall meet to review enrollment projections for Academic Years Four through Seven, and may jointly conclude to adjust the enrollment target for those years. For Academic Year Four (fall semester 2018), the enrollment target shall be 300 full time enrolled students in undergraduate and graduate Programs. For Year Five (fall semester 2019), the enrollment target shall be 425 full time students. For Year Six (fall semester 2020), the enrollment target shall be 550 full time students.

For Academic Year Seven (fall semester 2021), the enrollment target shall be 750 full time students enrolled in undergraduate and graduate Programs. The failure to reach the enrollment target for Year Seven shall be considered an Academic Default pursuant to section 10. In determining whether the enrollment target has been reached, the number of full time students, as defined above, enrolled at the beginning of the fall semester shall be determinative.

Under the provisions of the Agreement and throughout the Initial Term and Renewal Terms of the Lease Agreement, Saint Xavier University is committed to provide the Gilbert Representative with any/all information used by the University to produce annual enrollment projections, and to use its best efforts to substantially increase student enrollments in all Programs for all succeeding Academic Years.

7.2.3 When the University opens, it shall have at least the following degree programs: Business, Nursing and Education. Saint Xavier University shall ensure that all State

statutory and regulatory requirements are met so as to offer pre-licensure programs in Nursing and licensure and/or certification programs in Education. Such degree programs shall be maintained during the term of the Lease Agreement.

7.2.4 Saint Xavier University awards scholarships (for merit), grants (for need) and students may be eligible for Pell grants from the federal government. In addition, Town of Gilbert residents are eligible for a special Town of Gilbert grant for undergraduate programs as specified below, ramped up as follows:

Year One:	2% of the then tuition in place entering their first year
Year Two:	4% of the then tuition in place entering their second year.
Year Three:	6% of the then tuition in place entering their third year.
Year Four:	8% of the then tuition in place entering their fourth year.
Year Five (And thereafter):	10% of the then tuition in place entering their fifth year.

The total of all University scholarships, grants or tuition reduction cannot exceed a discount rate in excess of 50%. Saint Xavier University provides merit scholarships and need based scholarships. Additionally, at no time will the awarded scholarship (institutional aid), grant or tuition reduction (Town of Gilbert grant) be refundable. This means that the tuition less institutional scholarship (merit), less need based aid (Pell and/or institutional need aid) less the special Gilbert resident grant cannot result in a refund to the student. The Gilbert Town Manager is authorized, after consultation with Saint Xavier University, to adjust the minimum requirements in this section if he determines that there are not sufficient applications from Gilbert residents to comply with this performance criterion.

7.2.5 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of endowed funds for the University. This comprehensive and on-going endowment campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The endowment shall be considered to be fully funded when the endowment fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the endowment fund for the University by the end of the first Academic Year.

Until the endowment fund is fully funded as provided herein, Saint Xavier University shall maintain such endowment fund at a minimum level of Twenty-Five Thousand Dollars ($25,000.00).

7.2.6 On or before the sixth anniversary of the commencement of the term of the Lease Agreement, Saint Xavier University shall have completed a minimum investment of Thirty Six Million Dollars ($30,000,000.00) in the University. Such investment shall include salaries and benefits paid to employees of the Gilbert campus, lease payments, utilities, supplies, marketing materials and student recruitment and scholarships for Gilbert residents. The annual investment through the fifth anniversary of the commencement of the term of the Lease Agreement shall be at least (a) $2.5 Million prior to the first anniversary of the commencement of the Initial Term of the Lease Agreement; (b) $3.0 Million prior to the second anniversary of

the commencement of the Initial Term of the Lease Agreement; (c) $5.7 Million prior to the third anniversary of the commencement of the Initial Term of the Lease Agreement; (d) $6.0 Million prior to the fourth anniversary of the commencement of the Initial Term of the Lease Agreement; (e) $6.2 Million prior to the fifth anniversary of the commencement of the Initial Term of the Lease Agreement; and (f) and $6.4 Million prior to the sixth anniversary of the commencement of the Initial Term of the Lease Agreement. If on any anniversary of the commencement of the term of the Lease Agreement the above thresholds have not been met, Gilbert's Representative shall meet with Saint Xavier University's Representative to determine whether a reasonable adjustment can be made that will result in the minimum investment of Thirty-Six Million Dollars ($30,000,000.00) by Saint Xavier University by said fifth anniversary, and if so, Gilbert's Representative is authorized to approve such adjustment.

7.2.7 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of funds for a capital fund for the expansion of the University anticipated to occur on or before the fifteenth anniversary of the Effective Date. This comprehensive and on-going fundraising campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The capital fund shall be considered to be fully funded when the capital fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the capital fund for the University by the end of the first Academic Year.

7.3 **Failure to Meet Performance Criteria.** If Saint Xavier University does not meet the Saint Xavier University Performance Criteria, or fails to maintain the Saint Xavier University Performance Criteria as required by Sections 7.2.1 through 7.2.7 of this Agreement, then, subject to the Cure Periods set forth in Section 10.1, Gilbert may declare Saint Xavier University to be in Default of this Agreement and the Lease Agreement, with all of the rights and remedies set forth in Section 10 of this Agreement.

7.4 **Annual Report.** Annually, on or before each anniversary of the Effective Date during the term of this Agreement, Saint Xavier University shall submit to Gilbert a report showing the status of compliance with each of the Saint Xavier University Performance Criteria. The annual report shall include sufficient information to verify the status of each of the Saint Xavier University Performance Criteria. Gilbert may require such additional information as it determines is required to verify such status.

8. **Representations and Warranties.**

8.1 Gilbert Representations. Gilbert represents and warrants to Saint Xavier University, acknowledging and agreeing Saint Xavier University is entering into this Agreement in reliance on such representations and warranties:

8.1.1 Gilbert will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

8.1.2 As of the date of this Agreement, Gilbert knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of Gilbert or its officials with respect to this Agreement including Gilbert's execution, delivery and performance hereof.

8.1.3 The execution, delivery and performance of this Agreement by Gilbert is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which Gilbert is a party or is otherwise subject.

8.1.4 Gilbert has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8.2 Saint Xavier University Representations. Saint Xavier University represents and warrants to Gilbert, acknowledging and agreeing Gilbert is entering into this Agreement in reliance on such representations and warranties

8.2.1 Saint Xavier University is a tax exempt organization under Internal Revenue Code Section 501(c)(3) and that as such property used by it is exempt from taxation.

8.2.2 Saint Xavier University' execution and approval of this Agreement is in compliance with the organizational, formation and operating documents of Saint Xavier University. In addition, Saint Xavier University enters this Agreement as a duly accredited, four-year higher education institution. Through the term of this Agreement, the University shall meet all required accreditation obligations, as required by the Higher Learning Commission ("HLC") and other pertinent accrediting bodies for the programs that will be offered.

8.2.3 Saint Xavier University will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

8.2.4 As of the date of this Agreement, Saint Xavier University knows of no litigation, proceeding or official investigation contesting the powers of Saint Xavier University or its officers with respect to this Agreement including Saint Xavier University' execution, delivery and performance hereof.

8.2.5 The execution, delivery and performance of this Agreement by Saint Xavier University is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Saint Xavier University is a party or is otherwise subject.

8.2.6 But for the agreements set forth in this Agreement, Saint Xavier University would not establish, maintain and operate a University in the Heritage District or other location in Gilbert.

8.2.7 Saint Xavier University has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than

normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.2.8 Saint Xavier University has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **Enforced Delay in Performance for Causes Beyond Control of Party**. Whether stated or not, subject to the exclusions set forth in this Section 9, all periods of time in this Agreement are subject to this Section 9 and (as applicable) the cure periods referenced in Section 10.1. Subject to the foregoing, neither Gilbert nor Saint Xavier University, as the case may be, shall be considered in Default under this Agreement in the event of a delay due to Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay, provided the Party seeking the benefit of the provisions of this Section 9 shall, reasonably promptly after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

10. **Default and Remedies.**

10.1 **Default and Cure Period.**

10.1.1 Saint Xavier University Default. If Saint Xavier University fails to perform its obligations under this Agreement, and such failure is an Academic Default, Saint Xavier shall cure the Academic Default within three hundred sixty-five (365) days after notice thereof from Gilbert in accordance with this Agreement. Beginning with the commencement of the Fourth Academic Year, Saint Xavier University is only permitted to have two (2) cure periods for an Academic Default in any fifteen (15) year period unless Gilbert consents to additional cure periods. If Saint Xavier University's failure to perform its obligations under this Agreement is a Non-Academic Default, then Saint Xavier University shall cure the Non-Academic Default within forty five (45) days after notice thereof from Gilbert. These periods of time to cure a Default by Saint Xavier University may be extended by Gilbert at its discretion, provided Saint Xavier University commences performance or compliance within the initial 365 or 45 days, as applicable, and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Saint Xavier University. Any notice of an alleged Default ("Default Notice") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the applicable cure period (as extended, if applicable), Gilbert shall have the remedies set forth in Section 10.2.1. Notwithstanding any other provision of this Agreement or the Lease Agreement, Saint Xavier University shall not terminate the Lease Agreement or cease conducting classes commenced during any Academic Year prior to the expiration date of the Lease Agreement. In the event Saint Xavier University anticipates that it will terminate the Lease Agreement prior to its expiration date, Saint Xavier University shall prepare a transition plan for the students enrolled during that Academic Year to assure that classes continue to completion for that

Academic Year and to assure that students are provided an opportunity to continue their University program at a comparable University.

10.1.2 Gilbert Default. If Gilbert fails to perform its obligations under this Agreement, Gilbert shall cure the Default within forty five (45) days after notice thereof from Saint Xavier University in accordance with this Agreement. The periods of time to cure a Default by Gilbert may be extended by Saint Xavier University at its discretion, provided Gilbert commences performance or compliance within the initial thirty (30) days and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Gilbert. Any Default Notice shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within thirty (30) days of the Default Notice, Saint Xavier University shall have the remedies set forth in Section 10.2.2.

10.2 **Remedies.** Whenever a Default occurs and is not cured within the cure periods set forth in Sections 10.1.1 or 10.1.2 (as extended, if applicable), the remedies of the non-Defaulting Party shall consist of and be exclusively limited to the following:

10.2.1 Remedies of Gilbert. Within thirty (30) days of the Effective Date, Saint Xavier University shall deposit the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) in a restricted account to be used as set forth in this Section 10.2.1. Until the eighth anniversary of the Commencement Date, Gilbert shall be permitted to withdraw said funds in the event of a Default that is not cured within the cure periods set forth in Section 10.1.1. In the event of a Default Gilbert shall provide written notice of termination of the Agreement and the Lease Agreement to Saint Xavier University, whereupon this Agreement and the Lease Agreement shall terminate and the amount deposited in the restricted account shall become the property of Gilbert as liquidated damages and not a penalty, to cover the costs Gilbert will incur to locate another lessee and otherwise wind down the Lease Agreement. In addition, Saint Xavier University shall pay Gilbert any and all rent that may be due and owing up to and including the identified termination date. After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University. Except for a default under the provisions of 7.9.1 of the Lease, the remedies identified herein serve as the sole and exclusive remedies for default by Saint Xavier University, without any other acceleration rights, specific performance or the payment of additional damages to Gilbert. In the event of a default under section 7.9.1 of the Lease, Saint Xavier University shall also indemnify Gilbert for any increased interest cost, penalty, or other costs, including attorney's fees, incurred by Gilbert from SXU's failure to adhere to the private activity bonds test.

10.2.2 Remedies of Saint Xavier University. Saint Xavier University shall provide written notice of termination of the Agreement and the Lease Agreement to Gilbert, whereupon this Agreement and the Lease Agreement shall terminate. The recovery of Saint Xavier University shall be the actual damages as of the time of entry of judgment, Saint Xavier University expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages.

11. **Referendum or Legal Challenge**.

11.1 In the event a referendum petition is timely filed with the Clerk of Gilbert with respect to the adoption of this Agreement or the Lease Agreement by the Town Council, (i) the Parties may mutually agree in writing to rescind the Agreement, in which case the costs and expenses incurred by each Party to that date shall be borne by that Party, or (ii) Gilbert at its sole cost and expense, may schedule a referendum election for the next regular election of Gilbert, or, in Gilbert's sole and absolute discretion, as a special election; and the time period prior to the election and until the final results of such election are known shall be deemed an Enforced Delay pursuant to Section 9 of this Agreement. If a referendum election is held and the electors of Gilbert disapprove the adoption of this Agreement or the Lease Agreement, then this Agreement and the Lease Agreement shall automatically, and without further act or notice, be deemed terminated, in which event, the Parties shall each bear their own costs and expenses to the date of such automatic termination.

11.2 Upon the filing by a third party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining, directly or indirectly, to this Agreement (except a referendum as described in Section 11.1, the Parties may cause such action or proceeding to be timely defended by counsel selected by and acceptable to the Parties in their reasonable discretion and the Parties shall equally bear the cost of such defense. Either Party may, in its sole discretion, select its own counsel to represent its interests, at its own cost and expense. The Parties shall fully cooperate in the defense of such action or proceeding. In the event Gilbert and Saint Xavier University prevail at the trial level and the third party appeals the judgment, then Gilbert and Saint Xavier University shall equally bear the cost of the appeal to the Court of Appeals. If the cause is thereafter appealed to the Supreme Court of the State of Arizona, then Gilbert and Saint Xavier University shall bear the cost of such appeal only upon the mutual agreement of Gilbert and Saint Xavier University; provided however either Gilbert or Saint Xavier University may elect (at its sole cost and expense) to prosecute or defend such appeal to the Supreme Court of the State of Arizona. In the event Gilbert and Saint Xavier University do not prevail at the trial level, then Gilbert and Saint Xavier University shall appeal the judgment to the Court of Appeals only upon mutual agreement of Gilbert and Saint Xavier University, provided however either Gilbert or Saint Xavier University may elect (at its sole cost and expense) to appeal the judgment to the Court of Appeals or (if applicable) to the Supreme Court of the State of Arizona. Notwithstanding anything in this Section 11.2 to the contrary, the Parties must mutually agree on all strategic decisions and each Party shall approve (with such approval not unreasonably to be withheld, conditioned or delayed) all filings in any level of legal proceeding related to this Agreement. If the Parties do not agree, then either Party may terminate this Agreement upon written notice to the other; provided, however, each Party shall act reasonably in cooperating with the other in an effort to reach agreement.

12. **Notices and Filings.**

12.1 **Manner of Service**. All notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national "overnight" courier service (such as UPS or FedEx), or by United States certified mail

(return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To Gilbert:	To Saint Xavier University
Patrick Banger Town Manager 50 E. Civic Center Drive Gilbert, AZ 85296	Raymond Catania 3700 West 103rd Street Chicago, IL 60655

12.2 **Effective Date of Notices**. No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section 12. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this Section for notices, demands and other communications to be deemed effective.

13. **General Provisions.**

13.1 **Indemnification.**

13.1.1 Saint Xavier University shall indemnify, defend, pay and hold harmless Gilbert, and its employees, agents, contractors, licensees or assignees (each, individually, an ***"Indemnified Party,"*** and collectively, the "***Indemnified Parties***") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Saint Xavier University in this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Indemnified Parties by reason of any of the foregoing events, then Saint Xavier University, upon prompt written notice from the Indemnified Party will, at Saint Xavier University's sole cost and expense, resist or defend such claim, action or proceeding, in the Indemnified Party's name, if necessary, by

counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed. The foregoing indemnity shall be in addition to, and shall not limit, any indemnification provided in the Lease Agreement.

13.1.2 Gilbert shall indemnify, appear, defend and hold harmless Saint Xavier University, its officers, directors, members, employees, agents, contractors, licensees or assignees (each, individually, an ***"Indemnified Party,"*** and collectively, the "***Indemnified Parties***") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties arising out of Gilbert's design and construction of the Building. In the case of any claim, action or proceeding is made or brought against any of the Indemnified Parties by reason of any of the foregoing events, then Gilbert, upon prompt written notice from the Indemnified Party will, at Gilbert's sole cost and expense, resist or defend such claim, action or proceeding, in the Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed.

13.2 **Designated Representatives**. Whenever a term or condition of this Agreement refers to a "designated representative" of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party; provided if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the "designated representative" for Gilbert shall be deemed to be its Gilbert Town Manager and for Saint Xavier University its General Counsel.

13.3 **Persons Not Liable**. No shareholder, partner, member, manager, director, officer, official, council member, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the Gilbert or Saint Xavier University under the terms of this Agreement.

13.4 **Good Faith of Parties**. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

13.5 **Further Assurances**. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

13.6 **Restrictions on Assignment and Transfer.**

13.6.1 Except as provided in Section 13.6.2, no assignment, conveyance, transfer, encumbrance, hypothecation, pledge or other impairment of a Party's rights under this Agreement (each, a "Transfer") shall occur or be permitted without the prior written consent of the other Parties, which consent may be given or withheld in the other Parties' sole and unfettered discretion. Any Transfer in violation of this Section 13.6 shall be void, and not voidable, and shall vest no rights in the purported transferee or assignee. Notwithstanding the foregoing:

13.6.2 The restrictions on Transfer shall not apply with respect to: (a) Saint Xavier University's financing related to University operations or the exercise of any remedies by a lender of Saint Xavier University under such financing; (b) the assignment of the Lease Agreement to a wholly-owned subsidiary of Saint Xavier University; (c) a Corporate Succession, so long as Saint Xavier University's successor-in-interest expressly assumes the obligations under this Agreement. For the purposes of this Agreement, the term "Corporate Succession" means (i) a sale or transfer of all or substantially all of Saint Xavier University's business assets, or (ii) a change in the form of business entity through which Saint Xavier University conducts its business. Saint Xavier University shall promptly notify Gilbert in writing of any event of Corporate Succession. No voluntary or involuntary successor in interest of Saint Xavier University shall acquire any rights or powers under this Agreement except as expressly authorized in this Section 13.6.2, and any Transfer in violation of the provisions of this Section 13.6.2 shall be void and shall vest no rights in the purported transferee.

13.7 **Waiver**. The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power of privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.8 **Governing Law; Choice of Forum**. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement (whether by a Party, or by a permitted successor or assign to all or any interest of a Party) shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties (and their successors and assigns) agree and consent to the exclusive jurisdiction of such Superior Court. Saint Xavier University (and their successors and assigns) waive all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

13.9 **Attorneys' Fees and Costs**. In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement,

or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

13.10 **Business Days**. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

13.11 **Time of Essence**. Time is of the essence in implementing the terms of this Agreement.

13.12 **Headings**. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13.13 **Exhibits and Recitals**. Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement. The Recitals set forth at the beginning of this Agreement and the introductory paragraphs preceding the Recitals are incorporated into this Agreement, and the Parties hereby confirm the accuracy of the Recitals.

13.14 **Construction**. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement reflecting ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

13.15 **No Partnership; Third Parties**. Nothing in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the Gilbert and Saint Xavier University. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each Mortgagee shall be a third party beneficiary of the provisions of this Section 13.14, and except the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of the Gilbert acting in the

course and scope of their employment or engagement and all such persons shall be and are intended to be, third party beneficiaries of such indemnification provisions.

13.16 **Amendment**. No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the Gilbert Town Council, the Saint Xavier Board of Trustees, and executed by the Parties. Although the material terms of this Agreement shall not be changed without approval by the Gilbert Town Council and the Saint Xavier Board of Trustees, the Parties' Representatives shall have the right (but not the obligation), upon their mutual agreement, to vary or modify minor, administrative, technical or procedural terms of this Agreement dealing with, for example and without limitation, diligence, and approvals.

13.17 **Limited Severability.** The Parties each believe that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Gilbert to do any act in violation of any Applicable Law, constitutional provision, law, regulation, Municipal Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that, if practical and legally permitted, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; and further provided that in no event shall Gilbert be required to borrow funds, extend credit, make any expenditure from its General Fund, or take any other action determined by the Town Attorney to be a violation of any Applicable Law. Unless prohibited by any Applicable Law, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed. For purposes of this Agreement, the term "Applicable Laws" (or, in the singular, "Applicable Law") means all federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and all official policies of Gilbert, each of which apply to the development of the Property as of the date or dates upon which compliance is to be evaluated.

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

13.19 **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. With the exception of the Lease Agreement, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents) are hereby superseded and merged into this Agreement.

13.20 **Survival**. All agreements and indemnities in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated

herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

13.21 **Compliance with Immigration Laws and Regulations.** Pursuant to the provisions of A.R.S. §41-4401, Saint Xavier University warrants to the Gilbert Saint Xavier University is in compliance with all Federal Immigration laws and regulations which relate to its employees who work on the construction of the Project and, to the extent mandatory with the E-Verify Program under A.R.S. §23-214(A). Saint Xavier University acknowledges a breach of this warranty by Saint Xavier University or any of its Affiliates is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subcontract. To the extent permitted by law, the Gilbert retains the legal right to inspect the papers of any employee of Saint Xavier University who works on the construction of the Project to ensure compliance with this warranty. Gilbert may conduct random verification of the employment records of Saint Xavier University to ensure compliance with this warranty. Gilbert will not consider Saint Xavier University in material breach of the foregoing warranty if Saint Xavier University establish they have 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 Arizona Revised Statutes § 23-214(A). The provisions of this Article must be included in any contract Saint Xavier University enters into with all persons who provide services under this Agreement or any other contract with the Gilbert.

13.22 **Conflict of Interest Statutes**. This Agreement is subject to, and may be terminated by the Gilbert in accordance with, the provisions of A.R.S. §38-511.

[Remainder of page intentionally blank – Signature Page follows]

IN WITNESS WHEREOF, the Parties have entered into this Amended and Restated Development Agreement on or as of the day and year first written above.

GILBERT:

TOWN OF GILBERT, ARIZONA,
an Arizona municipal corporation

By : _____
Its: _____

APPROVED AS TO FORM:

_____
L. Michael Hamblin, Town Attorney

SAINT XAVIER UNIVERSITY:

By: _____
Its: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, _____ of Town of Gilbert, Arizona, an Arizona municipal corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of St. Xavier University, a 501(c)(3) corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

Description Of Document This Notarial Certificate Is Being Attached To:	
TYPE/TITLE	
DATE OF DOCUMENT	
NUMBER OF PAGES	
ADDITIONAL SIGNORS	
(other than those named in	
the notarial certificate)	

File: 0578-004-0030-0014; Desc: St Xavier Agreement Amend 4-7-15 SG redline; Doc#: 222161v2

EXHIBIT A

LEGAL DESCRIPTION – LOT 2

COMMENCING AT A 1/2" REBAR WITH NO CAP MARKING THE EAST QUARTER CORNER OF SAID SECTION 12, FROM WHICH A TOWN OF GILBERT BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST CORNER OF SAID SECTION 12 BEARS SOUTH 00 DEGREES 54 MINUTES 48 SECONDS EAST 2629.10 FEET;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 00 DEGREES 54 MINUTES
48 SECONDS EAST, 428.25 FEET TO A BRASS CAP FLUSH MARKING THE INTERSECTION OF VAUGHN AVENUE AND GILBERT ROAD;

THENCE ALONG SAID VAUGHN AVENUE CENTERLINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 919.69 FEET;

THENCE DEPARTING SAID CENTERLINE, NORTH 00 DEGREES 55 MINUTES 57 SECONDS WEST,
30.00 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE WEST LINE OF CREEDS ADDITION AS RECORDED IN BOOK 46 OF MAPS, PAGE 49 NORTH 00 DEGREES 54 MINUTES 48 SECONDS WEST, 356.75 FEET TO THE SOUTH LINE OF THE SRP WESTERN CANAL AS RECORDED IN BOOK 185 OF MAPS, PAGE 48, MARICOPA
COUNTY RECORDER;

THENCE DEPARTING SAID WEST LINE OF CREED'S ADDITION AND ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL NORTH 89 DEGREES 23 MINUTES 34 SECONDS EAST, 250.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL SOUTH 89 DEGREES 35 MINUTES 51 SECONDS EAST, 29.26 FEET TO THE WEST RIGHT OF WAY LINE OF ASH STREET AS DEDICATED PER THIS PLAT;

THENCE DEPARTING SAID SOUTH LINE OF THE SRP WESTERN CANAL AND ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 03 MINUTES 28 SECONDS EAST, 354.69 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE;

THENCE DEPARTING SAID WEST RIGHT OF WAY LINE AND ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 274.83 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 98,766 SQUARE FEET OR 2.2674 ACRES MORE OR LESS.

EXHIBIT B

PROJECT SPECIFICATIONS

Master List Description	**Quantity**
ADMINISTRATION – Non Academic	
☐ School of Nursing Faculty Offices	6
☐ School of Business Faculty Offices	4
☐ Administrative Offices / Meeting Rooms	4
☐ Administrative Offices / Meeting Rooms	2
☐ General Assembly Space	1
☐ Information/Reception Front Desk/Security Space	1
☐ Information Commons / Library	1
☐ General Student Gathering Space	6
☐ Trade/Conference/Corporate Training Space (complete with food preparation space and storage)	1
Mechanical Rooms (Electric HVAC, Life/Safety Fire/Water)	3
Bathrooms (two per floor…both men's and women's)	20
Incremental Growth - Contingency Space	5
Common Space hallways, corridors, etc.	TBD
School of Business/General Education - Instructional	
☐ Smart Classroom space for 50 students (non-nursing) (used for group study, will have computer stations, room for instruction, has to be flexible for technology and the modern classroom, etc)	6
Student Project Space	4
Ground Floor Lobby	1
Nursing School Needs – Instructional	

☐	School of Nursing Classroom Needs (up to 50 students)	8
☐	Seminar rooms for Nursing (up to 15/room)	4
☐	Simulation Lab Space (small) (accommodate up to 10)	5
☐	Sim Lab Studio (larger) (Can hold up to 25)	2
☐	Auditorium Style (tiered seating for approx. 125)	1

EXHIBIT C

PROJECT BUDGET

(To be attached)

EXHIBIT D

PROJECT SCHEDULE

Site Plan Approval - March 31, 2014

Design Completion - June 30, 2014

Issuance of Revenue Bonds - June 30, 2015

Construction Commences - July 31, 2014

Construction Completion - August 31, 2015

Commencement of First Academic Year - October 1, 2015

EXHIBIT E

FORM OF LEASE AGREEMENT

WHEN RECORDED RETURN TO:
Town of Gilbert
Attn: Town Clerk
50 East Civic Center Dr.
Gilbert, AZ 85296

Lease Agreement

By and Between

Town of Gilbert, Arizona, an Arizona Municipal Corporation;

and Saint Xavier University, a not for profit 501 c (3) Corporation

_____ ___, 201_.

File: 0578-004-0030-0014; Desc: St Xavier Agreement Amend 4-7-15 SG redline; Doc#: 222161v2

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LEASE AGREEMENT

This Lease Agreement ("Lease Agreement" or "Agreement") is made between the Town of Gilbert, a municipal corporation ("Gilbert" or "Town") as "Landlord" and Saint Xavier University, a not for profit 501 c (3) corporation ("Saint Xavier University") as "Tenant". Gilbert and Saint Xavier University may also be referred to in this Lease Agreement collectively as the "Parties", or individually as a "Party", or "Landlord" or "Tenant" respectively.

RECITALS

A. Gilbert owns real property in the Gilbert Heritage District, a redevelopment area authorized by Arizona Revised Statutes ("A.R.S.") Title 36 Chapter 12 Article 3 ("Heritage District"); Gilbert desires that such real property be redeveloped for a university use in order to provide additional educational opportunities in Gilbert and to further the economic development of the Heritage District.

B. Gilbert adopted a Redevelopment Plan for the Heritage District, and the four-year liberal arts university to be operated by Saint Xavier University proposed in this Agreement will further the goals set forth in that Redevelopment Plan.

C. Saint Xavier University is experienced in operating a private university campus and programs as described in this Agreement and the Development Agreement; Saint Xavier University operates campuses in Chicago and Orland Park, IL, with a total student population of approximately 2930 undergraduates, 1450 graduate students, and now desires to establish a private university on the real property owned by Gilbert in the Heritage District.

D. Saint Xavier University, currently under no legal obligation or other compulsion to do so, now elects to open a new university campus within the corporate limits of Gilbert in accordance with the terms and conditions set forth in this Lease Agreement and in the Development Agreement.

E. Gilbert, acting through its Town Council, has determined in the exercise of its legislative discretion that the establishment of the private university in the Heritage District would be an important community asset providing significant derivative economic benefits and community amenities for Gilbert's residents and businesses, as well as significant regional and state economic benefits.

F. The operation 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, which has suffered and continues to suffer from insufficient economic development.

G. The operation of a university in the Heritage District will provide significant full-time and part-time employment opportunities for the residents of Gilbert, with Gilbert and Saint Xavier University anticipating Saint Xavier University will hire certain full-time employees for office and administrative purposes at the university.

H. Gilbert will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the establishment and operation of the university contemplated by this Agreement.

LEASE AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing introductory paragraphs and Recitals, and the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

Section 1: Definitions.

In this Lease Agreement, unless a different meaning clearly appears from the context, the emboldened words shall be defined as set forth below:

1.1 "Academic Default": A Default by Saint Xavier University of its obligations under Section 11.

1.2 "Academic Year": The annual period of time from the commencement of classes in the Fall semester of any given year, whether occurring in the months of August or September, and continuing until the annual commencement or graduation occurring at the end of the first semester of a new calendar year, whether April, May or June. Saint Xavier University may supplement the Academic Year with a Summer Session, as required.

1.3 "Business Days": Monday through Thursday excluding national holidays.

1.4 "Commencement Date": The day following the date a Certificate of Occupancy for the Premises is issued by Gilbert.

1.5 "Default": As defined in Section 7 of this Agreement.

1.6 "Full-Time Student" : An undergraduate student at the University is considered to be a full time student if they take twelve (12) credit hours per semester. A graduate student enrolled between 6 and 9 credit hours is considered full time.

1.7 "Landlord": The Town of Gilbert, Arizona

1.8 "Lease Term": Fifteen (15) years (the "Initial Term"), in the absence of Default. The term "Lease Term" shall also include all extensions thereto as expressly provided in this Lease and/or any amendment or addendum thereto. For the purpose calculating the Lease Term, if the commencement Date does not occur on the first day of a calendar month, the expiration of the Lease Term shall be calculated as though the Lease Term began on the first day of the next succeeding calendar month after the month in which the Commencement Date occurs. For the purpose of calculating the Lease Term, if the Lease Term as set forth above does not expire at

the end of the Academic Year, the Tenant, with the Landlord's permission, which may not be unreasonably withheld, may hold over until the last day of the month in which the Academic Year ends.

The parties may mutually agree to extend the Lease for additional Renewal Terms of five (5) years. **1.9 "Non-Academic Default":** All Defaults by Saint Xavier University that are not Academic Defaults.

1.10 "Permitted Use": Operation and maintenance of a four year private liberal arts university open to enrollment by members of the general public.

1.11 "Premises": As set forth in Exhibit A and all buildings thereon.

1.12 "Rent" or "Base Rent": Monthly payment by Tenant to Landlord as set forth in Exhibit B.

1.13 "Revenue Bonds": The debt or obligation issued by Gilbert or its designee, including but not limited to the Town of Gilbert Industrial Development Authority, for the cost of design and construction of the Improvements.

1.14 "Saint Xavier University Performance Criteria": The performance criteria set forth in Section 11 of this Lease Agreement.

1.15 "Tenant": Saint Xavier University.

1.16 "University": The four-year private liberal arts university to be established, maintained and operated by Saint Xavier University pursuant to this Lease Agreement and the Development Agreement.

Section 2: Basic Lease Terms

2.1 Property Ownership.

Gilbert shall own all land and improvements thereon, including all the improvements made thereto. Upon termination of the lease the furniture, fixtures and equipment described in the Development Agreement Exhibit F shall be the property of Gilbert.

2.2. Leased Premises.

Gilbert as Landlord hereby leases to Saint Xavier University as Tenant on and in consideration of the terms and conditions contained herein the land and improvements thereon set forth and specifically described and depicted on Exhibit A attached, which by reference is made a part of this Lease.

2.3 Effective Date and Term.

Effective Date and Term will be on the Commencement Date and Term as defined in Sections 1.4 and 1.8.

2.4 Rent and Billing.

Saint Xavier University as Tenant shall pay to Gilbert as Landlord as rent for the leased premises the sum set forth in Exhibit B attached, which by reference is made a part of this lease ("Base Rent"). If Saint Xavier University loses its 501(c) (3) status the lease payments may be adjusted by Gilbert to cover any additional costs resulting from that loss.

2.4.1 In the event that the Lease Term shall commence, on a day other than the first day of a month, Tenant shall also pay Landlord the Rent and other sums due hereunder for such fractional month on a per diem basis (calculated on the basis of a 30 day month).

2.4.2 This Lease is a "triple net" lease. Tenant shall pay to Landlord during the Term the Base Rent plus all excise, sales, use, rental and/or transaction privileged taxes levied or imposed, or hereafter levied or imposed, against or on account of the terms of this Lease (including rights and obligations of the parties hereto), including but not limited to any or all amounts payable hereunder by Tenant or the receipt thereof by Landlord (except Landlord's income taxes), such taxes to be paid at the same time and in addition to the Base Rent and all other amounts which may become due with respect to the Premises. Amounts due over and above the Base Rent shall be referred to as "Additional Rent". "Base Rent" and "Additional Rent" may be collectively referred to as "Rent".

2.4.3 Tenant shall pay Rent on or before the first day of each month at: Town of Gilbert, 50 E. Civic Center Drive, Gilbert, Arizona 85296 ATTENTION; DIRECTOR OF FINANCE AND MANAGEMENT SERVICES.

2.4.4 Saint Xavier University further understands and agrees that in the event the Premises becomes subject to a government property lease excise tax pursuant to Arizona Revised Statutes Title 42 Chapter 6 Article 5, Saint Xavier University shall pay such excise tax and Gilbert shall have no responsibility whatsoever for such excise taxes.

2.4.5 Rent Payment Schedule [TO BE DETERMINED]

2.5 Late Charges.

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and any other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of will be very difficult to ascertain. Accordingly, if any monthly installment of Rent or other amount due to Landlord hereunder shall not be received by Landlord within four (4) business days after the due date therefor, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such installment or other amount of such costs. Thereafter, any amount due, which is not paid, shall bear interest from the day due until paid at a rate of 12% per annum.

2.6 Permitted Use.

Landlord hereby authorizes Tenant to occupy and use the premises for the purpose establishing, maintaining and operating a four-year liberal arts university campus and activities incident thereto and for no other purpose. Authorization can be revoked by Gilbert as Landlord upon a Default by Saint Xavier University as Tenant as set forth in Section 7 of this Lease Agreement.

2.7 Surrender.

Upon the expiration of the term of this Lease, or upon its earlier termination, as herein provided, Saint Xavier University as Tenant and if in possession shall have 45 days from the date notice is given to Gilbert as Landlord to remove all of Tenant's personal property, but not the Furniture, Fixtures and Equipment from the Premises and to surrender a peaceable possession of the Lease premises free and clear of any of its personal property, trash or debris, in good condition and repair, ordinary wear and tear excepted. The Furniture, Fixtures and Equipment shall become the property of Gilbert.

2.8 Sub-lease.

Until such time as Saint Xavier University's Rent payment equals the full amount of the monthly or yearly portion of the debt service, all proceeds collected in any sub-lease shall be paid to Gilbert.

3. Insurance

3.1 Requirements.

Tenant shall provide and maintain for the duration of the Lease, insurance against damage to property which arise from or in connection with the Lease as follows:

A.	Coverage for Landlord's Tenant improvements.	Replacement Value
B.	Coverage on building.	Replacement Value
C.	Property Insurance shall be written on an all-risk, replacement cost coverage, including coverage for flood and earth movement.	
D.	The Town of Gilbert shall be named as a loss payee on property coverage.	
E.	Policy shall contain a waiver of subrogation against the Town of Gilbert.	

3.2. Additional Insurance Requirements.

The policies shall include, or be endorsed to include the following provisions:

3.2.1. Gilbert as Additional Insured.

On insurance policies where the Town of Gilbert is named as an additional insured, the Town of Gilbert shall be an additional insured to the full limits of liability purchased by the Tenant.

3.2.2. Primary Insurance.

The Tenant's insurance coverage shall be the primary insurance and non-contributory with respect to all other available sources.

3.2.3 Notice of Cancellation.

Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided or canceled except after 10 days prior

written notice has been given to the Town. Notice shall be sent directly to Town of Gilbert Risk Manager, 50 Civic Center Drive, Gilbert, AZ 85296.

3.2.4. Acceptability of Insurers.

Insurance is to be placed with insurance duly licensed and authorized to do business in the State of Arizona and with a "A.M. Best" rating of not less than A or above. The Town in no way warrants that the above required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency. The verification of coverage less Tenant shall furnish the Town of Gilbert with Certificates of Insurance (Accord Form or equivalent approved by the Town) as required by this Lease. Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

3.2.5 Certificates.

All certificates and any other required endorsements are to be received and approved by the Town before the Lease commences. Each insurance policy required by this Lease must be in affect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of the Agreement. All certificates required by this Lease shall be sent directly to the Town as set forth in Section 12.12. Gilbert reserves the right to require complete certified copies of all insurance policies and endorsements required by this Lease at any time.

3.2.6 Insurance Modification.

Any modification or variation from the insurance requirements in this Lease must have prior approval from the Town of Gilbert whose decision shall be final. Action will not require a formal lease amendment but may be made by administrative action.

4. Indemnification.

Saint Xavier University, as Tenant, shall indemnify, defend, save and hold harmless the Town of Gilbert and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, losses, or expenses (including court costs, attorneys' fees, and cost 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 acts or omissions of Tenant or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Tenant's occupancy and use of the Premises. It is the specific intention of the parties that the Town shall, in all instances, except for claims arising solely from the negligence or willful acts or omissions of the Town, be indemnified by Tenant from and against any and all claims. It is agreed that Tenant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, the Tenant agrees to waive all rights of subrogation against the Town, its officers, officials, agents and employees from losses arising from the use, occupancy or condition of the premises.

5. Property Loss.

If the building(s) constituting the Premises are destroyed or damaged by fire or other casualty so that they are no longer of use as determined by Gilbert, then this Lease Agreement shall be terminated by Gilbert. If the damages to the buildings are capable of being repaired, all such repairs will be paid for by Saint Xavier University first to the extent of its insurance coverage, and if necessary thereafter with other assets. If the damages to the building are not capable of being repaired Saint Xavier University will pay to Gilbert (1) the fair market value of Gilbert's remaining interest in the Lease of the premises for a period of three (3) years, or until the end of the Term, whichever is less, as well as (2) the replacement value of the loss of the building and all Landlord financed improvements first to the extent of its insurance coverage, and if necessary thereafter with other assets.

6. Alterations.

6.1 Saint Xavier University shall make no alterations or improvements to the operational, H-VAC, mechanical and fire suppression systems without having first obtained permission from Gilbert. Minor, routine, non-structural modification of space by Saint Xavier University is permissible without Gilbert's permission, provided it is done in accordance with local ordinances, codes, and regulations covering such modifications including, but not limited to, the American for Disabilities Act (ADA). Any alteration or improvement commenced by operator shall be completed expeditiously in compliance with all laws, rules, and regulations of any governmental authorities having jurisdiction over the premises.

6.2 The premises shall be kept free and clear from any and all mechanics' and materialmens' liens, claims and charges. Each party shall indemnify and hold the other party harmless from any and all costs, expenses, claims, liens, or demands, including reasonable attorneys' fees, (collectively "costs") arising out of or by virtue of any non-payment of any obligations incurred by the other party.

6.3 Any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the Lease, except that Landlord may elect within thirty (30) days before the expiration of the Lease, or within forty-five (45) days after termination of the Lease, to require Tenant to remove any alterations that Tenant has made to the Premises. If Landlord so elects, Tenant at its cost shall restore the Premises to the condition designated by Landlord in its election, before the last day of the Term, or within thirty (30) days after notice of election is given, whichever is later.

6.4 If Tenant is not then in default of any provisions of this Lease, Tenant shall have the right to remove from the Premises immediately before the expiration of the Term, or within thirty (30) days after termination of the term, any alterations Tenant has made to the Premises, as long as the removal will not cause any structural damage to the Premises, and Tenant at its cost promptly restores any damage cause by the removal.

6.5 Signs. Tenant shall not inscribe or affix any sign, lettering or design on the exterior of the Premises or building, without Landlord's prior written consent. Any signs not in conformity with this Lease shall be immediately removed by Tenant.

7. Default

7.1 Events of Default. The existence or occurrence of any one or more of the following events shall constitute an event of default under this Lease if such event is not cured within forty-five (45) days of receipt of notice of such event from Landlord:

7.1.1 Saint Xavier University's failure to use the Premises solely for the Permitted Use for a continuous period of thirty (30) days, summer break at the end of an Academic Year, if any, excluded.

7.1.2 Non-payment of any portion for Rent.

7.1.3 Saint Xavier University's failure to comply with or perform any covenant, representation, warranty or obligation set forth in this Lease or in the Development Agreement.

7.1.4 General Assignment of any contract rights or assets of Saint Xavier University for the benefit of Saint Xavier University or any creditors of Saint Xavier University.

7.1.5 Appointment of a receiver or trustee for Saint Xavier University or for any trust owned or controlled by Saint Xavier University on account of improper conduct or improprieties of Saint Xavier University, any officer, or employee of Saint Xavier University that results in a diminution in the value of the total assets of the Saint Xavier University or any related trust by ten (10%) or more value of the University' total assets of any Saint Xavier University trust being relied upon for payment or support for payment of the lease obligations.

7.1.6 Commencement of a formal or informal proceeding for the dissolution or liquidation of Saint Xavier University, the winding up of the affair of Saint Xavier University, and settlement of claims against Saint Xavier University or against any trust of Saint Xavier University resulting in a diminution in value of St. Xavier University's assets or any owned trust by ten (10%) or more regardless of whether such action was voluntary or involuntary.

7.1.7. The failure of Saint Xavier University to have an action commenced by a related third party, without the consent of St. Xavier University, under any bankruptcy law dismissed within fifteen days of its filing.

7.1.8 A filing by Saint Xavier University of a request or petition under any bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction due to demonstrable mismanagement or financial insolvency.

7.1.9 Saint Xavier University's failure to preserve the tax free status of the Revenue Bonds by adhering to the private activity bonds test set forth in U. S. Internal Revenue Code section 141.

7.1.10 Saint Xavier University's failure to meet the Performance Criteria set forth Section 11.

7.2 Saint Xavier University Default. If Saint Xavier University fails to perform its obligations under this Agreement, and such failure is an Academic Default, Saint Xavier shall cure the Academic Default within three hundred sixty-five (365) days after notice thereof from Gilbert in accordance with this Agreement. . Beginning with the commencement of the Fourth Academic Year, Saint Xavier University is only permitted to have two (2) cure periods for an Academic Default in any fifteen (15) year period unless Gilbert consents to additional cure periods. If Saint Xavier University's failure to perform its obligations under this Agreement is a Non-Academic Default, then Saint Xavier University shall cure the Non-Academic Default within forty five (45) days after notice thereof from Gilbert. These periods of time to cure a Default by Saint Xavier University may be extended by Gilbert at its discretion, provided Saint Xavier University commences performance or compliance within the initial 365 or 45 days, as applicable, and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Saint Xavier University. Any notice of an alleged Default ("Default Notice") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the applicable cure period (as extended, if applicable), Gilbert shall have the remedies set forth in Section 10.2.1. Notwithstanding any other provision of this Agreement or the Lease Agreement, Saint Xavier University shall not terminate the Lease Agreement or cease conducting classes commenced during any Academic Year prior to the expiration date of the Lease Agreement. In the event Saint Xavier University anticipates that it will terminate the Lease Agreement prior to its expiration date, Saint Xavier University shall prepare a transition plan for the students enrolled during that Academic Year to assure that classes continue to completion for that Academic Year and to assure that students are provided an opportunity to continue their University program at a comparable University.

7.2.1 Non-Compete. If within fifteen (15) years of the Commencement Date Saint Xavier University ceases the Permitted Use for any reason on the Property for any reason, it shall not operate an educational institution anywhere in Maricopa, Pinal or Pima Counties (Arizona) for a period of five (5) years from the date of vacating the premises.

7.3 Gilbert Default. If Gilbert fails to perform its obligations under this Lease Agreement, Gilbert shall cure the Default within forty- five (45) days after notice thereof from Saint Xavier University in accordance with this Agreement. The periods of time to cure a Default by Gilbert may be extended by Saint Xavier University at its discretion, provided Gilbert commences performance or compliance within the initial thirty (30) days and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Gilbert. Any Default Notice shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured

within thirty (30) days of the Default Notice, Saint Xavier University shall have the remedies set forth in Section 8.1.2.

8. Remedy

8.1 Whenever a Default occurs and is not cured within the cure periods (as extended, if applicable) in Sections 7.2 and 7.3, the remedies of the non-Defaulting Party shall consist of and be limited to the following:

8.1.1 Remedies of Gilbert. . Within thirty (30) days of the Effective Date, Saint Xavier University shall deposit the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) in a restricted account to be used as set forth in this Section 8.1.1. Until the eighth anniversary of the Commencement Date, Gilbert shall be permitted to withdraw said funds in the event of a Default that is not cured within the cure periods set forth in Section 10.1.1. In the event of a Default Gilbert shall provide written notice of termination of the Agreement and the Lease Agreement to Saint Xavier University, whereupon the Development Agreement and the Lease Agreement shall terminate and the amount deposited in the restricted account shall become the property of Gilbert as liquidated damages and not a penalty, to cover the costs Gilbert will incur to locate another lessee and otherwise wind down the Lease Agreement. In addition, Saint Xavier University shall pay Gilbert any/all rent that may be due and owing up to and including the identified termination date. After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University. Except for a default under the provisions of section 7.9.1, the remedies identified herein serve as the sole and exclusive remedies for default by the University, without any other acceleration rights, specific performance or the payment of additional damages to Gilbert. In the event of default under 7.9.1, Saint Xavier University shall also indemnify Gilbert for any increased interest costs, penalty, or any other costs, including attorney's fees, incurred by Gilbert from Saint Xavier University's failure to adhere to the private activity bonds test.

After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University.

8.1.2 Remedies of Saint Xavier University. Saint Xavier University shall provide written notice of termination of the Development and/or this Lease Agreement and the Lease Agreement to Gilbert, whereupon the Development Agreement and the Lease Agreement shall terminate. The recovery of Saint Xavier University shall be the actual damages as of the time of entry of judgment, Saint Xavier University expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages.

8.2 In the event of Default by Saint Xavier University Gilbert may, at its option, enter into agreements with other entities to operate a university level educational institution for related purposes at the premises set for in the Lease between the parties.

9. Maintenance

9.1 Cost of Maintenance and Operation of the Premises.

Landlord and Tenant intend and agree that this Lease shall be an absolutely triple net lease to Landlord, with Landlord not, except as expressly otherwise set forth in this Lease, to incur any expense (whether for maintenance, property taxes, Tenant's insurance, utilities, structural or other repairs, replacements, capital improvements, or otherwise) in connection with the Premises or this Lease. Tenant shall, at its expense, furnish to and pay for any and all utilities, repairs, replacements and services for the Premises. Tenant shall timely pay for any and all utility and other costs and perform any and all such maintenance in a safe, lien-free manner, as well as indemnify and hold Landlord harmless for, from and against any and all costs and liabilities (including attorneys' fees and costs) deriving therefrom.

9.2 Maintenance.

During the Term, the Tenant , at its expense, shall: (i) maintain and keep the interior and exterior of the Premises, including but without limitation, all parts of the improvements thereon, clean, painted and in good condition and repair, (ii) pay for custodial services and supplies, pest control, utility costs, telephone, cable, and internet service, refuse, garbage and trash disposal, specialty electrical fixtures used on the Premises; and (iii) operate and maintain (and replace as applicable) all parts of the Premises, including but without limitation, air conditioning, heating, plumbing, restrooms, electrical distribution systems, elevators, concrete foundations, floors, roofs, building structure systems, fire alarm and prevention systems, landscaping, walkways and parking (including lighting), maintaining them in clean and good condition.

9.3 Facilities Maintenance Plan.

Within ninety days of the Completion of Construction as defined in the Development Agreement, Landlord and Tenant will prepare and subsequently include and incorporate as Exhibit C to this Lease Agreement a Facilities Maintenance Plan, as a guideline when scheduling the repair and any replacement of equipment on the Premises. Tenant will evaluate the maintenance plan on an annual basis and submit the plan to Town by the time of the completion of Saint Xavier University's annual audit, along with a tentative schedule for repairs and/or new equipment to be installed at the premises over the next ten years.

9.4 Annual Maintenance Report.

Tenant shall submit an Annual Maintenance Report by August 1 of each year of this Lease Agreement to the Town representative stated under Section 12.1 herein. Such report shall include, at a minimum, the specific repair(s) or replacement(s) performed, dates repaired and installed, and associated cost. Tenant shall perform all scheduled maintenance and required repairs within a reasonable time as determined by the Town.

9.5 Town Approval on Major Repairs, Replacement.

Tenant, prior to the repair or replacement of a major item, including but not limited to, air conditioning, heating, roof, structural repairs, flooring, plumbing, fire prevention systems, electrical systems, concrete foundations shall obtain Town approval to ensure that the major

repair or system replacement is of a quality comparable to that being replaced or initially installed by the Town.

9.6 Replacement Reserve Fund Account.

Tenant shall establish reasonable reserves in an amount agreed upon with the Town for ongoing building maintenance and capital improvements. Such reserves will be maintained in a separate escrow account and will be managed in accordance with all governing laws, rules and guidelines applicable to a nonprofit designated as a 501 c (3) organization. The funds contained in the Replacement Reserve Fund Account and the itemized uses for which they are intended shall be set forth in the annual report of the Facilities Maintenance Plan required in section 9.3 above. Any funds in the Replacement Reserve Fund Account at the end of the Lease Term, as defined herein, or at the time of termination of the this Lease after default by Gilbert will be released to Saint Xavier University. Any funds in the Replacement Reserve Fund Account at the time of termination of the Lease after default by Saint Xavier University will be released to Gilbert.

10. Covenants, Representations and Warranties.

10.1 Gilbert represents to Saint Xavier University that it will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Lease Agreement.

10.2 As of the date of this Lease Agreement, Gilbert knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of Gilbert or its official with respect to this Lease Agreement including Gilbert's execution, delivery and performance thereof.

10.3 The execution, delivery and performance of this Lease Agreement by Gilbert is not prohibited by and does not conflict with any other agreements, instruments or judgments or decrees to which Gilbert is a party or is otherwise subject.

10.4 Saint Xavier University represents and warrants to Gilbert that the laws of the State of Arizona and the articles and bylaws of Saint Xavier University provide Saint Xavier University with the power and authority to execute this Agreement and to carry out the terms thereof.

10.5 Saint Xavier University represents and warrants to Gilbert, and further agrees that it has (and during the Term will continue to have) all the licenses, permits, accreditations, and authorizations required by law to operate the Premises for the Permitted Use and otherwise fulfill its obligations under this Lease Agreement.

10.6 Saint Xavier University warrants and represents to Gilbert that it presently is an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code and that it is not engaged in any prohibited transaction which would cause it be denied such exemption under Sections 503 and 504 of the Code.

10.7 Saint Xavier University warrants and represents to Gilbert that as of this date it knows of no litigation, proceeding or official investigation contesting the powers of Saint Xavier University of its officers with respect to this Lease Agreement including Saint Xavier University's execution, delivery and performance thereof.

10.8 Saint Xavier University warrants and represents to Gilbert that the execution, delivery and performance of this Agreement by Saint Xavier University is not prohibited by, and does not conflict with, any other agreements, instruments, and judgments or decrees to which Saint University is a party or is otherwise subject.

11. Saint Xavier University Performance Criteria

11.1 Saint Xavier University shall open the University on or before October 1, 2015.

11.1.2 Saint Xavier University shall use its best efforts by means of its student enrollment experience and admission expertise to recruit and retain the number of students necessary to appropriately populate the undergraduate and graduate programs offered for the degree and degree-completion programs offered initially in Nursing, Business and Education, and subsequently in other fields (the "Programs"). Though enrollment for instruction in online or hybrid formats is not limited, for purposes of this section, "full time students" shall mean undergraduate students taking at least 9 credit hours a semester and graduate students taking at least 6 credit hours a semester, by personal attendance on the Property (or off the Property if participating in intern or externship programs) and taught by instructors physically present. Such best efforts shall be reflected in the development of reasonable and viable annual enrollment targets of Programs offered during the traditional academic year, during summer sessions, in on-site, online and in a hybrid classroom formats. The University shall use its best efforts to substantially increase enrollments in succeeding academic years. During Years One and Two of this Agreement, enrollment targets shall be contingent upon approval of prelicensure Nursing Programs by the AZ Board of Nursing, as well as the achievement of any other State approvals required for graduate or undergraduate Programs offered through the School of Education, the Graham School of Management, or the College of Arts and Sciences. In addition, as the AZ Board of Nursing approves prelicensure Nursing Programs in the fall of 2015 and spring of 2016, undergraduate enrollment targets in Nursing shall focus on the annual matriculation of 40 to 60 students. For Academic Year One therefore, enrollment targets shall focus on the matriculation of 50 to 75 full time students in graduate and degree-completion Programs. For Academic Year Two, the enrollment target shall be 100 to 150 full time students. For Academic Year Three, the enrollment target shall be 150 to 225 full time students. At the end of Academic Year Three (during the spring semester 2018), the University and Gilbert Representative shall meet to review enrollment projections for Academic Years Four through Seven, and may jointly conclude to adjust the enrollment target for those years. For Academic Year Four, the enrollment target shall be 300 full time enrolled students in undergraduate and graduate Programs. For Year Five (fall semester 2019), the enrollment target shall be 425 full time students. For Year Six (fall semester 2020), the enrollment target shall be 550 full time students.

For Academic Year Seven (fall semester 2021), the enrollment target shall be 750 full time students enrolled in undergraduate and graduate Programs. The failure to reach the

enrollment target for Academic Year Seven shall be considered an Academic Default pursuant to section 7. In determining whether the enrollment target has been reached, the number of full time students as defined above, enrolled at the beginning of the fall semester shall be determinative.

Under the provisions of the Agreement and throughout the Initial Term and Renewal Terms of the Lease Agreement, Saint Xavier University is committed to provide the Gilbert Representative with any/all information used by the University to produce annual enrollment projections, and to use its best efforts to substantially increase student enrollments in all Programs for all succeeding Academic Years.

11.1.3 When the University opens, it shall have at least the following degree programs: Business, Nursing and Education. Saint Xavier University shall ensure that all State statutory and regulatory requirements are met so as to offer pre-licensure programs in Nursing and licensure and/or certification programs in Education. Such degree programs shall be maintained during the term of the Lease Agreement.

11.1.4 Saint Xavier University awards scholarships (for merit), grants (for need) and students may be eligible for Pell grants from the federal government. In addition, Town of Gilbert residents are eligible for a special Town of Gilbert grant for undergraduate programs as specified below, ramped up as follows:

Year One:	2% of the then tuition in place entering their first year
Year Two:	4% of the then tuition in place entering their second year.
Year Three:	6% of the then tuition in place entering their third year.
Year Four:	8% of the then tuition in place entering their fourth year.
Year Five (And thereafter):	10% of the then tuition in place entering their fifth year.

The total of all University scholarships, grants or tuition reduction cannot exceed a discount rate in excess of 50%. Saint Xavier University provides merit scholarships and need based scholarships. Additionally, at no time will the awarded scholarship (institutional aid), grant or tuition reduction (Town of Gilbert grant) be refundable. This means that the tuition less institutional scholarship (merit), less need based aid (Pell and/or institutional need aid) less the special Gilbert resident grant cannot result in a refund to the student. The Gilbert Town Manager is authorized, after consultation with Saint Xavier University, to adjust the minimum requirements in this section if he determines that there are not sufficient applications from Gilbert residents to comply with this performance criteria.

11.1.5 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of endowed funds for the

University. This comprehensive and on-going endowment campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The endowment shall be considered to be fully funded when the endowment fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the endowment fund for the University by the end of the first Academic Year.

Until the endowment fund is fully funded as provided herein, Saint Xavier University shall maintain such endowment fund at a minimum level of Twenty-Five Thousand Dollars ($25,000.00).

11.1.6 On or before the sixth anniversary of the commencement of the term of the Lease Agreement, Saint Xavier University shall have completed a minimum investment of Thirty Six Million Dollars ($30,000,000.00) in the University. Such investment shall include salaries and benefits paid to employees of the Gilbert campus, lease payments, utilities, supplies, marketing materials and student recruitment and scholarships for Gilbert residents. The annual investment through the fifth anniversary of the commencement of the term of the Lease Agreement shall be at least (a) $2.5 Million prior to the first anniversary of the commencement of the Initial Term of the Lease Agreement; (b) $3.0 Million prior to the second anniversary of the commencement of the Initial Term of the Lease Agreement; (c) $5.7 Million prior to the third anniversary of the commencement of the Initial Term of the Lease Agreement; (d) $6.0 Million prior to the fourth anniversary of the commencement of the Initial Term of the Lease Agreement; (e) $6.2 Million prior to the fifth anniversary of the commencement of the Initial Term of the Lease Agreement; and (f) and $6.4 Million prior to the sixth anniversary of the commencement of the Initial Term of the Lease Agreement. If on any anniversary of the commencement of the term of the Lease Agreement the above thresholds have not been met, Gilbert's Representative shall meet with Saint Xavier University's Representative to determine whether a reasonable adjustment can be made that will result in the minimum investment of Thirty-Six Million Dollars ($30,000,000.00) by Saint Xavier University by said fifth anniversary, and if so, Gilbert's Representative is authorized to approve such adjustment.

11.1.7 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of funds for a capital fund for the expansion of the University anticipated to occur on or before the fifteenth anniversary of the Effective Date. This comprehensive and on-going fundraising campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The capital fund shall be considered to be fully funded when the capital fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the capital fund for the University by the end of the first Academic Year.

11.2 Failure to Meet Performance Criteria. If Saint Xavier University does not meet the Saint Xavier University Performance Criteria, or fails to maintain the Saint Xavier University Performance Criteria as required by Sections 7.2.1 through 7.2.7 of this Agreement, then, subject to the Cure Periods set forth in Section 10.1, Gilbert may declare Saint Xavier University to be in Default of this Agreement and the Lease Agreement, with all of the rights and remedies set forth in Section 10 of this Agreement.

11.3 Annual Report. Annually, on or before each anniversary of the Effective Date during the term of this Agreement, Saint Xavier University shall submit to Gilbert a report showing the status of compliance with each of the Saint Xavier University Performance Criteria. The annual report shall include sufficient information to verify the status of each of the Saint Xavier University Performance Criteria. Gilbert may require such additional information as it determines is required to verify such status.

12. Environmental Provisions

12.1 Tenant recognizes that assuring protection of public health, welfare and the environment from activities upon the Premises during the Lease Term is an important consideration for Town and during the Lease Term the federal, state and local laws, rules, regulations and ordinances relating to pollution, protection of the environment, public health, safety or industrial hygiene (hereinafter referred to as the "Applicable Laws") will change. Tenant warrants that throughout the Lease Term, Tenant will maintain compliance with all Applicable Laws. Additionally, Tenant will provide a list, updated annually upon the anniversary of the Commencement Date of all hazardous material on the Premises to the Gilbert Fire Chief or his designee.

12.2 Tenant further warrants, unless disclosed and agreed to by Town, that no liquid, solid, semi-sold or gaseous substances (hereinafter referred to as Regulated Substances) which are, or during the Lease Term may become, subject to regulation under Applicable Laws, other than liquid oxygen, transmission fluid, oil, and other lubricants, will be used on the Premises. Tenant shall not have on the Premises any Regulated Substances, other than liquid oxygen, airplane fuel, transmission fluid, oil, other lubricants and FAA approved cleaning solvents. Regulated Substances include, but are not limited to, any and all substances, materials or wastes regulated under the Resource Conservation and Recovery Act, 43 U.S.C. Section 8909, et. seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et. seq.; the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921, et. seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Section 49-101, et. seq.; and the rules and regulations adopted and guidelines promulgated pursuant to the Applicable Laws.

12.3 In addition to the other requirements of this section, Tenant shall not release, discharge, leak or emit, or permit to be released, discharged, leaked or emitted into the atmosphere, ground, soil, sewer system, surface water or groundwater any substance if such substance (as reasonably determined by Town, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the environment, (b) the health, welfare or safety of persons whether located on the Premises or elsewhere, or (c) the condition, value, use or enjoyment of

the Premises or any other real or personal property. Tenant has or will timely obtain, maintain and comply with all provisions of all permits, licenses and other authorizations which are required under the Applicable Laws (hereinafter referred to as the "Permits").

12.4 Tenant shall immediately notify Town, orally and in writing, of any allegations by any governmental authority or other person or entity of any event of non-compliance with the applicable laws or permits of this section. Tenant shall also immediately notify Town orally and in writing, of any allegations by any governmental authority or other person or entity, of any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with Applicable Laws, Permits or the provisions of this section, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation, based on or related to the generation, manufacture, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant or Regulated Substance.

12.5 Town, or its authorized representative, agent or contractor, shall have the right, upon reasonable notice, to inspect the Premises and to review and copy documents, records, and data maintained by Tenant relating to substances used and stored on the Premises or disposed of, released or otherwise removed from the Premises, in order to assure itself that Tenant is in compliance with the provisions of this Paragraph.

12.6 In addition, Town shall have the right, at its expense, to perform periodic environmental inspections as Town deems necessary using the services of a qualified and duly licensed environmental engineers approved by Tenant whose approval thereof may not be unreasonably withheld. The said engineers shall conduct such sampling and testing of soils, water, substances and emissions as Town deems necessary to assure itself that Tenant is in compliance with the provisions of this Section. In the event the results of the inspection indicate a need for further testing and/or remediation as a result of Tenant's use of the Premises in order to comply with ADEQ or EPA remediation standards or guidelines, then Tenant hereby agrees to reimburse Town for its reasonable inspection costs and to pay for such additional testing and remediation as will be required as a consequence of Tenant's use of the Premises. Should remediation be required as a consequence of Tenant's use of Premises, Tenant shall immediately undertake such remediation as is necessary to restore the condition of the Premises and shall diligently pursue such work to completion. Tenant's failure to timely perform its obligations under this Paragraph shall be considered a material breach of this Lease, and Tenant's obligations under this Paragraph shall continue beyond the expiration or termination hereof. Nothing in this Paragraph shall constitute a waiver of any right of Tenant, including without limitation, the right to receive contribution from any individual or entity responsible for contamination of any part of the Premises.

12.7 Any instance of non-compliance with Applicable Laws, Permits or the provisions of this Paragraph shall be grounds for immediate termination of this Lease by Town.

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12.8 To the fullest extent permitted by law, Tenant agrees to indemnify, defend and hold Town harmless for any costs of legally required remediation of environmental contamination and

from any claims, demands, actions, suits, proceedings, hearings, investigations, responsibility, liability, orders, injunctions, judgments, fines, damages and losses of any nature whatsoever, arising out of or relating in any way to Tenant's present or future use of, or activities or operations on or at, the Premises, or arising from or relating to any breach of the provisions of this Paragraph. Tenant also agrees to indemnify and hold Town harmless any costs and expenses incurred in connection therewith, including without limitation, any attorneys' and expert witness fees, investigation, clean up, removal, disposal, remedial, corrective, or mitigating action costs, fines and penalties related in any way to Tenant's use of the Premises. These indemnities shall survive the termination of this Lease.

13. Miscellaneous.

13.1 No Subrogation.

Gilbert and St. Xavier University recognize the Town of Gilbert is a public, tax supported entity, responsible to the citizens for the administration of taxpayer funds, and obligated to recover any and all damages to which the Town might be legally entitled by reason of any negligent or negligent omissions by another party.

13.2 No Subordination.

This Agreement and the respective interests of Gilbert and St. Xavier University hereunder shall not be subordinated or subject to any encumbrances which may be required for any loans obtained by St. Xavier to finance the costs and expense of St. Xavier University.

13.3 Legal Expenses.

In the event of any suit instituted by either Landlord or Tenant against the other in any way connected with the Lease or for the recovery of rent or possession of the lease premises, each Party is to pay their own legal fees.

13.4 Access.

Upon reasonable notice, Gilbert shall have the right to enter the Premises during normal working hours to inspect the buildings and ensure that the premises are being operated for the Permitted Use, provided however, that Gilbert shall use its best efforts to minimize any interference with St. Xavier's use of the Premises.

13.5 Cancellation Clause.

This Lease may be terminated pursuant to the provisions of A.R.S. § 38-511.

13.6 Waiver.

No covenant, term or condition of this Lease shall be deemed to have been waived by either party hereto unless such waiver is in writing.

13.7 Assignment.

Saint Xavier University as Tenant may not assign any interest in this Lease without the prior written consent of Gilbert as Landlord.

13.8 Entire Agreement.

This Lease is in conjunction with the Development Agreement and constitutes the entire Agreement between the Landlord and Tenant. No subsequent alternation, amendment, change, or addition to this Lease shall be binding upon the Landlord or Tenant unless set forth in writing and duly executed by both parties.

13.9 Relationship Between Parties.

The relationship of the parties hereto is solely that of Landlord and Tenant and under no circumstances shall the parties be considered as partners or joint ventures.

13.10 Time.

Time is of the essence of this Lease in every covenant, term and condition contained herein.

13.11 Governing Law, Choice of Forum. Mediation.

This Lease Agreement shall be governed by the laws of the State of Arizona. Any action to enforce this Agreement or resolve disputes arising therefrom shall be brought in the Maricopa County Superior Court. Parties also agree, prior to the initiation of any suit or legal action to attempt to resolve their differences through the services of a mutually agreed upon mediator.

13.12 Legal Worker.

As required by A.R.S. Section 41-4401, St. Xavier agrees to comply with all federal immigration laws and regulations that relate to its employees and/or subcontractors' employees, and their compliance with A.R.S. Sec. 23-214, subsection A.

13.13 Compliance with Laws.

Tenant shall, at its sole expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulation or requirements now in force, and with all rules, orders, directives, regulations, recommendations or requirements of the Insurance Services Office, any board of fire underwriters, or any other similar bodies now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises.

13.14 Captions.

The captions and headings appearing herein are for convenience only and are not a part of this Lease nor do they limit or amplify any term or provision herein.

13.15 Severance.

Any term or provision of this Lease which now or hereafter is declared contrary to any law, order, regulation, ordinance or requirement of any governmental authority, whether now in force or enacted or promulgated in the future, or which is otherwise invalid, shall be deemed stricken from this Lease without impairing the validity of the remainder of this Lease.

13.16 Impartial Interpretation.

Landlord and Tenant acknowledge that both parties have been represented by counsel in the negotiation of this Lease, and that this Lease shall be construed according to fair language. Accordingly, the rule of contract interpretation to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Lease.

13.17 Incorporation of Exhibits.

All Exhibits attached hereto are by this reference incorporated herein as though set forth in full.

13.18 Waiver of Jury Trial.

Landlord and Tenant herby waive trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other one, or in respect of, any matter whatsoever arising out of or in any way connected with this Lease.

14. Notices and Communications between Parties.

To the University:
Raymond P. Catania, VP for Business and Finance
Kathleen Rinehart, General Counsel
3700 West 103rd Street
Chicago, IL 60655

To the Town:
(except where as provided above in Sections 3.2.3 and 12.1)
Patrick Banger
Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

In WITNESS WHEREOF, the Parties hereto have executed this Agreement on or as of the day and year first written above.

TOWN OF GILBERT

_____
John W. Lewis, Mayor

APPROVED AS TO FORM:

_____
L. Michael Hamblin, Town Attorney

ATTEST:

_____
Cathy Templeton, Town Clerk

SAINT XAVIER UNIVERSITY

_____
By its
_____

EXHIBIT A TO LEASE AGREEMENT
Legal Description of Premises

COMMENCING AT A 1/2" REBAR WITH NO CAP MARKING THE EAST QUARTER CORNER OF SAID SECTION 12, FROM WHICH A TOWN OF GILBERT BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST CORNER OF SAID SECTION 12 BEARS SOUTH 00 DEGREES 54 MINUTES 48 SECONDS EAST 2629.10 FEET;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 00 DEGREES 54 MINUTES
48 SECONDS EAST, 428.25 FEET TO A BRASS CAP FLUSH MARKING THE INTERSECTION OF VAUGHN AVENUE AND GILBERT ROAD;

THENCE ALONG SAID VAUGHN AVENUE CENTERLINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 919.69 FEET;

THENCE DEPARTING SAID CENTERLINE, NORTH 00 DEGREES 55 MINUTES 57 SECONDS WEST,
30.00 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE WEST LINE OF CREEDS ADDITION AS RECORDED IN BOOK 46 OF MAPS, PAGE 49 NORTH 00 DEGREES 54 MINUTES 48 SECONDS WEST, 356.75 FEET TO THE SOUTH LINE OF THE SRP WESTERN CANAL AS RECORDED IN BOOK 185 OF MAPS, PAGE 48, MARICOPA
COUNTY RECORDER;

THENCE DEPARTING SAID WEST LINE OF CREED'S ADDITION AND ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL NORTH 89 DEGREES 23 MINUTES 34 SECONDS EAST, 250.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL SOUTH 89 DEGREES 35 MINUTES 51 SECONDS EAST, 29.26 FEET TO THE WEST RIGHT OF WAY LINE OF ASH STREET AS DEDICATED PER THIS PLAT;

THENCE DEPARTING SAID SOUTH LINE OF THE SRP WESTERN CANAL AND ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 03 MINUTES 28 SECONDS EAST, 354.69 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE;

THENCE DEPARTING SAID WEST RIGHT OF WAY LINE AND ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 274.83 FEET TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINS 98,766 SQUARE FEET OR 2.2674 ACRES MORE OR LESS.

EXHIBIT B TO LEASE AGREEMENT

Rent

(To be attached)

EXHIBIT C TO LEASE AGREEMENT

Facilities Maintenance Plan
(To be attached)

EXHIBIT F

FURNITURE, FIXTURES AND EQUIPMENT

(To be attached)

EXHIBIT G

ON-SITE IMPROVEMENTS

(To be attached)

EXHIBIT H

OFF-SITE IMPROVEMENTS
(To be attached)

WHEN RECORDED RETURN TO:

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

AMENDED AND RESTATED AGREEMENT

By and Between

TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation;

and

SAINT XAVIER UNIVERSITY, a not-for-profit 501(c) (3) corporation

April 30, 2015

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Exhibit H Off-Site Improvements

AGREEMENT

This Agreement ("Agreement") is made by and between the Town of Gilbert, an Arizona municipal corporation ("Gilbert"), and Saint Xavier University, a 501(c)(3) corporation ("Saint Xavier University"). Gilbert and Saint Xavier University are sometimes referred to in this Agreement collectively as the "Parties," or individually as a "Party."

RECITALS

A. Gilbert owns real property in the Gilbert Heritage District, a redevelopment area authorized by Arizona Revised Statutes Title 36 Chapter 12 Article 3 ("Heritage District"); Gilbert desires that such real property be redeveloped for a university use as described in this Agreement in order to provide additional educational opportunities in Gilbert and to further the economic development of the Heritage District.

B. Gilbert adopted a Redevelopment Plan for the Heritage District and the four-year liberal arts university to be operated by Saint Xavier University proposed in this Agreement will further the goals set forth in that Redevelopment Plan.

C. Saint Xavier University is experienced in operating a private university campus and programs as described in this Agreement; Saint Xavier University operates campuses in Chicago and Orland Park, IL, with a total student population of approximately 2,925 undergraduates and 1,450 graduate students and now desires to establish an additional site for the university on the real property owned by Gilbert in the Heritage District.

D. Saint Xavier University, under no legal obligation or other compulsion to do so, now elects to open a new site for the university campus within the corporate limits of Gilbert in accordance with the terms and conditions set forth in this Agreement and in the Lease as hereinafter defined).

E. Gilbert, acting through its Town Council, has determined in the exercise of its legislative discretion the establishment of the private university in the Heritage District would be an important community asset providing significant derivative economic benefits and community amenities for Gilbert's residents and businesses, as well as significant regional and state economic benefits.

F. The operation 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, which has suffered and continues to suffer from insufficient economic development.

G. The operation of a university in the Heritage District will provide significant full-time and part-time employment opportunities for the residents of Gilbert, with Gilbert and Saint Xavier University anticipating Saint Xavier University will hire certain full-time and part time employees for office and administrative purposes at the university.

H. Gilbert will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the establishment and operation of the university contemplated by this Agreement.

I. Gilbert is authorized pursuant to ARS Section 9-500.05 and 9-500.11 to enter into development agreements that include expenditures for economic development.

J. The Gilbert Town Council has determined, in the exercise of its legislative discretion, and based upon independent economic analysis prepared by Applied Economics , the value of any benefit conferred on Saint Xavier University by Gilbert is far exceeded by the educational and economic benefits the university will bring to the Heritage District and to Gilbert as a whole.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, representations, mutual promises and agreements set forth herein, the Parties agree as follows:

1. **Definitions**. Capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.

Academic Year means the annual period of time from the commencement of classes in the Fall semester of any given year, whether occurring in the months of August or September, and continuing until the annual commencement or graduation occurring at the end of the first semester of a new calendar year, whether April, May or June. Saint Xavier University may supplement the Academic Year with a Summer Session, as required.

Academic Default means a Default by Saint Xavier University of its obligations under Section 7.

Architect means the person or firm selected to design the Project pursuant to Section 4.6.2 of this Agreement.

Building means the approximate 87,000 square foot building to be constructed on the Property by Gilbert and leased to Saint Xavier University pursuant to Section 6 of this Agreement.

Change Orders for Unforeseen Circumstances means change orders during the course of design or construction of the Project that result from unforeseen circumstances related to the Project site, but not resulting from a change to the Project Scope requested by a Party.

Commencement of Construction means the occurrence of both: (i) the obtaining of a building permit for the Project; and, (ii) the actual commencement of physical construction of the Project pursuant to that building permit.

Completion of Construction issuance of a certificate of occupancy for the Building.

Construction Costs means all costs of engineering, design, construction, construction management, surveys, inspections, testing and other activities related to design and construction

of the On-Site Improvements and the Off-Site Improvements, including but not limited to (i) permits and other approvals, (ii) third party costs incurred by Gilbert to perform design, construction, construction management, surveys and other activities related to design and construction of the On-Site Improvements and Off-Site Improvements, and (iii) insurance costs.

Default means the failure by either Party to perform its obligations under this Agreement.

Design Approval means approval of the Site Plan and design of the Building by the Gilbert Design Review Board.

Effective Date means the date this Agreement is recorded in the office of the Maricopa County Recorder's Office

Enforced Delay includes but is not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the federal or state government and acts of Third Parties (including contractors, subcontractors, and suppliers) beyond the reasonable control of the Party; (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (including the effect of petitions for initiative or referendum), and (3) failure of Gilbert to sell Revenue Bonds despite good faith efforts to do so. Notwithstanding the foregoing or anything in this Agreement to the contrary, Enforced Delay shall not include any delay in performance due to (i) economic conditions; (ii) financial infirmity or financial decisions made by Saint Xavier University; (iii) failure of Saint Xavier University to reach or maintain the Saint Xavier University Performance Criteria, or (iv) any act that constitutes a Default of the Party seeking the benefit of an Enforced Delay.

Full-Time Student means an undergraduate student at the University who is enrolled for at least nine (9) credit hours in the University at any given semester. A graduate student enrolled between 6 and 9 credit hours in any given semester is considered full time.

Furniture, Fixtures and Equipment or FFE means the furniture, fixtures and equipment described in Exhibit F.

Gilbert's Representative means the person designated pursuant to Section 13.2.

Gilbert Project Budget Limit means the not to exceed amount approved by the Gilbert Town Council pursuant to Section 4.2.1.

Guaranteed Maximum Price means the negotiated fixed price for the construction services to be performed by the construction manager-at-risk pursuant to Section 4.7.2, subject to approved change orders.

Improvements means the Off-Site Improvements and the On-Site Improvements.

Lease Agreement means the lease entered into between Gilbert and Saint Xavier University for the lease of the Building and the Property as provided in Section 6 and which will be substantially in the form attached to this Agreement as Exhibit E.

Non-Academic Default means all Defaults by Saint Xavier University that are not Academic Defaults.

Notice of Final Completion of Construction means the written notice by Gilbert to Saint Xavier University that construction of the Improvements is complete.

Notice of Substantial Completion of Construction means the written notice by Gilbert to Saint Xavier University that the construction of the Improvements are substantially complete and further subject to substantial completion of punch list items.

Off-Site Improvements means the improvements described in Exhibit H.

On-Site Improvements means the improvements described in Exhibit G.

Plan of Operation means the plan of operation for Saint Xavier University pursuant to Section 4.3.

Project means Site Plan approval for the Project by Gilbert, issuance of building permits and design and construction of the On-Site Improvements and Off-Site Improvements in accordance with this Agreement. "Project" does not include the operation of the University.

Project Budget means the budget for the Project set forth in Exhibit C, attached to this Agreement

Project Committee means a group made up of the Parties' Representatives, one person appointed by the Gilbert Representative, one person appointed by the Saint Xavier University Representative and the Gilbert Town Manager or his designee.

Project Schedule means the schedule for the required approvals, design, construction and lease commencement described in Section 4.4 and in Exhibit D attached to this Agreement.

Project Specifications means the requirements of Saint Xavier University for the Project as set forth in Section 4.1 and in Exhibit B, attached to this Agreement.

Property means the real property described in Exhibit A, attached to this Agreement

Punch List Items means items existing at the time of Substantial Completion that are included in the contract documents for construction of the Improvements but which have not been completed.

Revenue Bonds Revenue Bonds means debt or obligations issued by Gilbert or its designee, including but not limited to the Town of Gilbert Industrial Development Authority, for the cost of design and construction of the Improvements.

Site Plan means the site plan required by Article 5.6 of the Gilbert Land Development Code.

Saint Xavier University Performance Criteria means the performance criteria set forth in Section 7.2 of this Agreement.

Saint Xavier University's Representative means the person designated pursuant to Section 13.2.

Substantial Completion of Construction means the date on which the construction of the Off-Site Improvements and On-Site Improvements is sufficiently complete so that they can be used for their intended purposes.

Town Council means the Common Council of the Town of Gilbert, Arizona.

University means the four-year private liberal arts university to be established, maintained and operated by Saint Xavier University pursuant to this Agreement open to enrollment by members of the general public.

2. **Purpose.** The purpose of this Agreement is to provide for the development of the Property and to set forth the agreements of the Parties with respect to the Project, the issuance of Revenue Bonds by Gilbert, the lease of the Property and the Building by Gilbert to Saint Xavier University, and the performance criteria for the operation of the University by Saint Xavier University. It is the goal of the Parties that Saint Xavier University establish, maintain and operate a four year liberal arts University site in the Heritage District and comply with the Saint Xavier University Performance Criteria in order to provide educational opportunities to the residents of Gilbert and the region and to further the economic development of the Heritage District. It is the further goal of the Parties to create a capital fund for the future expansion of the University.

3. **General Description of the Project.** Subject to Enforced Delay, Saint Xavier University shall open a University site on the Property on or before October 1, 2015. At a minimum, Saint Xavier University shall offer degree and degree completion programs in nursing, business and education on the Property and comply with the Saint Xavier Performance Criteria. In return, Gilbert shall design and construct the Improvements on the Property. Saint Xavier University and Gilbert shall execute a Lease Agreement for the Property and the Improvements.

4. **Development of the Project.**

4.1 **Project Specifications.** Saint Xavier University requires that the Project comply with the Project Specifications attached as Exhibit B. Gilbert relies on the Project Specifications in the design and construction of the Project. Any costs associated with change orders and/or modifications to the Project scope, including resultant delays, made by either party to this agreement that are not mutually agreed to shall be borne by the party requesting the

modifications. Such changes must be presented to both Gilbert and Saint Xavier University prior to approval by Gilbert of the change to the Project Specifications.

4.2 **Project Budget.**

4.2.1 The Parties acknowledge that the scope of the Furniture, Fixtures and Equipment, On-Site Improvements and Off-Site Improvements are not known at the time of execution of this Agreement. On or before the completion of the design development phase of the design of the Building, the scope of the Fixtures and Equipment, On-Site Improvements, Off-Site Improvements will be approved by the Parties' Representatives and attached as Exhibit F, Exhibit G and Exhibit H respectively. If the Parties' Representatives fail to approve the Furniture, Fixtures and Equipment, On-site Improvements and Off-Site Improvements prior to completion of the design phase of the design of the Building, then the Gilbert Project Budget Limit shall not be submitted for approval pursuant to Section 4.2.3 and this Agreement shall automatically terminate in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination

4.2.2 Except as provided in Section 4.2.1 for failure to approve the scope of the Furniture, Fixtures and Equipment and Off-Site Improvements, a proposed Project Budget will be prepared by the Parties' Representatives on or before completion of the design development phase of the design for the Building. The proposed Project Budget shall include costs of issuance of the Revenue Bonds and projected interest on the Revenue Bonds, Construction Costs, system development fees for the Improvements, cost of Furniture, Fixtures and Equipment, a ten percent (10%) contingency for Change Orders for Unforeseen Circumstances, and an amount equal to one year debt service on the Revenue Bonds to be used in the event the Lease Agreement is terminated prior to the end of its term. The proposed Project Budget will also include a recommended Gilbert Project Budget Limit.

4.2.3 The Gilbert Project Budget Limit shall be submitted for approval to the Gilbert Town Council and the Board of Directors of Saint Xavier University on or before June 30, 2014. If the Gilbert Town Council and the Board of Directors of Saint Xavier University approve the Gilbert Project Budget Limit, then the Project Budget prepared by the Parties' Representatives shall be attached as Exhibit C to this Agreement. If the Gilbert Town Council and the Board of Directors of Saint Xavier University fail to approve the Gilbert Project Budget Limit on or before June 30, 2014, or such later date as the Parties shall mutually agree in writing, this Agreement shall automatically terminate, in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination.

4.2.4 The Gilbert Representative is authorized to adjust the Project Budget within the Gilbert Project Budget Limit consistent with the most effective and efficient manner to complete the Project in accordance with this Agreement and shall be responsible to notify the University's representative of the modification, in writing, within forty eight (48) hours of the modification..

4.2.5 Gilbert shall issue its Revenue Bonds pursuant to Section 5 of this Agreement in the amount of the Project Budget plus any additional amounts deemed necessary

for the Project in the sole discretion of Gilbert. At any time Gilbert determines that the Project Budget will be exceeded, Gilbert shall immediately give written notice to Saint Xavier University of the amount of the anticipated exceedance and the reasons therefore. Saint Xavier University shall be solely responsible for and shall pay all costs that exceed the Project Budget. Gilbert shall have no obligation to issue additional Revenue Bonds or provide any funds to finance the Project over and above the Project Budget.

4.3 **Saint Xavier University Submittal of Budget.** Saint Xavier University shall submit to Gilbert evidence of the formal approval by its Board of Directors of this Agreement and its adopted budget for the first Academic Year of the University. Gilbert shall notify Saint Xavier University in writing at least five (5) days prior to its intended execution of the first agreements with an architect(s) or engineer(s) pursuant to Section 4.6.2 and if Saint Xavier University does not submit such evidence or budget as required by this Section within five (5) days of such notice, this Agreement shall automatically terminate. In the event of such automatic termination of this Agreement pursuant to this Section 4.3, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.4 **Project Schedule.** The Project Schedule is attached as Exhibit D to this Agreement. The Project Schedule may be modified or extended by mutual agreement of the Parties' Representatives. The Project Schedule may also be extended for Enforced Delays as set forth in Section 9.

4.5 **Project Site Plan Approval.** The Site Plan shall be prepared by Gilbert in collaboration with Saint Xavier University. The Site Plan shall comply with all requirements of the Gilbert Land Development Code and other applicable laws, regulations and rules. The Site Plan shall require Gilbert Design Review Board and Redevelopment Commission approval. If the Parties fail to agree to a Site Plan or if the Design Review Board and Redevelopment Commission fail to approve the Site Plan on or before March 31, 2014, or such later date as the Parties' Representatives shall mutually agree in writing, this Agreement shall automatically terminate, in which event, both Parties shall bear their own costs and expenses incurred to the date of such automatic termination.

4.6 **Project Design.**

4.6.1 The design of the Project shall comply with Gilbert's design guidelines and shall require Design Review Board and Redevelopment Commission approval.

4.6.2 Gilbert shall enter into a contract or contracts, as it deems appropriate, with a qualified engineer(s) and architect(s) to design the Project. The selection of engineers and architects shall comply with the requirements of Arizona Revised Statutes Title 34. Gilbert shall notify Saint Xavier University in writing of the selected engineer(s) and architect(s) and the proposed design fees. If within ten (10) days of the date of the notice, Saint Xavier University objects to an engineer or architect, Saint Xavier University shall notify Gilbert in writing of the objection and the basis for the objection. If no objection is received, Gilbert shall enter into a

contract with the selected engineer(s) and architect(s). If Saint Xavier University submits its written notice objecting to a selected engineer or architect, Gilbert or Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.6.2, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty-five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University. A detailed list of costs incurred with adequate support (invoices, etc.) must be maintained by Gilbert and readily available upon request.

4.6.3 Upon completion of each phase of the design of the Project, Gilbert shall provide the design documents for that phase to Saint Xavier University for review. Saint Xavier University shall have thirty (30) days within which to submit any comments to the design documents to Gilbert. If Saint Xavier University does not submit comments, Gilbert may proceed with the next phase or with construction of the Project, as the case may be. If Saint Xavier University submits comments, the comments will be reviewed for compliance with the Project Specifications and shall be reviewed by the engineer and/or architect. Such comments will be incorporated into the design unless the engineer or architect, as the case may be, in its sole discretion determines a design change based on the comments do not comply with sound engineering or architectural practices or do not comply with standards in the industry. If Saint Xavier University objects to a refusal by the engineer or architect to incorporate its comments into the design of the Project, Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.6.3, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within thirty (30) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.7 **Project Construction; Guaranteed Maximum Price.**

4.7.1 Gilbert shall use a construction manager-at-risk method of project delivery. Upon completion of the selection process for the construction manager-at-risk, Gilbert shall notify Saint Xavier University in writing of the selected construction manager-at-risk. If within ten (10) days of the date of the notice, Saint Xavier University objects to the construction manager-at-risk, Saint Xavier University shall notify Gilbert in writing of the objection and the basis for the objection. If no objection is received, Gilbert shall enter into a contract with the construction manager-at-risk for the design phase of the Project. If Saint Xavier University submits its written notice objecting to the selected construction manager-at-risk, Saint Xavier University may terminate this Agreement. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.7.1, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty-five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University. A detailed list of costs incurred with adequate support (invoices, etc.) must be maintained by Gilbert and readily available upon request.

4.7.2 Gilbert shall negotiate a Guaranteed Maximum Price for the construction of the Project with the construction manager-at-risk at the end of the design development drawings phase of the Project. Gilbert shall submit notice of the negotiated Guaranteed

Maximum Price for the Project to Saint Xavier University for approval. Within twenty (20) days of the date of the notice, Saint Xavier University shall either approve the Guaranteed Maximum Price in writing or object to the Guaranteed Maximum Price. If Saint Xavier University approves the Guaranteed Maximum Price, Saint Xavier University shall notify Gilbert in writing and such approval shall be Saint Xavier University's authorization to Gilbert to proceed with the construction phase of the Project. If Saint Xavier University objects to the Guaranteed Maximum Price, Saint Xavier University shall notify Gilbert in writing of such objection prior to the expiration of the twenty (20) day period. In that event, the Parties' Representatives shall meet to discuss the reason for the objection. If agreement cannot be reached on the Guaranteed Maximum Price within forty-five (45) days of the date of Saint Xavier University's written notice of objection, or such later date agreed to by the Parties' Representatives, this Agreement shall automatically terminate. In the event of termination of this Agreement by Saint Xavier University pursuant to this Section 4.7.2, Saint Xavier University shall pay all of Gilbert's costs and expenses incurred prior to the date of termination. Such payment shall be made within forty-five (45) days of written notice from Gilbert to Saint Xavier University of the amounts owed by Saint Xavier University.

4.7.3 Gilbert will use its best efforts to cause the Commencement of Construction to occur on or before the Commencement Date as set forth in the Project Schedule, and thereafter will diligently pursue and prosecute construction of the Project in accordance with the Project Schedule. In the event Commencement of Construction has not occurred on or before the date set forth in the Project Schedule, the Parties promptly thereafter shall meet and confer in good faith to attempt to resolve those matters that have delayed the Commencement of Construction and to determine whether the Project can be completed in a manner consistent with the Project Budget and Project Schedule and the expectations of the Parties. If the Parties are unable, in good faith and within ninety (90) days following the Commencement Date set forth in the Project Schedule, to resolve the issues, then this Agreement shall be terminated, and neither Party shall have any rights with respect to the other or in connection with or arising out of this Agreement. In the event of termination of this Agreement by either Party pursuant to this Section 4.7.3, each Party shall bear their own costs and expenses incurred prior to the date of termination.

4.7.4 Saint Xavier University shall be responsible for the cost of any change orders issued for the Project, except for change orders requested by Gilbert and Change Orders for Unforeseen Circumstances.

4.7.5 The Parties acknowledge that after Gilbert issues the Revenue Bonds as set forth in Section 5 of this Agreement, Gilbert will incur costs and become obligated to pay debt service on the Revenue Bonds. The Revenue Bonds issued will include an amount equal to one year debt service, which shall be used to pay debt service on the Revenue Bonds in the event the Lease Agreement is terminated for any reason prior to the expiration of the term of the Lease Agreement.

4.8 **Acceptance.** Upon Substantial Completion of Construction of the Project, Gilbert shall provide to Saint Xavier University a Notice of Substantial Completion of Construction. The representatives of Gilbert and Saint Xavier University shall conduct a walk-through of the

Project. Gilbert and Saint Xavier University shall mutually agree on any Punch List items that must be completed or remedied, consistent with the construction contract requirements. Upon Final Completion of Construction, Gilbert will provide to Saint Xavier University a Notice of Final Completion of Construction. If all of the items on the Punch List prepared for Substantial Completion of Construction have been completed, Gilbert may accept the Project.

4.9 **Project Committee.** The Project Committee shall be appointed within thirty (30) days of the Effective Date. The Project Committee shall oversee the design and construction of the Project and make recommendations to the Gilbert Representative or Town Council, as applicable, concerning all material aspects of the design and construction of the Project.

5. **Issuance of Revenue Bonds.** Gilbert shall issue Revenue Bonds in an amount equal to the Project Budget less interest. At Gilbert's discretion, Gilbert may identify an alternative revenue source for the items required to be included in the Project Budget pursuant to Section 4.2.2 and other obligations of Gilbert. The Revenue Bonds shall be issued in accordance with the Project Schedule, which shall provide that the Revenue Bonds shall not be issued more than sixty (60) days prior to the execution of the contract for construction services for the Project. Repayment of the Revenue Bonds shall remain the obligation of Gilbert.

6. **Lease Agreement.** Within five (5) days of the approval of the issuance of the Revenue Bonds by the Gilbert Town Council or the approval by Gilbert of this amendment, whichever comes first, Saint Xavier University shall execute the Lease Agreement in the form attached as Exhibit E. Gilbert's Representative is authorized to make non-substantial changes to the form of Lease Agreement prior to execution and shall provide Saint Xavier University written notice of such non-substantial changes prior to the execution of the lease. Failure to execute the Lease Agreement shall be a Non-Academic Default. Saint Xavier University understands and agrees that in the event the Property becomes subject to a government property lease excise tax pursuant to Arizona Revised Statutes Title 42 Chapter 6 Article 5, Saint Xavier University shall pay such excise tax and Gilbert shall have no responsibility whatsoever for such excise taxes. Further, if Saint Xavier University loses its 501(c)(3) status, the lease payments may be adjusted by Gilbert to cover any additional costs resulting from that loss.

7. **Saint Xavier University Performance Criteria.**

7.1 **Gilbert Agreements Contingent on Saint Xavier University Performance Criteria.** Saint Xavier University understands and agrees that Gilbert's willingness to enter into this Agreement is contingent on Saint Xavier University compliance with the Saint Xavier University Performance Criteria set forth in this Section 7.

7.2 **Performance Criteria.** In recognition of the benefits provided by Gilbert to Saint Xavier University:

7.2.1 Saint Xavier University shall open the University on or before October 1, 2015.

7.2.2 Saint Xavier University shall use its best efforts by means of its student enrollment experience and admission expertise to recruit and retain the number of full-time students necessary to appropriately populate the undergraduate and graduate degree and degree-completion programs offered initially in Nursing, Business and Education and subsequently in other fields (the "Programs"). The University acknowledges and agrees that it has an ongoing duty to comply with any/all directives from the Higher Learning Commission ("HLC"), including but not limited to the requirement that distance education offered by the University not exceed 20% of total degree programs. For purposes of this section, "full time students" shall mean undergraduate students taking at least 9 credit hours a semester and graduate students taking at least 6 credit hours a semester, by personal attendance on the Property (or off the Property if participating in intern or externship programs) and taught by instructors physically present, and/or by means of online and hybrid formats that shall include on-site residency components of instruction of at least once per week. Such best efforts shall be reflected in the development of reasonable and viable annual enrollment targets for Programs offered during the traditional academic year and summer sessions, in on-site, online and hybrid classroom formats. During Years One and Two of this Agreement, enrollment targets shall be contingent, in part, upon approval of prelicensure Nursing Programs by the AZ Board of Nursing, as well as the achievement of any other State approvals required for graduate or undergraduate Programs offered through the School of Education, the Graham School of Management, or the College of Arts and Sciences. In addition, as the AZ Board of Nursing approves prelicensure Nursing Programs in the fall of 2015 and spring of 2016, undergraduate enrollment targets in Nursing shall focus on the annual matriculation of 40 to 60 students. For Academic Year One therefore, enrollment targets shall focus on the matriculation of 50 to 75 full time students in graduate and degree-completion Programs. For Academic Year Two, the enrollment target shall be 100 to 150 full time students. For Academic Year Three, the enrollment target shall be 150 to 225 full time students. At the end of Year Three (during the spring semester 2018), the University and Gilbert Representative shall meet to review enrollment projections for Academic Years Four through Seven, and may jointly conclude to adjust the enrollment target for those years. For Academic Year Four (fall semester 2018), the enrollment target shall be 300 full time enrolled students in undergraduate and graduate Programs. For Year Five (fall semester 2019), the enrollment target shall be 425 full time students. For Year Six (fall semester 2020), the enrollment target shall be 550 full time students.

For Academic Year Seven (fall semester 2021), the enrollment target shall be 750 full time students enrolled in undergraduate and graduate Programs. The failure to reach the enrollment target for Year Seven shall be considered an Academic Default pursuant to Section 10.

Under the provisions of this Agreement and throughout the Initial Term and Renewal Terms of the Lease Agreement, the University is committed to provide the Gilbert Representative with any/all information used by the University to produce enrollment projections, and to use its best efforts to substantially increase student enrollments in all Programs for all succeeding academic years. For example, for Years One through Seven, the University shall regularly provide the Gilbert Representative with Tenth of Term enrollment projections for those programs and classes that are scheduled to meet on an academic semester basis (e.g., 14 weeks), as well as enrollment projections for professional cohort programs that are

scheduled to meet on an accelerated basis (e.g., 8 weeks). Such projections shall be used to assess the ability of the University to meet and/or exceed annual student enrollment targets for Years One through Seven, which includes the attainment of the an overall enrollment of 700-750 full-time graduate and undergraduate students by the end of Year Seven. Should the University fail to attain targeted enrollment goals at any point during Years One through Seven, the University and the Gilbert Representatives shall meet to (a) determine what factors, within or outside the control of the University, may have contributed to the University's inability to achieve identified enrollment targets; and (b) identify whether, in the best interests of both Parties, the Lease Agreement should be terminated. Any termination of the Lease Agreement shall be in accordance Section 1.8 of that Lease Agreement.

7.2.3 When the University opens, it shall have at least the following degree programs: Business, Nursing and Education, exclusive of Nursing prelicensure programs. Saint Xavier University shall ensure that all State statutory and regulatory requirements are met so as to offer pre-licensure programs in Nursing and licensure and/or certification programs in Education. Such degree programs shall be maintained during the term of the Lease Agreement.

7.2.4 Saint Xavier University awards scholarships (for merit), grants (for need) and students may be eligible for Pell grants from the federal government. In addition, Town of Gilbert residents are eligible for a special Town of Gilbert grant for undergraduate programs as specified below, ramped up as follows:

Year One:	2% of the then tuition in place entering their first year
Year Two:	4% of the then tuition in place entering their second year.
Year Three:	6% of the then tuition in place entering their third year.
Year Four:	8% of the then tuition in place entering their fourth year.
Year Five (And thereafter):	10% of the then tuition in place entering their fifth year.

The total of all University scholarships, grants or tuition reduction cannot exceed a discount rate in excess of 50%. Saint Xavier University provides merit scholarships and need based scholarships. Additionally, at no time will the awarded scholarship (institutional aid), grant or tuition reduction (Town of Gilbert grant) be refundable. This means that the tuition less institutional scholarship (merit), less need based aid (Pell and/or institutional need aid) less the special Gilbert resident grant cannot result in a refund to the student. The Gilbert Town Manager is authorized, after consultation with Saint Xavier University, to adjust the minimum requirements in this section if he determines that there are not sufficient applications from Gilbert residents to comply with this performance criterion.

7.2.5 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of endowed funds for the University. This comprehensive and on-going endowment campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The endowment shall be considered to be fully funded when the endowment fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the endowment fund for the University by the end of the first Academic Year.

Until the endowment fund is fully funded as provided herein, Saint Xavier University shall maintain such endowment fund at a minimum level of Twenty-Five Thousand Dollars ($25,000.00).

7.2.6 On or before the sixth anniversary of the commencement of the term of the Lease Agreement, Saint Xavier University shall have completed a minimum investment of Thirty Million Dollars ($30,000,000.00) in the University. Such investment shall include salaries and benefits paid to employees of the Gilbert campus, lease payments, utilities, supplies, marketing materials and student recruitment and scholarships for Gilbert residents. The annual investment through the fifth anniversary of the commencement of the term of the Lease Agreement shall be at least (a) $2.5 Million prior to the first anniversary of the commencement of the Initial Term of the Lease Agreement; (b) $3.0 Million prior to the second anniversary of the commencement of the Initial Term of the Lease Agreement; (c) $5.7 Million prior to the third anniversary of the commencement of the Initial Term of the Lease Agreement; (d) $6.0 Million prior to the fourth anniversary of the commencement of the Initial Term of the Lease Agreement; (e) $6.2 Million prior to the fifth anniversary of the commencement of the Initial Term of the Lease Agreement; and (f) and $6.4 Million prior to the sixth anniversary of the commencement of the Initial Term of the Lease Agreement. If on any anniversary of the commencement of the term of the Lease Agreement the above thresholds have not been met, Gilbert's Representative shall meet with Saint Xavier University's Representative to determine whether a reasonable adjustment can be made that will result in the minimum investment of Thirty Million Dollars ($30,000,000.00) by Saint Xavier University by said fifth anniversary, and if so, Gilbert's Representative is authorized to approve such adjustment.

7.2.7 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of funds for a capital fund for the expansion of the University anticipated to occur on or before the fifteenth anniversary of the Effective Date. This comprehensive and on-going fundraising campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The capital fund shall be considered to be fully funded when the capital fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the capital fund for the University by the end of the first Academic Year.

7.3 **Failure to Meet Performance Criteria.** If Saint Xavier University does not meet the Saint Xavier University Performance Criteria, or fails to maintain the Saint Xavier University Performance Criteria as required by Sections 7.2.1 through 7.2.7 of this Agreement, then, subject to the Cure Periods set forth in Section 10.1, Gilbert may declare Saint Xavier University to be in Default of this Agreement and the Lease Agreement, with all of the rights and remedies set forth in Section 10 of this Agreement.

7.4 **Annual Report.** Annually, on or before each anniversary of the Effective Date during the term of this Agreement, Saint Xavier University shall submit to Gilbert a report showing the status of compliance with each of the Saint Xavier University Performance Criteria. The annual report shall include sufficient information to verify the status of each of the Saint

Xavier University Performance Criteria. Gilbert may require such additional information as it determines is required to verify such status.

8. **Representations and Warranties.**

8.1 Gilbert Representations. Gilbert represents and warrants to Saint Xavier University, acknowledging and agreeing Saint Xavier University is entering into this Agreement in reliance on such representations and warranties:

8.1.1 Gilbert will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

8.1.2 As of the date of this Agreement, Gilbert knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of Gilbert or its officials with respect to this Agreement including Gilbert's execution, delivery and performance hereof.

8.1.3 The execution, delivery and performance of this Agreement by Gilbert is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which Gilbert is a party or is otherwise subject.

8.1.4 Gilbert has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8.2 Saint Xavier University Representations. Saint Xavier University represents and warrants to Gilbert, acknowledging and agreeing Gilbert is entering into this Agreement in reliance on such representations and warranties

8.2.1 Saint Xavier University is a tax exempt organization under Internal Revenue Code Section 501(c)(3) and that as such property used by it is exempt from taxation.

8.2.2 Saint Xavier University' execution and approval of this Agreement is in compliance with the organizational, formation and operating documents of Saint Xavier University. In addition, Saint Xavier University enters this Agreement as a duly accredited, four-year higher education institution. Through the term of this Agreement, the University shall meet all required accreditation obligations, as required by the Higher Learning Commission ("HLC") and other pertinent accrediting bodies for the programs that will be offered.

8.2.3 Saint Xavier University will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

8.2.4 As of the date of this Agreement, Saint Xavier University knows of no litigation, proceeding or official investigation contesting the powers of Saint Xavier University or its officers with respect to this Agreement including Saint Xavier University' execution, delivery and performance hereof.

8.2.5 The execution, delivery and performance of this Agreement by Saint Xavier University is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Saint Xavier University is a party or is otherwise subject.

8.2.6 But for the agreements set forth in this Agreement, Saint Xavier University would not establish, maintain and operate a University in the Heritage District or other location in Gilbert.

8.2.7 Saint Xavier University has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.2.8 Saint Xavier University has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **Enforced Delay in Performance for Causes Beyond Control of Party**. Whether stated or not, subject to the exclusions set forth in this Section 9, all periods of time in this Agreement are subject to this Section 9 and (as applicable) the cure periods referenced in Section 10.1. Subject to the foregoing, neither Gilbert nor Saint Xavier University, as the case may be, shall be considered in Default under this Agreement in the event of a delay due to Enforced Delay. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay, provided the Party seeking the benefit of the provisions of this Section 9 shall, reasonably promptly after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

10. **Default and Remedies.**

10.1 **Default and Cure Period.**

10.1.1 Saint Xavier University Default. If Saint Xavier University fails to perform its obligations under this Agreement, and such failure is an Academic Default, Saint Xavier shall cure the Academic Default within three hundred sixty-five (365) days after notice thereof from Gilbert in accordance with this Agreement. Beginning with the commencement of the Fourth Academic Year, Saint Xavier University is only permitted to have two (2) cure periods for an Academic Default in any fifteen (15) year period unless Gilbert consents to additional cure periods. If Saint Xavier University's failure to perform its obligations under this Agreement is a Non-Academic Default, then Saint Xavier University shall cure the Non-Academic Default within forty five (45) days after notice thereof from Gilbert. These periods of time to cure a Default by Saint Xavier University may be extended by Gilbert at its discretion, provided Saint Xavier University commences performance or compliance within the initial 365 or 45 days, as applicable, and thereafter diligently and in good faith pursues completion of such performance or

compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Saint Xavier University. Any notice of an alleged Default ("Default Notice") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the applicable cure period (as extended, if applicable), Gilbert shall have the remedies set forth in Section 10.2.1. Notwithstanding any other provision of this Agreement or the Lease Agreement, any termination of the Lease Agreement shall be in accordance with Section 1.8 of the Lease Agreement.

10.1.2 Gilbert Default. If Gilbert fails to perform its obligations under this Agreement, Gilbert shall cure the Default within forty five (45) days after notice thereof from Saint Xavier University in accordance with this Agreement. The periods of time to cure a Default by Gilbert may be extended by Saint Xavier University at its discretion, provided Gilbert commences performance or compliance within the initial thirty (30) days and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Gilbert. Any Default Notice shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within thirty (30) days of the Default Notice, Saint Xavier University shall have the remedies set forth in Section 10.2.2.

10.2 **Remedies.** Whenever a Default occurs and is not cured within the cure periods set forth in Sections 10.1.1 or 10.1.2 (as extended, if applicable), the remedies of the non-Defaulting Party shall consist of and be exclusively limited to the following:

10.2.1 Remedies of Gilbert. Within thirty (30) days of the Effective Date, Saint Xavier University shall deposit the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) in a restricted account to be used as set forth in this Section 10.2.1. Until the eighth anniversary of the Commencement Date, Gilbert shall be permitted to withdraw said funds in the event of a Default that is not cured within the cure periods set forth in Section 10.1.1. In the event of a Default Gilbert shall provide written notice of termination of the Agreement and the Lease Agreement to Saint Xavier University, whereupon this Agreement and the Lease Agreement shall terminate and the amount deposited in the restricted account shall become the property of Gilbert as liquidated damages and not a penalty, to cover the costs Gilbert will incur to locate another lessee and otherwise wind down the Lease Agreement. In addition, Saint Xavier University shall pay Gilbert any and all rent that may be due and owing up to and including the identified termination date. After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University. The remedies identified herein serve as the sole and exclusive remedies for default by Saint Xavier University, without any other acceleration rights, specific performance or the payment of additional damages to Gilbert.

10.2.2 Remedies of Saint Xavier University. Saint Xavier University shall provide written notice of termination of the Agreement and the Lease Agreement to Gilbert, whereupon this Agreement and the Lease Agreement shall terminate. The recovery of Saint Xavier University shall be the actual damages as of the time of entry of judgment, Saint Xavier

University expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages.

11. **Referendum or Legal Challenge**.

11.1 In the event a referendum petition is timely filed with the Clerk of Gilbert with respect to the adoption of this Agreement or the Lease Agreement by the Town Council, (i) the Parties may mutually agree in writing to rescind the Agreement, in which case the costs and expenses incurred by each Party to that date shall be borne by that Party, or (ii) Gilbert at its sole cost and expense, may schedule a referendum election for the next regular election of Gilbert, or, in Gilbert's sole and absolute discretion, as a special election; and the time period prior to the election and until the final results of such election are known shall be deemed an Enforced Delay pursuant to Section 9 of this Agreement. If a referendum election is held and the electors of Gilbert disapprove the adoption of this Agreement or the Lease Agreement, then this Agreement and the Lease Agreement shall automatically, and without further act or notice, be deemed terminated, in which event, the Parties shall each bear their own costs and expenses to the date of such automatic termination.

11.2 Upon the filing by a third party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining, directly or indirectly, to this Agreement (except a referendum as described in Section 11.1, the Parties may cause such action or proceeding to be timely defended by counsel selected by and acceptable to the Parties in their reasonable discretion and the Parties shall equally bear the cost of such defense. Either Party may, in its sole discretion, select its own counsel to represent its interests, at its own cost and expense. The Parties shall fully cooperate in the defense of such action or proceeding. In the event Gilbert and Saint Xavier University prevail at the trial level and the third party appeals the judgment, then Gilbert and Saint Xavier University shall equally bear the cost of the appeal to the Court of Appeals. If the cause is thereafter appealed to the Supreme Court of the State of Arizona, then Gilbert and Saint Xavier University shall bear the cost of such appeal only upon the mutual agreement of Gilbert and Saint Xavier University; provided however either Gilbert or Saint Xavier University may elect (at its sole cost and expense) to prosecute or defend such appeal to the Supreme Court of the State of Arizona. In the event Gilbert and Saint Xavier University do not prevail at the trial level, then Gilbert and Saint Xavier University shall appeal the judgment to the Court of Appeals only upon mutual agreement of Gilbert and Saint Xavier University, provided however either Gilbert or Saint Xavier University may elect (at its sole cost and expense) to appeal the judgment to the Court of Appeals or (if applicable) to the Supreme Court of the State of Arizona. Notwithstanding anything in this Section 11.2 to the contrary, the Parties must mutually agree on all strategic decisions and each Party shall approve (with such approval not unreasonably to be withheld, conditioned or delayed) all filings in any level of legal proceeding related to this Agreement. If the Parties do not agree, then either Party may terminate this Agreement upon written notice to the other; provided, however, each Party shall act reasonably in cooperating with the other in an effort to reach agreement.

12. **Notices and Filings.**

12.1 **Manner of Service**. All notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national "overnight" courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To Gilbert:	To Saint Xavier University:
Patrick Banger Town Manager 50 E. Civic Center Drive Gilbert, AZ 85296	Christine Wiseman, President Bob Fisher, VP for Business and Finance Kathleen Rinehart, General Counsel and Sec. of the Corp. 3700 West 103rd Street Chicago, IL 60655

12.2 **Effective Date of Notices**. No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section 12. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this Section for notices, demands and other communications to be deemed effective.

13. **General Provisions.**

13.1 **Indemnification.**

13.1.1 Saint Xavier University shall indemnify, defend, pay and hold harmless Gilbert, and its employees, agents, contractors, licensees or assignees (each, individually, an "*Indemnified Party,*" and collectively, the "*Indemnified Parties*") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Saint Xavier

University in this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Indemnified Parties by reason of any of the foregoing events, then Saint Xavier University, upon prompt written notice from the Indemnified Party will, at Saint Xavier University's sole cost and expense, resist or defend such claim, action or proceeding, in the Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed. The foregoing indemnity shall be in addition to, and shall not limit, any indemnification provided in the Lease Agreement.

13.1.2 Gilbert shall indemnify, appear, defend and hold harmless Saint Xavier University, its officers, directors, members, employees, agents, contractors, licensees or assignees (each, individually, an *"Indemnified Party,"* and collectively, the "*Indemnified Parties*") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments and causes of action including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Indemnified Parties arising out of Gilbert's design and construction of the Building. In the case of any claim, action or proceeding is made or brought against any of the Indemnified Parties by reason of any of the foregoing events, then Gilbert, upon prompt written notice from the Indemnified Party will, at Gilbert's sole cost and expense, resist or defend such claim, action or proceeding, in the Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed.

13.2 **Designated Representatives**. Whenever a term or condition of this Agreement refers to a "designated representative" of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party; provided if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the "designated representative" for Gilbert shall be deemed to be its Gilbert Town Manager and for Saint Xavier University its General Counsel.

13.3 **Persons Not Liable**. No shareholder, partner, member, manager, director, officer, official, council member, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the Gilbert or Saint Xavier University under the terms of this Agreement.

13.4 **Good Faith of Parties**. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

13.5 **Further Assurances**. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

13.6 **Restrictions on Assignment and Transfer.**

13.6.1 Except as provided in Section 13.6.2, no assignment, conveyance, transfer, encumbrance, hypothecation, pledge or other impairment of a Party's rights under this Agreement (each, a "Transfer") shall occur or be permitted without the prior written consent of the other Parties, which consent may be given or withheld in the other Parties' sole and unfettered discretion. Any Transfer in violation of this Section 13.6 shall be void, and not voidable, and shall vest no rights in the purported transferee or assignee. Notwithstanding the foregoing:

13.6.2 The restrictions on Transfer shall not apply with respect to: (a) Saint Xavier University's financing related to University operations or the exercise of any remedies by a lender of Saint Xavier University under such financing; (b) the assignment of the Lease Agreement to a wholly-owned subsidiary of Saint Xavier University; (c) a Corporate Succession, so long as Saint Xavier University's successor-in-interest expressly assumes the obligations under this Agreement. For the purposes of this Agreement, the term "Corporate Succession" means (i) a sale or transfer of all or substantially all of Saint Xavier University's business assets, or (ii) a change in the form of business entity through which Saint Xavier University conducts its business. Saint Xavier University shall promptly notify Gilbert in writing of any event of Corporate Succession. No voluntary or involuntary successor in interest of Saint Xavier University shall acquire any rights or powers under this Agreement except as expressly authorized in this Section 13.6.2, and any Transfer in violation of the provisions of this Section 13.6.2 shall be void and shall vest no rights in the purported transferee.

13.7 **Waiver**. The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power of privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.8 **Governing Law; Choice of Forum**. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement (whether by a Party, or by a permitted successor or assign to all or any interest of a Party) shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties (and

their successors and assigns) agree and consent to the exclusive jurisdiction of such Superior Court. Saint Xavier University (and their successors and assigns) waive all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

13.9 **Attorneys' Fees and Costs**. In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

13.10 **Business Days**. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

13.11 **Time of Essence**. Time is of the essence in implementing the terms of this Agreement.

13.12 **Headings**. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13.13 **Exhibits and Recitals**. Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement. The Recitals set forth at the beginning of this Agreement and the introductory paragraphs preceding the Recitals are incorporated into this Agreement, and the Parties hereby confirm the accuracy of the Recitals.

13.14 **Construction**. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement reflecting ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

13.15 **No Partnership; Third Parties**. Nothing in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the Gilbert and Saint Xavier University. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each Mortgagee shall be a third party beneficiary of the provisions of this Section 13.14, and except the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of the Gilbert acting in the course and scope of their employment or engagement and all such persons shall be and are intended to be, third party beneficiaries of such indemnification provisions.

13.16 **Amendment**. No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the Gilbert Town Council, the Saint Xavier Board of Trustees, and executed by the Parties. Although the material terms of this Agreement shall not be changed without approval by the Gilbert Town Council and the Saint Xavier Board of Trustees, the Parties' Representatives shall have the right (but not the obligation), upon their mutual agreement, to vary or modify minor, administrative, technical or procedural terms of this Agreement dealing with, for example and without limitation, diligence, and approvals.

13.17 **Limited Severability.** The Parties each believe that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Gilbert to do any act in violation of any Applicable Law, constitutional provision, law, regulation, Municipal Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that, if practical and legally permitted, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; and further provided that in no event shall Gilbert be required to borrow funds, extend credit, make any expenditure from its General Fund, or take any other action determined by the Town Attorney to be a violation of any Applicable Law. Unless prohibited by any Applicable Law, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed. For purposes of this Agreement, the term "Applicable Laws" (or, in the singular, "Applicable Law") means all federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and all official policies of Gilbert, each of which apply to the development of the Property as of the date or dates upon which compliance is to be evaluated.

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

13.19 **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. With the exception of the Lease Agreement, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents) are hereby superseded and merged into this Agreement.

13.20 **Survival**. All agreements and indemnities in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

13.21 **Compliance with Immigration Laws and Regulations.** Pursuant to the provisions of A.R.S. §41-4401, Saint Xavier University warrants to the Gilbert Saint Xavier University is in compliance with all Federal Immigration laws and regulations which relate to its employees who work on the construction of the Project and, to the extent mandatory with the E-Verify Program under A.R.S. §23-214(A). Saint Xavier University acknowledges a breach of this warranty by Saint Xavier University or any of its Affiliates is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subcontract. To the extent permitted by law, the Gilbert retains the legal right to inspect the papers of any employee of Saint Xavier University who works on the construction of the Project to ensure compliance with this warranty. Gilbert may conduct random verification of the employment records of Saint Xavier University to ensure compliance with this warranty. Gilbert will not consider Saint Xavier University in material breach of the foregoing warranty if Saint Xavier University establish they have 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 Arizona Revised Statutes § 23-214(A). The provisions of this Article must be included in any contract Saint Xavier University enters into with all persons who provide services under this Agreement or any other contract with the Gilbert.

13.22 **Conflict of Interest Statutes**. This Agreement is subject to, and may be terminated by the Gilbert in accordance with, the provisions of A.R.S. §38-511.

[Remainder of page intentionally blank – Signature Page follows]

IN WITNESS WHEREOF, the Parties have entered into this Amended and Restated Development Agreement on or as of the day and year first written above.

GILBERT:

TOWN OF GILBERT, ARIZONA,
an Arizona municipal corporation

By : _____
Its: _____

APPROVED AS TO FORM:

_____
L. Michael Hamblin, Town Attorney

SAINT XAVIER UNIVERSITY:

By: _____
Its: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, _____ of Town of Gilbert, Arizona, an Arizona municipal corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of St. Xavier University, a 501(c)(3) corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

Description Of Document This Notarial Certificate Is Being Attached To:	
TYPE/TITLE	
DATE OF DOCUMENT	
NUMBER OF PAGES	
ADDITIONAL SIGNORS	
(other than those named in	
the notarial certificate)	

EXHIBIT A

LEGAL DESCRIPTION – LOT 2

COMMENCING AT A 1/2" REBAR WITH NO CAP MARKING THE EAST QUARTER CORNER OF SAID SECTION 12, FROM WHICH A TOWN OF GILBERT BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST CORNER OF SAID SECTION 12 BEARS SOUTH 00 DEGREES 54 MINUTES 48 SECONDS EAST 2629.10 FEET;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 00 DEGREES 54 MINUTES
48 SECONDS EAST, 428.25 FEET TO A BRASS CAP FLUSH MARKING THE INTERSECTION OF VAUGHN AVENUE AND GILBERT ROAD;

THENCE ALONG SAID VAUGHN AVENUE CENTERLINE SOUTH 89 DEGREES 04 MINUTES 03
SECONDS WEST, 919.69 FEET;

THENCE DEPARTING SAID CENTERLINE, NORTH 00 DEGREES 55 MINUTES 57 SECONDS WEST,
30.00 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE WEST LINE OF CREEDS ADDITION AS RECORDED IN BOOK 46 OF MAPS, PAGE 49 NORTH 00 DEGREES 54 MINUTES 48 SECONDS WEST, 356.75 FEET TO THE SOUTH LINE OF THE SRP WESTERN CANAL AS RECORDED IN BOOK 185 OF MAPS, PAGE 48, MARICOPA
COUNTY RECORDER;

THENCE DEPARTING SAID WEST LINE OF CREED'S ADDITION AND ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL NORTH 89 DEGREES 23 MINUTES 34 SECONDS EAST, 250.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL SOUTH 89 DEGREES 35 MINUTES 51 SECONDS EAST, 29.26 FEET TO THE WEST RIGHT OF WAY LINE OF ASH STREET AS DEDICATED PER THIS PLAT;

THENCE DEPARTING SAID SOUTH LINE OF THE SRP WESTERN CANAL AND ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 03 MINUTES 28 SECONDS EAST, 354.69 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE;

THENCE DEPARTING SAID WEST RIGHT OF WAY LINE AND ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 274.83 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 98,766 SQUARE FEET OR 2.2674 ACRES MORE OR LESS.

EXHIBIT B

PROJECT SPECIFICATIONS

Master List Description	**Quantity**
ADMINISTRATION – Non Academic	
☐ School of Nursing Faculty Offices	6
☐ School of Business Faculty Offices	4
☐ Administrative Offices / Meeting Rooms	4
☐ Administrative Offices / Meeting Rooms	2
☐ General Assembly Space	1
☐ Information/Reception Front Desk/Security Space	1
☐ Information Commons / Library	1
☐ General Student Gathering Space	6
☐ Trade/Conference/Corporate Training Space (complete with food preparation space and storage)	1
Mechanical Rooms (Electric HVAC, Life/Safety Fire/Water)	3
Bathrooms (two per floor…both men's and women's)	20
Incremental Growth - Contingency Space	5
Common Space hallways, corridors, etc.	TBD
School of Business/General Education - Instructional	
☐ Smart Classroom space for 50 students (non-nursing) (used for group study, will have computer stations, room for instruction, has to be flexible for technology and the modern classroom, etc)	6
Student Project Space	4
Ground Floor Lobby	1

Nursing School Needs – Instructional

☐	School of Nursing Classroom Needs (up to 50 students)	8
☐	Seminar rooms for Nursing (up to 15/room)	4
☐	Simulation Lab Space (small) (accommodate up to 10)	5
☐	Sim Lab Studio (larger) (Can hold up to 25)	2
☐	Auditorium Style (tiered seating for approx. 125)	1

EXHIBIT C

PROJECT BUDGET

(To be attached)

EXHIBIT D

PROJECT SCHEDULE

Site Plan Approval - March 31, 2014

Design Completion - June 30, 2014

Issuance of Revenue Bonds - June 30, 2015

Construction Commences - July 31, 2014

Construction Completion - August 31, 2015

Commencement of First Academic Year - October 1, 2015

EXHIBIT E

FORM OF LEASE AGREEMENT

WHEN RECORDED RETURN TO:
Town of Gilbert
Attn: Town Clerk
50 East Civic Center Dr.
Gilbert, AZ 85296

Lease Agreement

By and Between

Town of Gilbert, Arizona, an Arizona Municipal Corporation;

and Saint Xavier University, a not for profit 501 c (3) Corporation

April 30, 2015

Town of Gilbert Contract No. 2015-2105-0700

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LEASE AGREEMENT

This Lease Agreement ("Lease Agreement" or "Agreement") is made between the Town of Gilbert, a municipal corporation ("Gilbert" or "Town") as "Landlord" and Saint Xavier University, a not for profit 501 c (3) corporation ("Saint Xavier University") as "Tenant". Gilbert and Saint Xavier University may also be referred to in this Lease Agreement collectively as the "Parties", or individually as a "Party", or "Landlord" or "Tenant" respectively.

RECITALS

A. Gilbert owns real property in the Gilbert Heritage District, a redevelopment area authorized by Arizona Revised Statutes ("A.R.S.") Title 36 Chapter 12 Article 3 ("Heritage District"); Gilbert desires that such real property be redeveloped for a university use in order to provide additional educational opportunities in Gilbert and to further the economic development of the Heritage District.

B. Gilbert adopted a Redevelopment Plan for the Heritage District, and the four-year liberal arts university to be operated by Saint Xavier University proposed in this Agreement will further the goals set forth in that Redevelopment Plan.

C. Saint Xavier University is experienced in operating a private university campus and programs as described in this Agreement and the Development Agreement; Saint Xavier University operates campuses in Chicago and Orland Park, IL, with a total student population of approximately 2930 undergraduates, 1450 graduate students, and now desires to establish an additional site for the University on the real property owned by Gilbert in the Heritage District.

D. Saint Xavier University, currently under no legal obligation or other compulsion to do so, now elects to open a new site for the University within the corporate limits of Gilbert in accordance with the terms and conditions set forth in this Lease Agreement and in the Development Agreement.

E. Gilbert, acting through its Town Council, has determined in the exercise of its legislative discretion that the establishment of a new site for the University in the Heritage District would be an important community asset providing significant derivative economic benefits and community amenities for Gilbert's residents and businesses, as well as significant regional and state economic benefits.

F. The operation 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, which has suffered and continues to suffer from insufficient economic development.

G. The operation of a university in the Heritage District will provide significant full-time and part-time employment opportunities for the residents of Gilbert, with Gilbert and Saint

Xavier University anticipating Saint Xavier University will hire certain full-time and part time employees for office and administrative purposes at the university.

H. Gilbert will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the establishment and operation of the university contemplated by this Agreement.

LEASE AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing introductory paragraphs and Recitals, and the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

Section 1: Definitions.

In this Lease Agreement, unless a different meaning clearly appears from the context, the emboldened words shall be defined as set forth below:

1.1 "Academic Default": A Default by Saint Xavier University of its obligations under Section 11.

1.2 "Academic Year": The annual period of time from the commencement of classes in the Fall semester of any given year, whether occurring in the months of August or September, and continuing until the annual commencement or graduation occurring at the end of the first semester of a new calendar year, whether April, May or June. Saint Xavier University may supplement the Academic Year with a Summer Session, as required.

1.3 "Business Days": When referencing when notice must be given to or from Gilbert the term "Business Days" shall mean Monday through Thursday excluding national holidays. When referencing Saint Xavier University operations the term "Business Days" shall mean Monday through Saturday.

1.4 "Commencement Date": The day following the date a Certificate of Occupancy for the Premises is issued by Gilbert.

1.5 "Default": As defined in Section 7 of this Agreement.

1.6 "Full-Time Student" : An undergraduate student at the University is considered to be a full time student if they take twelve (12) credit hours per semester. A graduate student enrolled between 6 and 9 credit hours is considered full time.

1.7 "Landlord": The Town of Gilbert, Arizona

1.8 "Commencement Date, Term and Termination": The Initial Term of the Agreement shall be fifteen (15) years, in the absence of academic or nonacademic default, or other means of termination, as agreed to by the Parties. For the purpose calculating the Initial Term or subsequent Renewal Terms, if the Commencement Date does not occur on the first day of a calendar month, the expiration of the Initial Term shall be calculated as though the Initial Term

began on the first day of the next succeeding calendar month after the month in which the Commencement Date occurs. For the purpose of calculating the Lease Term, if the Lease Term as set forth above does not expire at the end of the Academic Year, the University, with Gilbert's permission, which may not be unreasonably withheld, may hold over until the last day of the month in which the Academic Year ends.

The Parties may mutually agree, in writing, to extend the Lease Agreement for additional Renewal Terms of five (5) years.

Termination of the Lease Agreement may occur in the following manner:

Academic or Operational Default by the University. During the Initial Term of the Agreement, the University is expected to meet Performance Criteria identified in Section 11. Should such Performance Criteria not be met, the Town of Gilbert shall provide written notice to the University identifying the specific nature of the Academic Default. Thereafter, the University shall have 365 days to cure the Academic Default. Should the Academic Default not be cured within the required timeframe and absent any agreement by the Town to extend the cure period, the Town of Gilbert may terminate this Lease Agreement and is entitled to receive the following: (i) all rent due and owing up to and including the identified termination date; (ii) payment of liquidated damages by the University in the amount of $250,000. Such payment shall be required for Academic Default through Year Eight of this Lease Agreement; (iii) completion by the University of any/all academic program closure(s) and/or operation and academic transitional actions necessary to meet legal, regulatory and accreditation requirements, including, but not limited to those issued by the Higher Learning Commission, the Arizona Board of Postsecondary Education, the Arizona Board of Nursing, the U.S. Department of Education, and 26 U.S. Code Section 501(c)(3).

Should the Town of Gilbert believe that an Operational Default has occurred, written notice regarding the specific nature of the Operational Default shall be sent to the University. Thereafter, the University shall have 45 days to cure the Operational Default. Should the Operational Default not be cured within the required timeframe and absent any agreement by the Town to extend the cure period, the Town of Gilbert may terminate this Lease Agreement and is entitled to receive all of the monetary and non-monetary remedies described in this Section 1.8(a).

a. By Mutual Agreement of the Town of Gilbert and the University. In accordance with Sections 7.2.2 of the Development Agreement and Section 11.1.2 of this Lease Agreement, the University and the Town of Gilbert shall meet to assess the University's ability to attain annual enrollment targets for Years One through Three during this Agreement. Should the University fail to attain targeted enrollment goals during this period, the University and Gilbert Representatives shall meet to (a) determine what factors, within or outside the control of the University, may have contributed to the University's inability to attain identified enrollment targets; and (b) identify whether, in the best interests of the University and the Town of Gilbert, the Parties will mutually agree to terminate the Lease Agreement. Should such mutual

agreement to terminate occur, the Parties agree that Gilbert shall be entitled to the remedies identified in Section 1.8(a) herein.

b. **Termination by the University.** No sooner than the end of the Fourth Academic Year of this Lease Agreement, the University may terminate the Initial Term or a Renewal Term by providing the Town with the following: (a) twenty-four (24) months written notice of its intent to terminate the Lease; (b) Payment to Gilbert of $250,000.00 in liquidated damages. The Parties agree and acknowledge that the payment of this liquidated damages amount shall be required only if termination occurs in Years Four through Eight of this Lease Agreement; (c) payment of all rent due and owing under the term of the Lease Agreement, up to and including the identified termination date; and (d) completion by the University of any/all academic program closure and/or operation and academic transitional actions necessary to meet legal, regulatory and accreditation requirements, including, but not limited to those issued by the Higher Learning Commission, the Arizona Board of Postsecondary Education, the Arizona Board of Nursing, the U.S. Department of Education, and 26 U.S. Code Section 501(c)(3).

The Parties acknowledge and agree that a termination of this Lease Agreement also shall terminate duties and responsibilities identified in the Development Agreement, except those expressly identified and mutually agreed to by the Parties as surviving termination. The Parties further acknowledge and agree that the payments associated with the termination provisions identified herein serve as the sole and exclusive remedies for the exercise of a termination right, without any other acceleration rights, and/or any other remedies, including without limitation, specific performance beyond that identified and assumed by the University and/or payment of additional damages by the University.

1.10 "Permitted Use": Operation and maintenance of a four year private liberal arts university site open to enrollment by members of the general public.

1.11 "Premises": As set forth in Exhibit A and all buildings thereon.

1.12 "Rent" or "Base Rent": Monthly payment by Tenant to Landlord as set forth in Exhibit B.

1.13 "Revenue Bonds": The debt or obligation issued by Gilbert or its designee, including but not limited to the Town of Gilbert Industrial Development Authority, for the cost of design and construction of the Improvements.

1.14 "Saint Xavier University Performance Criteria": The performance criteria set forth in Section 11 of this Lease Agreement.

1.15 "Tenant": Saint Xavier University.

1.16 "University": The four-year private liberal arts university site to be established, maintained and operated by Saint Xavier University pursuant to this Lease Agreement and the Development Agreement.

Section 2: Basic Lease Terms

2.1 Property Ownership.

Gilbert shall own all land and improvements thereon, including all the improvements made thereto. Upon termination of the lease the furniture, fixtures and equipment described in the Development Agreement Exhibit F shall be the property of Gilbert.

2.2 Leased Premises.

Gilbert as Landlord hereby leases to Saint Xavier University as Tenant on and in consideration of the terms and conditions contained herein the land and improvements thereon set forth and specifically described and depicted on Exhibit A attached, which by reference is made a part of this Lease.

2.3 Commencement Date and Term.

Commencement Date and Term will be as defined in Sections 1.4 and 1.8.

2.4 Rent and Billing.

Saint Xavier University as Tenant shall pay to Gilbert as Landlord as rent for the leased premises the sum set forth in Exhibit B attached, which by reference is made a part of this lease ("Base Rent"). If Saint Xavier University loses its 501(c) (3) status the lease payments may be adjusted by Gilbert to cover any additional costs resulting from that loss.

2.4.1 In the event that the Lease Term shall commence, on a day other than the first day of a month, Tenant shall also pay Landlord the Rent and other sums due hereunder for such fractional month on a per diem basis (calculated on the basis of a 30 day month).

2.4.2 This Lease is a "triple net" lease. Tenant shall pay to Landlord during the Term the Base Rent plus all excise, sales, use, rental and/or transaction privileged taxes levied or imposed, or hereafter levied or imposed, against or on account of the terms of this Lease (including rights and obligations of the parties hereto), including but not limited to any or all amounts payable hereunder by Tenant or the receipt thereof by Landlord (except Landlord's income taxes), such taxes to be paid at the same time and in addition to the Base Rent and all other amounts which may become due with respect to the Premises. Amounts due over and above the Base Rent shall be referred to as "Additional Rent". "Base Rent" and "Additional Rent" may be collectively referred to as "Rent".

2.4.3 Tenant shall pay Rent on or before the first day of each month at: Town of Gilbert, 50 E. Civic Center Drive, Gilbert, Arizona 85296 ATTENTION; DIRECTOR OF FINANCE AND MANAGEMENT SERVICES.

2.4.4 Saint Xavier University further understands and agrees that in the event the Premises becomes subject to a government property lease excise tax pursuant to Arizona Revised Statutes Title 42 Chapter 6 Article 5, Saint Xavier University shall pay such excise tax and Gilbert shall have no responsibility whatsoever for such excise taxes.

2.4.5 Rent Payment Schedule [TO BE DETERMINED]

2.5 Late Charges.

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and any other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of will be very difficult to ascertain. Accordingly, if any monthly installment of Rent or other amount due to Landlord hereunder shall not be received by Landlord within four (4) business days after the due date therefor, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such installment or other amount of such costs. Thereafter, any amount due, which is not paid, shall bear interest from the day due until paid at a rate of 12% per annum.

2.6 Permitted Use.

Landlord hereby authorizes Tenant to occupy and use the premises for the purpose establishing, maintaining and operating a four-year liberal arts university site and activities incident thereto and for no other purpose. Authorization can be revoked by Gilbert as Landlord upon a Default by Saint Xavier University as Tenant as set forth in Section 7 of this Lease Agreement.

2.7 Surrender.

Upon the expiration of the term of this Lease, or upon its earlier termination, as herein provided, Saint Xavier University as Tenant and if in possession shall have 45 days from the date notice is given to Gilbert as Landlord to remove all of Tenant's personal property, but not the Furniture, Fixtures and Equipment from the Premises and to surrender a peaceable possession of the Lease premises free and clear of any of its personal property, trash or debris, in good condition and repair, ordinary wear and tear excepted. The Furniture, Fixtures and Equipment shall become the property of Gilbert.

2.8 Sub-lease.

Saint Xavier University shall not sublease the premises without the written consent of Gilbert.

3. Insurance

3.1 Requirements.

Tenant shall provide and maintain for the duration of the Lease, insurance against damage to property which arise from or in connection with the Lease as follows:

A.	Coverage for Landlord's Tenant improvements.	Replacement Value
B.	Coverage on building.	Replacement Value
C.	Property Insurance shall be written on an all-risk, replacement cost coverage, including coverage for flood and earth movement.	
D.	The Town of Gilbert shall be named as a loss payee on property coverage.	
E.	Policy shall contain a waiver of subrogation against the Town of Gilbert.	

3.2. Additional Insurance Requirements.

The policies shall include, or be endorsed to include the following provisions:

3.2.1 Gilbert as Additional Insured.

On insurance policies where the Town of Gilbert is named as an additional insured, the Town of Gilbert shall be an additional insured to the full limits of liability purchased by the Tenant.

3.2.2 Primary Insurance.

The Tenant's insurance coverage shall be the primary insurance and non-contributory with respect to all other available sources.

3.2.3 Notice of Cancellation.

Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided or canceled except after 10 days prior written notice has been given to the Town. Notice shall be sent directly to Town of Gilbert Risk Manager, 50 Civic Center Drive, Gilbert, AZ 85296.

3.2.4 Acceptability of Insurers.

Insurance is to be placed with insurance duly licensed and authorized to do business in the State of Arizona and with a "A.M. Best" rating of not less than A or above. The Town in no way warrants that the above required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency. The verification of coverage less Tenant shall furnish the Town of Gilbert with Certificates of Insurance (Accord Form or equivalent approved by the Town) as required by this Lease. Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

3.2.5 Certificates.

All certificates and any other required endorsements are to be received and approved by the Town before the Lease commences. Each insurance policy required by this Lease must be in affect at or prior to commencement of this Lease and remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal is a material breach of the Agreement. All certificates required by this Lease shall be sent directly to the Town as set forth in Section 12.12. Gilbert reserves the right to require complete certified copies of all insurance policies and endorsements required by this Lease at any time.

3.2.6 Insurance Modification.

Any modification or variation from the insurance requirements in this Lease must have prior approval from the Town of Gilbert whose decision shall be final. Action will not require a formal lease amendment but may be made by administrative action.

4. Indemnification.

Saint Xavier University, as Tenant, shall indemnify, defend, save and hold harmless the Town of Gilbert and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, losses, or expenses (including court costs, attorneys' fees, and cost 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 acts or omissions of Tenant or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Tenant's occupancy and use of the Premises. It is the specific intention of the parties that the Town shall, in all instances, except for claims arising solely from the negligence or willful acts or omissions of the Town, be indemnified by Tenant from and against any and all claims. It is agreed that Tenant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, the Tenant agrees to waive all rights of subrogation against the Town, its officers, officials, agents and employees from losses arising from the use, occupancy or condition of the premises.

5. Property Loss.

If the building(s) constituting the Premises are destroyed or damaged by fire or other casualty so that they are no longer of use as determined by Gilbert, then this Lease Agreement shall be terminated by Gilbert. If the damages to the buildings are capable of being repaired, all such repairs will be paid for by Saint Xavier University first to the extent of its insurance coverage, and if necessary thereafter with other assets. If the damages to the building are not capable of being repaired Saint Xavier University will pay to Gilbert (1) the fair market value of Gilbert's remaining interest in the Lease of the premises for a period of three (3) years, or until the end of the Term, whichever is less, as well as (2) the replacement value of the loss of the building and all Landlord financed improvements first to the extent of its insurance coverage, and if necessary thereafter with other assets.

6. Alterations.

6.1 Saint Xavier University shall make no alterations or improvements to the operational, H-VAC, mechanical and fire suppression systems without having first obtained permission from Gilbert. Minor, routine, non-structural modification of space by Saint Xavier University is permissible without Gilbert's permission, provided it is done in accordance with local ordinances, codes, and regulations covering such modifications including, but not limited to, the American for Disabilities Act (ADA). Any alteration or improvement commenced by operator shall be completed expeditiously in compliance with all laws, rules, and regulations of any governmental authorities having jurisdiction over the premises.

6.2 The premises shall be kept free and clear from any and all mechanics' and materialmens' liens, claims and charges. Each party shall indemnify and hold the other party harmless from any and all costs, expenses, claims, liens, or demands, including reasonable attorneys' fees, (collectively "costs") arising out of or by virtue of any non-payment of any obligations incurred by the other party.

6.3 Any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the Lease, except that Landlord may elect within thirty (30) days before the expiration of the Lease, or within forty-five (45) days after termination of the Lease, to require

Tenant to remove any alterations that Tenant has made to the Premises. If Landlord so elects, Tenant at its cost shall restore the Premises to the condition designated by Landlord in its election, before the last day of the Term, or within thirty (30) days after notice of election is given, whichever is later.

6.4 If Tenant is not then in default of any provisions of this Lease, Tenant shall have the right to remove from the Premises immediately before the expiration of the Term, or within thirty (30) days after termination of the term, any alterations Tenant has made to the Premises, as long as the removal will not cause any structural damage to the Premises, and Tenant at its cost promptly restores any damage cause by the removal.

6.5 Signs.

Tenant shall not inscribe or affix any sign, lettering or design on the exterior of the Premises or building, without Landlord's prior written consent. Any signs not in conformity with this Lease shall be immediately removed by Tenant.

7. Default

7.1 Events of Default.

The existence or occurrence of any one or more of the following events shall constitute an event of default under this Lease if such event is not cured within forty-five (45) days of receipt of notice of such event from Landlord:

7.1.1 Saint Xavier University's failure to use the Premises solely for the Permitted Use for a continuous period of thirty (30) days, summer break at the end of an Academic Year, if any, excluded.

7.1.2 Non-payment of any portion for Rent.

7.1.3 Saint Xavier University's failure to comply with or perform any covenant, representation, warranty or obligation set forth in this Lease or in the Development Agreement.

7.1.4 General Assignment of any contract rights or assets of Saint Xavier University for the benefit of Saint Xavier University or any creditors of Saint Xavier University.

7.1.5 Appointment of a receiver or trustee for Saint Xavier University or for any trust owned or controlled by Saint Xavier University on account of improper conduct or improprieties of Saint Xavier University, any officer, or employee of Saint Xavier University that results in a diminution in the value of the total assets of the Saint Xavier University or any related trust by ten (10%) or more value of the University' total assets of any Saint Xavier University trust being relied upon for payment or support for payment of the lease obligations.

7.1.6 Commencement of a formal or informal proceeding for the dissolution or liquidation of Saint Xavier University, the winding up of the affair of Saint Xavier University, and settlement of claims against Saint Xavier University or against any trust of Saint Xavier

University resulting in a diminution in value of St. Xavier University's assets or any owned trust by ten (10%) or more regardless of whether such action was voluntary or involuntary.

7.1.7. The failure of Saint Xavier University to have an action commenced by a related third party, without the consent of St. Xavier University, under any bankruptcy law dismissed within fifteen days of its filing.

7.1.8 A filing by Saint Xavier University of a request or petition under any bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction due to demonstrable mismanagement or financial insolvency.

7.1.9 Saint Xavier University's failure to preserve the tax free status of the Revenue Bonds by adhering to the private activity bonds test set forth in U. S. Internal Revenue Code section 141.

7.1.10 Saint Xavier University's failure to meet the Performance Criteria set forth Section 11.

7.2 Saint Xavier University Default.

If Saint Xavier University fails to perform its obligations under this Agreement, and such failure is an Academic Default, Saint Xavier shall cure the Academic Default within three hundred sixty-five (365) days after notice thereof from Gilbert in accordance with this Agreement. . Beginning with the commencement of the Fourth Academic Year, Saint Xavier University is only permitted to have two (2) cure periods for an Academic Default in any fifteen (15) year period unless Gilbert consents to additional cure periods. If Saint Xavier University's failure to perform its obligations under this Agreement is a Non-Academic Default, then Saint Xavier University shall cure the Non-Academic Default within forty five (45) days after notice thereof from Gilbert. These periods of time to cure a Default by Saint Xavier University may be extended by Gilbert at its discretion, provided Saint Xavier University commences performance or compliance within the initial 365 or 45 days, as applicable, and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Saint Xavier University. Any notice of an alleged Default ("Default Notice") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the applicable cure period (as extended, if applicable), Gilbert shall have the remedies set forth in Section 10.2.1. Notwithstanding any other provision of this Agreement or the Lease Agreement, Saint Xavier University shall not terminate the Lease Agreement or cease conducting classes commenced during any Academic Year prior to the expiration date of the Lease Agreement. In the event Saint Xavier University anticipates that it will terminate the Lease Agreement prior to its expiration date, Saint Xavier University shall prepare a transition plan for the students enrolled during that Academic Year to assure that classes continue to completion for that Academic Year and to assure that students are provided an opportunity to continue their University program at a comparable University.

7.2.1 Non-Compete.

The University acknowledges and agrees that during the Initial Term of this Agreement the only additional offices or sites that may be established outside of Gilbert in Maricopa, Pinal or Pima Counties shall be for the sole purpose of promoting academic programs, activities, and student admissions or enrollment for SXU-Gilbert, and/or any and all other operations necessary to support and enhance the SXU-Gilbert site. Any breach of this Section during the Initial Term of this Agreement in the form of a collaboration by the University with another municipality in Maricopa, Pinal or Pima Counties shall constitute an Academic Default and entitle the Town of Gilbert to terminate this Agreement and to all legal remedies available.

7.3 Gilbert Default.

If Gilbert fails to perform its obligations under this Lease Agreement, Gilbert shall cure the Default within forty- five (45) days after notice thereof from Saint Xavier University in accordance with this Agreement. The periods of time to cure a Default by Gilbert may be extended by Saint Xavier University at its discretion, provided Gilbert commences performance or compliance within the initial thirty (30) days and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of Gilbert. Any Default Notice shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within thirty (30) days of the Default Notice, Saint Xavier University shall have the remedies set forth in Section 8.1.2.

8. Remedy

8.1 Whenever a Default occurs and is not cured within the cure periods (as extended, if applicable) in Sections 7.2 and 7.3, the remedies of the non-Defaulting Party shall consist of and be limited to the following:

8.1.1 Remedies of Gilbert.

Within thirty (30) days of the Effective Date, Saint Xavier University shall deposit the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) in a restricted account to be used as set forth in this Section 8.1.1. Until the eighth anniversary of the Commencement Date, Gilbert shall be permitted to withdraw said funds in the event of a Default that is not cured within the cure periods set forth in Section 7.2. In the event of a Default Gilbert shall provide written notice of termination of the Agreement and the Lease Agreement to Saint Xavier University, whereupon the Development Agreement and the Lease Agreement shall terminate and the amount deposited in the restricted account shall become the property of Gilbert as liquidated damages and not a penalty, to cover the costs Gilbert will incur to locate another lessee and otherwise wind down the Lease Agreement. In addition, Saint Xavier University shall pay Gilbert any/all rent that may be due and owing up to and including the identified termination date. After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University. Except for a default under the provisions of section 7.9.1, the remedies identified herein serve as the sole and exclusive remedies for default by the University, without any other acceleration rights, specific performance or the payment of additional damages to Gilbert. In the event of default under 7.1.9, Saint Xavier University shall

also indemnify Gilbert for any increased interest costs, penalty, or any other costs, including attorney's fees, incurred by Gilbert from Saint Xavier University's failure to adhere to the private activity bonds test.

After the eighth anniversary of the Commencement Date, the funds in the restricted account may be released to Saint Xavier University.

8.1.2 Remedies of Saint Xavier University.

Saint Xavier University shall provide written notice of termination of the Development and/or this Lease Agreement and the Lease Agreement to Gilbert, whereupon the Development Agreement and the Lease Agreement shall terminate. The recovery of Saint Xavier University shall be the actual damages as of the time of entry of judgment, Saint Xavier University expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages.

8.2 In the event of Default by Saint Xavier University Gilbert may, at its option, enter into agreements with other entities to operate a university level educational institution for related purposes at the premises set for in the Lease between the parties.

9. Maintenance

9.1 Cost of Maintenance and Operation of the Premises.

Landlord and Tenant intend and agree that this Lease shall be an absolutely triple net lease to Landlord, with Landlord not, except as expressly otherwise set forth in this Lease, to incur any expense (whether for maintenance, property taxes, Tenant's insurance, utilities, structural or other repairs, replacements, capital improvements, or otherwise) in connection with the Premises or this Lease. Tenant shall, at its expense, furnish to and pay for any and all utilities, repairs, replacements and services for the Premises. Tenant shall timely pay for any and all utility and other costs and perform any and all such maintenance in a safe, lien-free manner, as well as indemnify and hold Landlord harmless for, from and against any and all costs and liabilities (including attorneys' fees and costs) deriving therefrom.

9.2 Maintenance.

During the Term, the Tenant , at its expense, shall: (i) maintain and keep the interior and exterior of the Premises, including but without limitation, all parts of the improvements thereon, clean, painted and in good condition and repair, (ii) pay for custodial services and supplies, pest control, utility costs, telephone, cable, and internet service, refuse, garbage and trash disposal, specialty electrical fixtures used on the Premises; and (iii) operate and maintain (and replace as applicable) all parts of the Premises, including but without limitation, air conditioning, heating, plumbing, restrooms, electrical distribution systems, elevators, concrete foundations, floors, roofs, building structure systems, fire alarm and prevention systems, landscaping, walkways and parking (including lighting), maintaining them in clean and good condition.

9.3 Facilities Maintenance Plan.

Within ninety days of the Completion of Construction as defined in the Development Agreement, Landlord and Tenant will prepare and subsequently include and incorporate as

Exhibit C to this Lease Agreement a Facilities Maintenance Plan, as a guideline when scheduling the repair and any replacement of equipment on the Premises. Tenant will evaluate the maintenance plan on an annual basis and submit the plan to Town by the time of the completion of Saint Xavier University's annual audit, along with a tentative schedule for repairs and/or new equipment to be installed at the premises over the next ten years.

9.4 Annual Maintenance Report.

Tenant shall submit an Annual Maintenance Report by to the Town representative stated under Section 12.1 herein at the time of the completion of Saint Xavier University's annual audit. Such report shall include, at a minimum, the specific repair(s) or replacement(s) performed, dates repaired and installed, and associated cost. Tenant shall perform all scheduled maintenance and required repairs within a reasonable time as determined by the Town.

9.5 Town Approval on Major Repairs, Replacement.

Tenant, prior to the repair or replacement of a major item, including but not limited to, air conditioning, heating, roof, structural repairs, flooring, plumbing, fire prevention systems, electrical systems, concrete foundations shall obtain Town approval to ensure that the major repair or system replacement is of a quality comparable to that being replaced or initially installed by the Town.

9.6 Replacement Reserve Fund Account.

Tenant shall establish reasonable reserves in an amount agreed upon with the Town for ongoing building maintenance and capital improvements. Such reserves will be maintained in a separate escrow account and will be managed in accordance with all governing laws, rules and guidelines applicable to a nonprofit designated as a 501 c (3) organization. The funds contained in the Replacement Reserve Fund Account and the itemized uses for which they are intended shall be set forth in the annual report of the Facilities Maintenance Plan required in section 9.3 above. Any funds in the Replacement Reserve Fund Account at the end of the Lease Term, as defined herein, or at the time of termination of the this Lease after default by Gilbert will be released to Saint Xavier University. Any funds in the Replacement Reserve Fund Account at the time of termination of the Lease after default by Saint Xavier University will be released to Gilbert.

10. Covenants, Representations and Warranties.

10.1 Gilbert represents to Saint Xavier University that it will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Lease Agreement.

10.2 As of the date of this Lease Agreement, Gilbert knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of Gilbert or its official with respect to this Lease Agreement including Gilbert's execution, delivery and performance thereof.

10.3 The execution, delivery and performance of this Lease Agreement by Gilbert is not prohibited by and does not conflict with any other agreements, instruments or judgments or decrees to which Gilbert is a party or is otherwise subject.

10.4 Saint Xavier University represents and warrants to Gilbert that the laws of the State of Arizona and the articles and bylaws of Saint Xavier University provide Saint Xavier University with the power and authority to execute this Agreement and to carry out the terms thereof.

10.5 Saint Xavier University represents and warrants to Gilbert, and further agrees that it has (and during the Term will continue to have) all the licenses, permits, accreditations, and authorizations required by law to operate the Premises for the Permitted Use and otherwise fulfill its obligations under this Lease Agreement.

10.6 Saint Xavier University warrants and represents to Gilbert that it presently is an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code and that it is not engaged in any prohibited transaction which would cause it be denied such exemption under Sections 503 and 504 of the Code.

10.7 Saint Xavier University warrants and represents to Gilbert that as of this date it knows of no litigation, proceeding or official investigation contesting the powers of Saint Xavier University of its officers with respect to this Lease Agreement including Saint Xavier University's execution, delivery and performance thereof.

10.8 Saint Xavier University warrants and represents to Gilbert that the execution, delivery and performance of this Agreement by Saint Xavier University is not prohibited by, and does not conflict with, any other agreements, instruments, and judgments or decrees to which Saint University is a party or is otherwise subject.

11. Saint Xavier University Performance Criteria

11.1 Saint Xavier University shall open the University on or before October 1, 2015.

11.1.2 Saint Xavier University shall use its best efforts by means of its student enrollment experience and admission expertise to recruit and retain the number of full-time students necessary to appropriately populate the undergraduate and graduate degree and degree-completion programs offered initially in Nursing, Business and Education and subsequently in other fields (the "Programs"). The University acknowledges and agrees that it has an ongoing duty to comply with any/all directives from the Higher Learning Commission ("HLC"), including but not limited to the requirement that distance education offered by the University not exceed 20% of total degree programs. For purposes of this section, "full time students" shall mean undergraduate students taking at least 9 credit hours a semester and graduate students taking at least 6 credit hours a semester, by personal attendance on the Property (or off the Property if participating in intern or externship programs) and taught by instructors physically present, and/or by means of online and hybrid formats that shall include on-site residency components of instruction of at least once per week. Such best efforts shall be reflected in the development of reasonable and viable annual enrollment targets for Programs offered during the

traditional academic year and summer sessions, in on-site, online and hybrid classroom formats. During Years One and Two of this Agreement, enrollment targets shall be contingent, in part, upon approval of prelicensure Nursing Programs by the AZ Board of Nursing, as well as the achievement of any other State approvals required for graduate or undergraduate Programs offered through the School of Education, the Graham School of Management, or the College of Arts and Sciences. In addition, as the AZ Board of Nursing approves prelicensure Nursing Programs in the fall of 2015 and spring of 2016, undergraduate enrollment targets in Nursing shall focus on the annual matriculation of 40 to 60 students. For Academic Year One therefore, enrollment targets shall focus on the matriculation of 50 to 75 full time students in graduate and degree-completion Programs. For Academic Year Two, the enrollment target shall be 100 to 150 full time students. For Academic Year Three, the enrollment target shall be 150 to 225 full time students. At the end of Year Three (during the spring semester 2018), the University and Gilbert Representative shall meet to review enrollment projections for Academic Years Four through Seven, and may jointly conclude to adjust the enrollment target for those years. For Academic Year Four (fall semester 2018), the enrollment target shall be 300 full time enrolled students in undergraduate and graduate Programs. For Year Five (fall semester 2019), the enrollment target shall be 425 full time students. For Year Six (fall semester 2020), the enrollment target shall be 550 full time students.

For Academic Year Seven (fall semester 2021), the enrollment target shall be 750 full time students enrolled in undergraduate and graduate Programs. The failure to reach the enrollment target for Year Seven shall be considered an Academic Default pursuant to Section 10.

Under the provisions of this Agreement and throughout the Initial Term and Renewal Terms of the Lease Agreement, the University is committed to provide the Gilbert Representative with any/all information used by the University to produce enrollment projections, and to use its best efforts to substantially increase student enrollments in all Programs for all succeeding academic years. For example, for Years One through Seven, the University shall regularly provide the Gilbert Representative with Tenth of Term enrollment projections for those programs and classes that are scheduled to meet on an academic semester basis (e.g., 14 weeks), as well as enrollment projections for professional cohort programs that are scheduled to meet on an accelerated basis (e.g., 8 weeks). Such projections shall be used to assess the ability of the University to meet and/or exceed annual student enrollment targets for Years One through Seven, which includes the attainment of the an overall enrollment of 700-750 full-time graduate and undergraduate students by the end of Year Seven. Should the University fail to attain targeted enrollment goals at any point during Years One through Seven, the University and the Gilbert Representatives shall meet to (a) determine what factors, within or outside the control of the University, may have contributed to the University's inability to achieve identified enrollment targets; and (b) identify whether, in the best interests of both Parties, the Lease Agreement should be terminated. Any termination of the Lease Agreement shall be in accordance Section 1.8 of that Lease Agreement.

11.1.3 When the University opens, it shall have at least the following degree programs: Business, Nursing and Education. Saint Xavier University shall ensure that all State statutory and regulatory requirements are met so as to offer pre-licensure programs in Nursing and licensure

and/or certification programs in Education, exclusive of nursing prelicensure programs. Such degree programs shall be maintained during the term of the Lease Agreement.

11.1.4 Saint Xavier University awards scholarships (for merit), grants (for need) and students may be eligible for Pell grants from the federal government. In addition, Town of Gilbert residents are eligible for a special Town of Gilbert grant for undergraduate programs as specified below, ramped up as follows:

Year One:	2% of the then tuition in place entering their first year
Year Two:	4% of the then tuition in place entering their second year.
Year Three:	6% of the then tuition in place entering their third year.
Year Four:	8% of the then tuition in place entering their fourth year.
Year Five (And thereafter):	10% of the then tuition in place entering their fifth year.

The total of all University scholarships, grants or tuition reduction cannot exceed a discount rate in excess of 50%. Saint Xavier University provides merit scholarships and need based scholarships. Additionally, at no time will the awarded scholarship (institutional aid), grant or tuition reduction (Town of Gilbert grant) be refundable. This means that the tuition less institutional scholarship (merit), less need based aid (Pell and/or institutional need aid) less the special Gilbert resident grant cannot result in a refund to the student. The Gilbert Town Manager is authorized, after consultation with Saint Xavier University, to adjust the minimum requirements in this section if he determines that there are not sufficient applications from Gilbert residents to comply with this performance criteria.

11.1.5 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of endowed funds for the University. This comprehensive and on-going endowment campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The endowment shall be considered to be fully funded when the endowment fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the endowment fund for the University by the end of the first Academic Year.

Until the endowment fund is fully funded as provided herein, Saint Xavier University shall maintain such endowment fund at a minimum level of Twenty-Five Thousand Dollars ($25,000.00).

11.1.6 On or before the sixth anniversary of the commencement of the term of the Lease Agreement, Saint Xavier University shall have completed a minimum investment of Thirty Million Dollars ($30,000,000.00) in the University. Such investment shall include salaries and benefits paid to employees of the Gilbert campus, lease payments, utilities, supplies, marketing materials and student recruitment and scholarships for Gilbert residents. The annual investment through the fifth anniversary of the commencement of the term of the Lease Agreement shall be at least (a) $2.5 Million prior to the first anniversary of the commencement of the Initial Term of the Lease Agreement; (b) $3.0 Million prior to the second anniversary of the commencement of the Initial Term of the Lease Agreement; (c) $5.7 Million prior to the third anniversary of the

commencement of the Initial Term of the Lease Agreement; (d) $6.0 Million prior to the fourth anniversary of the commencement of the Initial Term of the Lease Agreement; (e) $6.2 Million prior to the fifth anniversary of the commencement of the Initial Term of the Lease Agreement; and (f) and $6.4 Million prior to the sixth anniversary of the commencement of the Initial Term of the Lease Agreement. If on any anniversary of the commencement of the term of the Lease Agreement the above thresholds have not been met, Gilbert's Representative shall meet with Saint Xavier University's Representative to determine whether a reasonable adjustment can be made that will result in the minimum investment of Thirty Million Dollars ($30,000,000.00) by Saint Xavier University by said fifth anniversary, and if so, Gilbert's Representative is authorized to approve such adjustment.

11.1.7 Saint Xavier University shall commence a fundraising campaign on or before January 2017 and use all reasonable efforts towards the raising of funds for a capital fund for the expansion of the University anticipated to occur on or before the fifteenth anniversary of the Effective Date. This comprehensive and on-going fundraising campaign shall include planned giving and estate planning seminars, major gift solicitations and corporation grant support and continued donor stewardship and cultivation. The capital fund shall be considered to be fully funded when the capital fund contains Five Million Dollars ($5,000,000.00). Saint Xavier University shall deposit Twenty Five Thousand Dollars ($25,000.00) in the capital fund for the University by the end of the first Academic Year.

11.2 Failure to Meet Performance Criteria.

If Saint Xavier University does not meet the Saint Xavier University Performance Criteria, or fails to maintain the Saint Xavier University Performance Criteria as required by Section 11 of this Agreement, then, subject to the Cure Periods set forth in Section 7, Gilbert may declare Saint Xavier University to be in Default of this Agreement and the Lease Agreement, with all of the rights and remedies set forth in Section 8 of this Agreement.

11.3 Annual Report.

Annually, on or before each anniversary of the Effective Date during the term of this Agreement, Saint Xavier University shall submit to Gilbert a report showing the status of compliance with each of the Saint Xavier University Performance Criteria. The annual report shall include sufficient information to verify the status of each of the Saint Xavier University Performance Criteria. Gilbert may require such additional information as it determines is required to verify such status.

12. Environmental Provisions

12.1 Tenant recognizes that assuring protection of public health, welfare and the environment from activities upon the Premises during the Lease Term is an important consideration for Town and during the Lease Term the federal, state and local laws, rules, regulations and ordinances relating to pollution, protection of the environment, public health, safety or industrial hygiene (hereinafter referred to as the "Applicable Laws") will change. Tenant warrants that throughout the Lease Term, Tenant will maintain compliance with all Applicable Laws. Additionally, Tenant will provide a list, updated annually upon the anniversary of the Commencement Date of all hazardous material on the Premises to the Gilbert Fire Chief or his designee.

12.2 Tenant further warrants, unless disclosed and agreed to by Town, that no liquid, solid, semi-sold or gaseous substances (hereinafter referred to as Regulated Substances) which are, or during the Lease Term may become, subject to regulation under Applicable Laws, other than liquid oxygen, transmission fluid, oil, and other lubricants, will be used on the Premises. Tenant shall not have on the Premises any Regulated Substances, other than liquid oxygen, airplane fuel, transmission fluid, oil, other lubricants and FAA approved cleaning solvents. Regulated Substances include, but are not limited to, any and all substances, materials or wastes regulated under the Resource Conservation and Recovery Act, 43 U.S.C. Section 8909, et. seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et. seq.; the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921, et. seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Section 49-101, et. seq.; and the rules and regulations adopted and guidelines promulgated pursuant to the Applicable Laws.

12.3 In addition to the other requirements of this section, Tenant shall not release, discharge, leak or emit, or permit to be released, discharged, leaked or emitted into the atmosphere, ground, soil, sewer system, surface water or groundwater any substance if such substance (as reasonably determined by Town, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the environment, (b) the health, welfare or safety of persons whether located on the Premises or elsewhere, or (c) the condition, value, use or enjoyment of the Premises or any other real or personal property. Tenant has or will timely obtain, maintain and comply with all provisions of all permits, licenses and other authorizations which are required under the Applicable Laws (hereinafter referred to as the "Permits").

12.4 Tenant shall immediately notify Town, orally and in writing, of any allegations by any governmental authority or other person or entity of any event of non-compliance with the applicable laws or permits of this section. Tenant shall also immediately notify Town orally and in writing, of any allegations by any governmental authority or other person or entity, of any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with Applicable Laws, Permits or the provisions of this section, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation, based on or related to the generation, manufacture, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant or Regulated Substance.

12.5 Town, or its authorized representative, agent or contractor, shall have the right, upon reasonable notice, to inspect the Premises and to review and copy documents, records, and data maintained by Tenant relating to substances used and stored on the Premises or disposed of, released or otherwise removed from the Premises, in order to assure itself that Tenant is in compliance with the provisions of this Paragraph.

12.6 In addition, Town shall have the right, at its expense, to perform periodic environmental inspections as Town deems necessary using the services of a qualified and duly licensed environmental engineers approved by Tenant whose approval thereof may not be unreasonably

withheld. The said engineers shall conduct such sampling and testing of soils, water, substances and emissions as Town deems necessary to assure itself that Tenant is in compliance with the provisions of this Section. In the event the results of the inspection indicate a need for further testing and/or remediation as a result of Tenant's use of the Premises in order to comply with ADEQ or EPA remediation standards or guidelines, then Tenant hereby agrees to reimburse Town for its reasonable inspection costs and to pay for such additional testing and remediation as will be required as a consequence of Tenant's use of the Premises. Should remediation be required as a consequence of Tenant's use of Premises, Tenant shall immediately undertake such remediation as is necessary to restore the condition of the Premises and shall diligently pursue such work to completion. Tenant's failure to timely perform its obligations under this Paragraph shall be considered a material breach of this Lease, and Tenant's obligations under this Paragraph shall continue beyond the expiration or termination hereof. Nothing in this Paragraph shall constitute a waiver of any right of Tenant, including without limitation, the right to receive contribution from any individual or entity responsible for contamination of any part of the Premises.

12.7 Any instance of non-compliance with Applicable Laws, Permits or the provisions of this Paragraph shall be grounds for immediate termination of this Lease by Town.

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12.8 To the fullest extent permitted by law, Tenant agrees to indemnify, defend and hold Town harmless for any costs of legally required remediation of environmental contamination and from any claims, demands, actions, suits, proceedings, hearings, investigations, responsibility, liability, orders, injunctions, judgments, fines, damages and losses of any nature whatsoever, arising out of or relating in any way to Tenant's present or future use of, or activities or operations on or at, the Premises, or arising from or relating to any breach of the provisions of this Paragraph. Tenant also agrees to indemnify and hold Town harmless any costs and expenses incurred in connection therewith, including without limitation, any attorneys' and expert witness fees, investigation, clean up, removal, disposal, remedial, corrective, or mitigating action costs, fines and penalties related in any way to Tenant's use of the Premises. These indemnities shall survive the termination of this Lease.

13. Miscellaneous.

13.1 No Subrogation.

Gilbert and St. Xavier University recognize the Town of Gilbert is a public, tax supported entity, responsible to the citizens for the administration of taxpayer funds, and obligated to recover any and all damages to which the Town might be legally entitled by reason of any negligent or negligent omissions by another party.

13.2 No Subordination.

This Agreement and the respective interests of Gilbert and St. Xavier University hereunder shall not be subordinated or subject to any encumbrances which may be required for any loans obtained by St. Xavier to finance the costs and expense of St. Xavier University.

13.3 Legal Expenses.

In the event of any suit instituted by either Landlord or Tenant against the other in any way connected with the Lease or for the recovery of rent or possession of the lease premises, each Party is to pay their own legal fees.

13.4 Access.

Upon reasonable notice, Gilbert shall have the right to enter the Premises during normal working hours to inspect the buildings and ensure that the premises are being operated for the Permitted Use, provided however, that Gilbert shall use its best efforts to minimize any interference with St. Xavier's use of the Premises.

13.5 Cancellation Clause.

This Lease may be terminated pursuant to the provisions of A.R.S. § 38-511.

13.6 Waiver.

No covenant, term or condition of this Lease shall be deemed to have been waived by either party hereto unless such waiver is in writing.

13.7 Assignment.

Saint Xavier University as Tenant may not assign any interest in this Lease without the prior written consent of Gilbert as Landlord.

13.8 Entire Agreement.

This Lease is in conjunction with the Development Agreement and constitutes the entire Agreement between the Landlord and Tenant. No subsequent alternation, amendment, change, or addition to this Lease shall be binding upon the Landlord or Tenant unless set forth in writing and duly executed by both parties.

13.9 Relationship Between Parties.

The relationship of the parties hereto is solely that of Landlord and Tenant and under no circumstances shall the parties be considered as partners or joint ventures.

13.10 Time.

Time is of the essence of this Lease in every covenant, term and condition contained herein.

13.11 Governing Law, Choice of Forum. Mediation.

This Lease Agreement shall be governed by the laws of the State of Arizona. Any action to enforce this Agreement or resolve disputes arising therefrom shall be brought in the Maricopa

County Superior Court. Parties also agree, prior to the initiation of any suit or legal action to attempt to resolve their differences through the services of a mutually agreed upon mediator.

13.12 Legal Worker.

As required by A.R.S. Section 41-4401, St. Xavier agrees to comply with all federal immigration laws and regulations that relate to its employees and/or subcontractors' employees, and their compliance with A.R.S. Sec. 23-214, subsection A.

13.13 Compliance with Laws.

Tenant shall, at its sole expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulation or requirements now in force, and with all rules, orders, directives, regulations, recommendations or requirements of the Insurance Services Office, any board of fire underwriters, or any other similar bodies now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Premises.

13.14 Captions.

The captions and headings appearing herein are for convenience only and are not a part of this Lease nor do they limit or amplify any term or provision herein.

13.15 Severance.

Any term or provision of this Lease which now or hereafter is declared contrary to any law, order, regulation, ordinance or requirement of any governmental authority, whether now in force or enacted or promulgated in the future, or which is otherwise invalid, shall be deemed stricken from this Lease without impairing the validity of the remainder of this Lease.

13.16 Impartial Interpretation.

Landlord and Tenant acknowledge that both parties have been represented by counsel in the negotiation of this Lease, and that this Lease shall be construed according to fair language. Accordingly, the rule of contract interpretation to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Lease.

13.17 Incorporation of Exhibits.

All Exhibits attached hereto are by this reference incorporated herein as though set forth in full.

13.18 Waiver of Jury Trial.

Landlord and Tenant herby waive trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other one, or in respect of, any matter whatsoever arising out of or in any way connected with this Lease.

14. Notices and Communications between Parties.

To the University:
Christine M. Wiseman, President
Robert Fisher, VP for Business and Finance
Kathleen Rinehart, General Counsel, Secretary of the Corporation
3700 West 103rd Street
Chicago, IL 60655

To the Town:
(except where as provided above in Sections 3.2.3 and 12.1)
Patrick Banger
Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296

In WITNESS WHEREOF, the Parties hereto have executed this Agreement on or as of the day and year first written above.

TOWN OF GILBERT

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin, Town Attorney

SAINT XAVIER UNIVERSITY

_____
Christine M. Wiseman, President

EXHIBIT A TO LEASE AGREEMENT
Legal Description of Premises

COMMENCING AT A 1/2" REBAR WITH NO CAP MARKING THE EAST QUARTER CORNER OF SAID SECTION 12, FROM WHICH A TOWN OF GILBERT BRASS CAP IN HAND HOLE MARKING THE SOUTHEAST CORNER OF SAID SECTION 12 BEARS SOUTH 00 DEGREES 54 MINUTES 48 SECONDS EAST 2629.10 FEET;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 00 DEGREES 54 MINUTES
48 SECONDS EAST, 428.25 FEET TO A BRASS CAP FLUSH MARKING THE INTERSECTION OF VAUGHN AVENUE AND GILBERT ROAD;

THENCE ALONG SAID VAUGHN AVENUE CENTERLINE SOUTH 89 DEGREES 04 MINUTES 03
SECONDS WEST, 919.69 FEET;

THENCE DEPARTING SAID CENTERLINE, NORTH 00 DEGREES 55 MINUTES 57 SECONDS WEST,
30.00 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE WEST LINE OF CREEDS ADDITION AS RECORDED IN BOOK 46 OF MAPS, PAGE 49 NORTH 00 DEGREES 54 MINUTES 48 SECONDS WEST, 356.75 FEET TO THE SOUTH LINE OF THE SRP WESTERN CANAL AS RECORDED IN BOOK 185 OF MAPS, PAGE 48, MARICOPA
COUNTY RECORDER;

THENCE DEPARTING SAID WEST LINE OF CREED'S ADDITION AND ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL NORTH 89 DEGREES 23 MINUTES 34 SECONDS EAST, 250.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE OF THE SRP WESTERN CANAL SOUTH 89 DEGREES 35 MINUTES 51 SECONDS EAST, 29.26 FEET TO THE WEST RIGHT OF WAY LINE OF ASH STREET AS DEDICATED PER THIS PLAT;

THENCE DEPARTING SAID SOUTH LINE OF THE SRP WESTERN CANAL AND ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00 DEGREES 03 MINUTES 28 SECONDS EAST, 354.69 FEET TO THE NORTH RIGHT OF WAY LINE OF VAUGHN AVENUE;

THENCE DEPARTING SAID WEST RIGHT OF WAY LINE AND ALONG SAID NORTH RIGHT OF WAY LINE SOUTH 89 DEGREES 04 MINUTES 03 SECONDS WEST, 274.83 FEET TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINS 98,766 SQUARE FEET OR 2.2674 ACRES MORE OR LESS.

EXHIBIT B TO LEASE AGREEMENT

Rent
(To be attached)

EXHIBIT C TO LEASE AGREEMENT

Facilities Maintenance Plan

(To be attached)

EXHIBIT F

FURNITURE, FIXTURES AND EQUIPMENT

(To be attached)

EXHIBIT G

ON-SITE IMPROVEMENTS

(To be attached)

EXHIBIT H

OFF-SITE IMPROVEMENTS

(To be attached)

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: Approval of an Environmental Access Agreement with ADEQ to drill a monitoring well and sample groundwater near the intersection of Cambridge Street and Aspen Avenue (Contract No. 2015-2106-0698).

STRATEGIC INITIATIVE: Community Livability

Support ADEQ's activities to protect groundwater in Gilbert.

RECOMMENDED MOTION

A motion to approve an Environmental Access Agreement with ADEQ to drill a monitoring well and sample groundwater near the intersection of Cambridge Street and Aspen Avenue.

BACKGROUND/DISCUSSION

The Arizona Department of Environmental Quality (ADEQ) Water Quality Assurance Revolving Fund has been monitoring groundwater quality at the Cooper and Commerce Site since contamination was found in 2001. The installation of off-site monitoring wells started in 2003, and a groundwater pump-and-treat system began in 2008. Soil vapor extraction wells were installed and began continuous operation in 2010. Three additional off-site monitoring wells were installed in 2013.

ADEQ is requesting permission to install one additional monitoring well to characterize the impacted area. The data from this well will allow ADEQ to better quantify the nature, extent, fate and transport of the groundwater contamination. This new monitoring well is proposed in the Cambridge Street right-of-way, approximately 100 feet south of the intersection with Aspen Avenue. ADEQ will be taking full responsibility for all permitting, public notifications, and costs to construct the new monitoring well.

The Environmental Access Agreement was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

There is no financial impact associated with these access agreements for the Town of Gilbert.

The Financial Impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

Staff recommends approval of the Environmental Access Agreement.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	4/16/2015 6:50 PM
Jack Vincent	4/20/2015 11:00 AM
Cris Parisot	4/20/2015 8:16 AM

Water Quality Assurance Revolving Fund
Cooper and Commerce WQARF Site
Cooper Road and Commerce Avenue - Gilbert, Arizona

ENVIRONMENTAL ACCESS AGREEMENT

This Access Agreement ("Agreement") is entered into by and between the Town of Gilbert, a municipal corporation ("Owner") and the Arizona Department of Environmental Quality ("ADEQ"), an agency of the State of Arizona. Owner and ADEQ are referred to herein as the "Parties."

AGREEMENT

The Parties covenant and agree as follows:

1. Grant of Right of Access. Owner grants right of access to ADEQ and its representatives, and authorized agents to enter on, use, and occupy the right-of-way located three to seven feet west of the sidewalk on the east side of Cambridge Street, approximately 75 to 130 feet south of the center line of Aspen Avenue. This right-of-way is located west of parcel number 302-21-261 ("Property"). The location of the Property is shown by the map that is attached and marked "Exhibit 1."

The access granted herein is for the purpose of installing, maintaining, accessing, sampling, and, at ADEQ's sole discretion, abandoning one monitor well ("Activities") at ADEQ's sole expense. This right of access will terminate only when ADEQ determines that the Activities are completed and should be discontinued and records a document expressly terminating this Agreement. ADEQ may record this Agreement in the county where the Property is located. Owner shall not cause or allow any license, easement, encumbrance or any physical obstacle to be placed on the Property that may interfere with the Activities or ADEQ's rights under this agreement. Prior to construction and abandonment of the monitoring well, ADEQ's contractor shall follow the Owner's normal permitting process for working in the right-of-way.

2. Warranty of Title. The Exhibits are a material part of this Agreement. Owner holds equitable and legal title to and exclusive possession of the Property. Owner has the authority to enter into this Agreement and represents that there is no tenant or other person currently in possession of the Property.

3. Prior Notice of Activities. ADEQ will give Owner at least three (3) days prior notice of sampling Activities and at least ten (10) days prior notice of all other Activities to be conducted on the Property.

4. Notices Required Under This Agreement. Notices from ADEQ to Owner shall be effective when given, if by telephone, to Kenneth Morgan, P.E., Public Works Director, Town of Gilbert, at (480) 503-6516 and, if in writing, to Kenneth Morgan, P.E., at 900 East Juniper

Avenue, Gilbert, Arizona 85234. Notices from Owner to ADEQ shall be effective when given, if by telephone, to Scott Goodwin, Project Manager at 602-771-4452 and, if in writing to, Scott Goodwin at the Arizona Department of Environmental Quality, Waste Programs Division, 1110 West Washington Street, Fourth Floor, Mail Code 4415B, Phoenix, Arizona 85007. If Owner or ADEQ changes the telephone number or mailing address for purposes of notice under this Agreement, written notice of the change shall be promptly given to the other Party.

5. Insurance. While this Agreement is in effect, ADEQ will maintain proof of insurance or self-insurance and will require its contractors to comply with the insurance provisions of the Arizona Superfund Response Action Contract.

6. No Indemnity. Owner and ADEQ are responsible for only their own negligence in connection with the Activities conducted on the Property.

7. Damage. ADEQ will repair any material damage it causes to the Property, except for alterations to the Property caused by Owner, acts of nature, and persons other then ADEQ and its contractors. ADEQ will restore the Property to substantially the same condition as existed prior to the Activities authorized under this Agreement. Notwithstanding, the foregoing, ADEQ may abandon any well it installs on the Property in accordance with Arizona Department of Water Resources' rules for well abandonment and may seal all underground pipes it installs on the Property. Upon abandonment, all wells and underground pipes shall be in a condition acceptable to Owner and that does not interfere with pedestrian or vehicular traffic on the Property. Owner shall have no right to compensation for or to demand the removal of the wells or pipes.

8. Default. If either Party defaults under this Agreement and the default continues for more than ten (10) days after the effective date of Party's written notice stating the specific nature of the default, then the Party may treat the default as a breach of this Agreement. Notwithstanding the foregoing, if ADEQ determines that the default cannot be cured within the ten-day notice period, then the default shall be deemed cured if ADEQ commences efforts to cure the default within the ten-day notice period. ADEQ's inadvertent failure to give notice under Paragraph 4 is not a default under this Agreement.

9. Disputes. Proper venue for any civil action, proceeding, or arbitration arising out of this Agreement shall be Maricopa County, Arizona.

10. Miscellaneous. (A) This Agreement may be canceled pursuant to A.R.S.§38-511; (B) This Agreement expresses the entire agreement of the Parties; (C) Owner agrees that Owner is not relying on any promise, agreement, or representation made by ADEQ except as stated in this Agreement; (D) No modification of this Agreement is valid or enforceable unless the terms of the modification are in writing and signed by the Parties; (E) This Agreement binds and inures to the benefit of the Parties and their agents, heirs, successors, assigns, transferees, executors, and personal representatives; (F) ADEQ shall retain possession of the fully executed original of this Agreement and Owner shall receive accurate copies; (G) This Agreement is effective when signed by the Parties; (H) ADEQ retains all access, investigative, and enforcement authority and all other rights and remedies available to it under any applicable law, statute, rule, and

regulation; (I) this Agreement is subject to available funding and nothing shall bind ADEQ to expenditures in excess of funds appropriated and allotted for the purposes in this Agreement; and (J) this Agreement shall be interpreted and enforced according to the laws of the State of Arizona; and (K) ADEQ shall have sole responsibility for sampling of the well and, at no time, shall owner be required to sample the well.

TOWN OF GILBERT, ARIZONA, a municipal corporation, Licensor

By _____

John Lewis

Its: Mayor

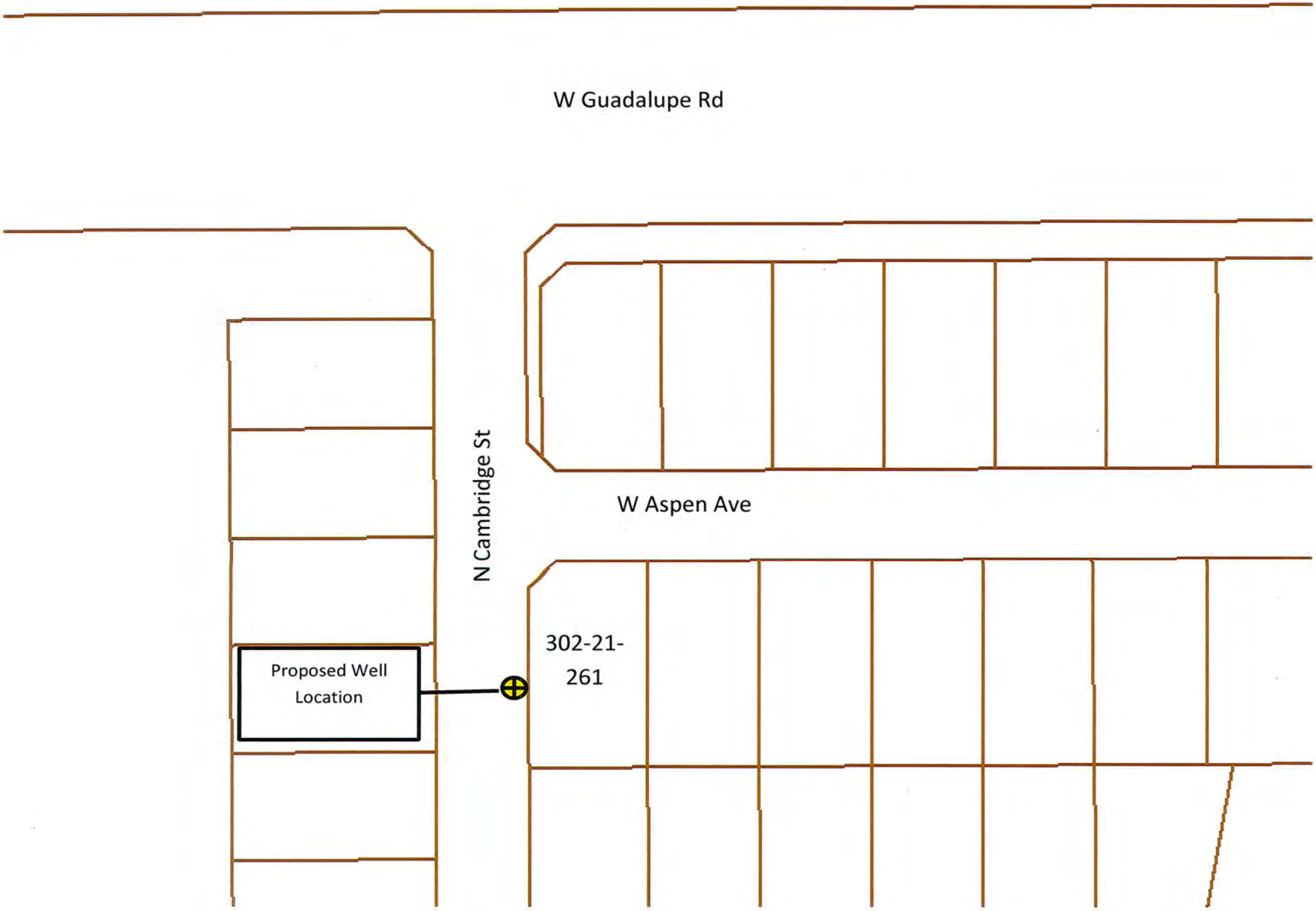
_____ _____
Date

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
an agency of the State of Arizona, Licensee

By_____
Tina LePage, Manager
Remedial Projects Section

Date_____

Exhibit 1


W Guadalupe Rd
W Aspen Ave
N Cambridge St
Proposed Well Location
302-21-261

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kristin Myers, Transportion Coordinator, 503-6706

MEETING DATE: April 30, 2015

SUBJECT: A motion to approve the Amendment to the Data Access and Exchange Agreement with the Arizona Department of Transportation

STRATEGIC INITIATIVE: Community Livability

Interagency partnerships that promote information sharing related to safety information between borders benefit the motoring public who may travel through multiple jurisdictions while commuting.

RECOMMENDED MOTION

A motion to approve Amendment One to the Data Access and Exchange Agreement with the Arizona Department of Transportation and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The Town of Gilbert and Arizona Department of Transportation (ADOT) entered in a Data Access/Exchange Agreement on May 8, 2012 to be able to connect to ADOT's ALISS crash database, Contract No. 2013-2106-0015. The original agreement expires on May 8, 2015 and this amendment will extend the terms of the agreement for an additional three years until May 8, 2018.

This database is used by the Engineering Services Division to review crash data that occurs within Gilbert. Staff uses this data to analyze the circumstances and environmental conditions of crashes, search for trends in type of severity of crashes, and identify measures that can be implemented to reduce the potential for further crashes. This database includes all crashes reported by Gilbert Police Department and other law enforcement agencies that respond to crashes within Gilbert on the state highways and on the local streets.

The addendum to the Intergovernmental Agreement was reviewed for form by Town Attorney, Jack Vincent.

FINANCIAL IMPACT

There is no financial impact to the Town.

Financial impact section was reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of Amendment One to the Data Access and Exchange Intergovernmental Agreement with the Arizona Department of Transportation.

Respectfully submitted,

Kristin Myers
Transportion Coordinator

Approved By	Approval Date
Erik Guderian	4/13/2015 2:33 PM
Kenneth Morgan	4/16/2015 6:36 PM
Jack Vincent	4/20/2015 4:31 PM
Cris Parisot	4/20/2015 10:40 AM

DATA ACCESS / EXCHANGE AGREEMENT
JOINT LETTER OF RENEWAL
AMENDMENT ONE

ADOT File No.:	**JPA/IGA 2012-001-I**
Amendment One No.:	**CAR-15-0005210-I**
Date:	
Name of Department:	**Town of Gilbert**
Doing Business As:	**As Above**
Business Address:	**50 East Civiv Center Drive**
	Gilbert, AZ 85296
Mailing Address:	As Above
Telephone Number:	(480) 503-6516

Duration:

The Parties agree to enter into this Joint Letter of Renewal/Amendment One to extend the term of the Agreement, ADOT File No. JPA/IGA **JPA2-12-001-I,** for an additional three (3) years.

1. The Parties agree to extend the expiration date of the agreement from **May 9th 2015 to May 8th 2018**.

2. ALL NOTICES AND DEMANDS upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

To ADOT at:

Intermodal Transportation Division
Traffic Records Section
ATTN: Rick Turner
206 S. 17th Ave, Mail Drop 064R
Phoenix, AZ 85007-3233

To AGENCY at:

Town of Gilbert
50 East Civic Center Civic
Gilbert, AZ 85296
Contact: Kenneth Morgan, P.E
Phone (480) 503-6516
Fax (480) 503-6170

3. EXCEPT AS AMENDED herein, ALL OTHER terms and conditions of the original Agreement remain in full force and effect.

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

Town of Gilbert

_____
Signature

John Lewis
_____
Name Printed

Town Mayor _____
Title

_____
Date

For ADOT USE ONLY

Received this date _____. Signed _____

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by _____ pursuant to this Agreement (Joint Letter of Renewal/Amendment One) is hereby approved.

DATED THIS _____ DAY OF _____, 20_____.

Intermodal Transportation Division/Traffic Engineering

_____
STEVE BOSCHEN, P.E
ITD Division Director
Arizona Department of Transportation

DRAFT

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kristin Myers, Transportation Coordinator, 503-6706

MEETING DATE: April 30, 2015

SUBJECT: Request a motion to approve the amendment to the Transit Services Agreement with the Regional Public Transporation Authority for Fiscal Year 2016 services

STRATEGIC INITIATIVE: Community Livability

Public transit services are essential for residents to commute to work, school and other destinations in our community and region. Developing an integrated regional transit system supports quality of life and economic development.

RECOMMENDED MOTION

- A motion to approve an intergovernmental agreement amendment with the Regional Public Transportation Authority for the Fiscal Year 2016 Gilbert Transit, Dial-A-Ride and Alternative Transportation Services and authorize the Mayor to execute the required documents**.**

BACKGROUND/DISCUSSION

The Town of Gilbert entered into an intergovernmental agreement (IGA) with the Regional Public Transportation Agency (RPTA) in July 1996 to provide bus services in the Town of Gilbert and to provide Dial-A-Ride (DAR) services for eligible residents. This agreement represents an annual update to the IGA. Previously there were two separate IGAs for 1) transit services and 2) DAR and alternative transportation services, but they have been consolidated into one agreement.

Regionally Funded Fixed Route Bus Service

The operating cost for bus services within the Town of Gilbert includes bus service on the following routes: Elliot Road (#108), Gilbert Road (#136), Williams Field Road (#156), Power Road (#184), Arizona Avenue (#112 & LINK) and the Mesa/Gilbert Express (#531). In November 2004, Maricopa County voters approved Proposition 400 which extended a half-cent tax for regional transportation purposes. All bus routes in Gilbert are programmed to be regionally funded through Proposition 400. As a result, the Town will not be charged for FY2016 bus services. Below is a summary of annual ridership for all fixed route bus service in Gilbert.

Fiscal Year	**Annual Ridership**
FY12	204,460
FY13	231,615
FY14	249,810

Dial-A-Ride Services

The DAR services assist persons with disabilities (ADA-certified) in traveling to their destinations. An eligible person must live within ¾ mile of a fixed route bus service. The RPTA bills the Town of Gilbert based upon the number of vehicle revenue miles provided to Gilbert passengers. Gilbert's funding for DAR is provided through the Local Transportation Assistance Fund (LTAF) which received funding through voter approved distribution of lottery proceeds. Additional funding is provided through the Transit Lifecycle Program (TLCP) which receives revenues from the Maricopa County half-cent sales tax and from federal Public Transportation Funds (PTF) funded by $0.0286 per gallon federal fuel tax. Total Town contribution is determined by actual ridership, and is estimated at $367,627 for FY 2016.

Fiscal Year	Operating Cost	Regional Funding	Town Payment
2016	$1,398,211	$1,030,584	$367,627
2015	$1,257,097	$965,181	$291,917
2014	$1,183,000	$845,830	$337,170

RideChoice Services

In order to reduce the increasing number of Gilbert DAR trips, the Town also participates in RPTA's alternative transportation services (RideChoice) program that makes a better mode of transportation available for persons with disabilities. The program serves eligible residents by providing taxi coupon booklets and taxi vouchers to dialysis centers. Gilbert's cost share for this program is estimated to be $50,591.

Fiscal Year	Operating Cost	Coupon Revenue	Town Payment
2016	$103,935	$53,344	$50,591
2015	$72,740	$11,800	$60,940
2014	$88,071	$40,848*	$47,223

The contract amendment was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

Regionally Funded Local Fixed Route Bus Service – There is no fiscal impact because Gilbert's fixed route bus service will be fully funded through regional sales tax revenues.

Dial-A-Ride – This agreement requires the town to pay $367,627 for Dial-a-Ride services. Currently budgeted in cost center 120100.45040000.5272. Gilbert will make twelve (12) monthly installments of $27,302.25. This is included in the FY2016 proposed budget.

Ride Choice – This agreement requires the town to pay $50,591 for RideChoice services. Currently budgeted in cost center 120100.45040000.5299. Gilbert will make twelve (12) monthly installments of $4,215.92. This is included in the FY2016 proposed budget.

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

STAFF RECOMMENDATION

Staff recommends approval of this Intergovernmental Agreement Amendment.

Respectfully submitted,

Kristin Myers
Transportation Coordinator

Approved By	Approval Date
Erik Guderian	4/13/2015 2:27 PM
Kenneth Morgan	4/16/2015 6:34 PM
Jack Vincent	4/20/2015 10:44 AM
Cris Parisot	4/20/2015 8:24 AM

TRANSIT SERVICES AMENDMENT

BETWEEN

THE TOWN OF GILBERT

AND

THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY

CONTRACT # 130-75-2016

As of the 1st day of July, 2015, this amends the following items of the Transit Service Agreement Contract # 130-75-2015 entered into between the Town of Gilbert (Town) and the Regional Public Transportation Authority (RPTA), dated the 1st day of July, 2013 as amended July 1, 2014.

The following Section amends that Section of the Agreement entered into July 1, 2013.

SECTION 2. SCOPE OF WORK

Ride Choice Program (Schedule D) This program includes the RideChoice Fare Card and the RideChoice Medical Trip Card. The programs are for seniors 65 years of age and over, and individuals with disabilities. The RideChoice Fare Card provides a Town of Gilbert funded subsidy of 75% up to a maximum of $75.00 per month. The customer pays up to $25.00 per month and receives up to $100.00 of value loaded to their card on a monthly basis. The RideChoice Medical Trip card is funded by the Town of Gilbert at 100% of the cost of trips made for dialysis, chemotherapy or radiation treatments. The card is loaded with the number of trips a customer expects to take on a monthly basis for their specific medical purpose. The Town of Gilbert is not accepting any new customers to the RideChoice Medical Trip program, and will be phasing out the program.

ADA Platinum Pass Program (Schedule F) The Platinum Pass Program provides trips to customers that are ADA certified through the "in person" assessment process to travel on fixed route services at no cost to the customer. The Member subsidizes the trip at 100% and this program is designed to encourage ADA certified individuals to use fixed route services for trips where they can versus traditional type paratransit trips. This program provides cost avoidance for both the participating Town and the customer.

The following Schedules amend those Schedules of the agreement entered into July 1, 2014.

The attached Schedule A amends Schedule A entered into July 1, 2014.

The attached Schedule C amends Schedule C entered into July 1, 2014.

The attached Schedule D amends Schedule D entered into July 1, 2014.

The attached Schedule E amends Schedule E entered into July 1, 2014.

The attached Schedule F amends Schedule F entered into July 1, 2014.

All other terms of the Parties Transit Services Agreement dated July 1, 2013 remain unchanged and in full force and effect.

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

REGIONAL PUBLIC TRANSPORTATION AUTHORITY (RPTA)

Stephen R. Banta, Chief Executive Officer

By: _____

APPROVED AS TO FORM:

By: _____
Michael J. Ladino, General Counsel

Town of Gilbert

John Lewis, Mayor

By: _____

By: _____
Cathy Templeton, Town Clerk

APPROVED AS TO FORM:

By: _____

Michael Hamblin, Town Attorney

SCHEDULE "A" REGIONALLY FUNDED FIXED ROUTE BUS SERVICE

Sources of Project Operating Budget

I. Regionally Funded Fixed Route Bus Service **3,125,590.00** (including express)

The above line represents the value of transit service paid for by the RPTA to the benefit of the Town of Gilbert.

The calculation to derive this figure is daily revenue miles of service x number of service days x cost per revenue mile of service.

FY 2016 Fixed Route Estimate

RPTA Operated in the City of Gilbert

PTF Funded

HASTUS	Gilb
Funding	RPTA

Level	Route	Sum of Total Miles	Sum of Gross Cost	Sum of Fares	Sum of PM	Sum of Net Cost
W	108	157,892	973,604	(46,367)	(98,384)	828,853
W	112	14,815	91,350	(14,202)	(9,231)	67,917
W	136	98,411	606,830	(78,116)	(61,321)	467,393
W	156	161,488	995,778	(35,276)	(100,625)	859,877
W	184	42,799	263,907	(20,568)	(26,668)	216,671
W	531	10,260	67,712	(32,507)	(6,393)	28,813
W	LINK-Arizona	7,282	44,900	(5,418)	(4,537)	34,945
S	108	14,773	91,092	(2,563)	(9,205)	79,324
S	112	1,391	8,579	(580)	(867)	7,132
S	136	14,409	88,851	(6,085)	(8,979)	73,788
S	156	28,746	177,255	(5,976)	(17,912)	153,367
S	184	3,622	22,332	(601)	(2,257)	19,474
S	LINK-Arizona	754	4,651	(471)	(470)	3,710
H	108	16,619	102,478	(1,911)	(10,356)	90,212
H	112	1,565	9,651	(222)	(975)	8,454
H	156	29,121	179,565	(3,658)	(18,145)	157,762
H	184	4,388	27,056	(558)	(2,734)	23,764
H	LINK-Arizona	792	4,884	(254)	(493)	4,136
Grand Total		**609,126**	**3,760,475**	**(255,332)**	**(379,553)**	**3,125,590**

SCHEDULE "C" – DIAL A RIDE SERVICES AND FINANCIAL INFORMATION

FINANCIAL INFORMATION

I. Sources of Project Operating Budget:

FY 2015-2016

For the period from July 1, 2015 through June 30, 2016, the Town of Gilbert will pay Valley Metro a total of $367,627.00 for the provision of East Valley Dial-a-Ride Services (EVDAR). This payment will be broken into twelve equal monthly installments of $27,302.25, which will be based on the following:

- The EVDAR Contractor's fixed monthly fee multiplied by the Town's projected share of billable Vehicle Revenue Miles (VRM).
- The EVDAR's VRM rate multiplied by the number of VRM's projected to be traveled by Town residents plus the number of VRM's projected to be traveled within the Town by visitors to the EVDAR service. Collected fares retained by the EVDAR contractor as partial reimbursement will be deducted from this amount. The Town is responsible for all VRM's traveled by its residents (regardless of the actual origins and destinations), and the Town is responsible for the actual number of VRM's which visitors to the EVDAR program travel within Town's boundaries.
- Wheelchair boarding fees associated with trips by Town residents plus the Town's pro rata share of the wheelchair boarding fees associated with trips taken by visitors to the EVDAR service area.

The Town will also be charged its pro-rata share of additional incentives paid to the EVDAR contractor for exceptional performance. Conversely, the Town will receive a discount based on its pro-rata share of service for any disincentives assessed against the EVDAR contractor for poor performance.

SCHEDULE "C" – DIAL-A-RIDE SERVICE COST ESTIMATE

East Valley Dial-a-Ride						
FY 2016 Cost Estimates						
Trips:	**Chandler**	**Gilbert**	**Mesa**	**Scottsdale**	**Tempe**	**Total**
ADA Ambulatory	39,116	33,912	105,840	39,623	32,561	251,051
ADA Wheelchair	8,841	8,100	25,920	8,514	8,453	59,828
Non-ADA Ambulatory	5,097	-	-	6,228	2,153	13,477
Non-ADA Wheelchair	205	-	-	56	681	942
Total Trips	53,258	42,012	131,760	54,420	43,847	325,298
Cost:						
ADA Ambulatory	895,275	1,004,092	2,604,490	825,106	595,332	5,924,294
ADA Wheelchair	376,254	399,158	1,147,681	344,784	320,805	2,588,682
Non-ADA Ambulatory	116,653	-	-	129,683	39,356	285,691
Non-ADA Wheelchair	8,714	-	-	2,253	25,864	36,831
Total Variable Cost	1,396,896	1,403,249	3,752,170	1,301,826	981,356	8,835,498
Shared Trip Var Cost Savings	(13,969)	(14,032)	(37,522)	(13,018)	(9,814)	(88,355)
Contractor's Fixed Fee	88,537	88,940	237,817	82,511	62,200	560,005
Contractor's Incentive	9,486	9,529	25,480	8,840	6,664	60,000
RPTA Salaries, Fringes & OHD	50,748	50,979	136,312	47,294	35,652	320,984
Total Gross Cost	1,531,698	1,538,664	4,114,258	1,427,454	1,076,058	9,688,132
CONTINGENCY	28,255	27,595	73,786	26,332	19,850	175,817
Revenue per Trip	4.14	4.00	4.00	4.00	4.06	
Total Revenue	220,489	168,048	527,040	217,682	178,019	1,311,277
Total Net Cost	**1,339,464**	**1,398,211**	**3,661,004**	**1,236,104**	**917,889**	**8,552,672**
Regional PTF ADA Costs	1,219,252	1,398,211	3,661,004	1,110,828	856,888	8,246,183
Regional Non-ADA Costs	120,212	-	-	125,275	61,002	306,489
Total Net Cost	1,339,464	1,398,211	3,661,004	1,236,104	917,889	8,552,672
Maximum PTF Available	1,215,400	1,030,584	2,948,543	1,440,670	1,025,813	7,661,010
PTF Applied	1,215,400	1,030,584	2,948,543	1,110,828	856,888	7,162,243
Member City Contributions:						
ADA-Costs	3,852	367,627	712,461	-	-	1,083,940
Non-ADA Costs	120,212	-	-	125,275	61,002	306,489
Total	**124,064**	**367,627**	**712,461**	**125,275**	**61,002**	**1,390,429**

SCHEDULE "D" – RIDE CHOICE

The Town agrees to participate and financially support the Alternative Transportation Services program for Fiscal Year 2015-2016. The Town shall fund this project in the amount of $50,591.00 for the period July 1, 2015 to June 30, 2016. The Town will pay the RPTA for the project in twelve (12) monthly installments of $4,215.92. Payment of invoices shall become due within thirty (30) calendar days after the receipt of an invoice from RPTA.

RPTA shall administer the Ride Choice Program, and provide Town monthly operating reports which include year-to-date expense, revenue, number of participants enrolled monthly, cumulative enrollment, active participants and other relevant program data.

Town of Gilbert	
RideChoice Program	
Fiscal Year 2015 - 2016	
Funding:	
New Freedom Grants	$40,900
Coupon Revenue	12,444
City Contributions	50,591
Total Funding	**$103,935**
Expenditures:	
Payments to Taxi Cab Companies	$49,774
Dialysis Voucher Program	$29,168
Program Cost	**$78,942**
Agency Staff, Overhead, Program Mgmt.	24,993
Total Expenditures	**$103,935**

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SCHEDULE "E" – AMERICANS WITH DISABILITIES ACT (ACT) – PUBLIC TRANSPORTATION FUNDS (PTF) AVAILABILITY

For the period July 1, 2015 to June 30, 2016 the maximum amount of Public Transportation Funds (PTF) available for the Town is **$1,030,584.00.** The PTF will pay actual costs for ADA trips and other requests for Paratransit service made by ADA certified Riders up to the maximum amount. A final reconciliation at fiscal year-end will be performed and adjustments, if necessary, will be made using actual ADA eligible costs.

Any remaining ADA PTF funds not used up to the maximum reimbursements may be requested by Town for other ADA certified rider eligible expenses, and certified by the Town's chief financial officer or designee. RPTA will reimburse Town within thirty (30) business days based upon availability of funds. Town may request that reimbursements be made electronically. Wire transfers must be pre-arranged through the RPTA Finance Department.

Maximum amount: **$1,030,584.00**

SCHEDULE "F" – ADA PLATINUM PASS PROGRAM

Member does hereby agree to participate in the Valley Metro ADA Platinum Pass Program specified in this Schedule F. The Platinum Pass Program allows ADA certified customers to travel on fixed-route services at no cost to the customer. The PTF funds 100 percent of the fare due (reduced fare for local service; full fare for express service) and will be allocated as a regional service without allocation to the Member or sub-regional JE. Participation in the ADA Platinum Pass Program is voluntary by Member and may be cancelled by Member by providing a ninety (90) calendar day written notice to RPTA. This program is designed to encourage ADA certified individuals to use fixed-route service for a trip whenever possible, in lieu of a traditional paratransit trip. This program provides cost avoidance for both the participating city and the customer. Each eligible ADA certified passenger that opts to participate will receive a reduced fare ADA Platinum Pass to be used at rail fare vending machines and at bus fare boxes for the payment of fare, as defined by the Valley Metro RPTA Board approved fare policy in effect. Current fare information can be found here:
http://www.valleymetro.org/paying_your_fare/fare_options/.

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kristin Myers, Transportation Coordinator, 503-6706

MEETING DATE: April 30, 2015

SUBJECT: Motion to approve an Intergovernmental Agreement between the Town of Gilbert and the Arizona Department of Transportation

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 Intergovernmental Agreement, Contract No. 2015-7008-0636 with the Arizona Department of Transportation for the Design Concept Report and Environmental Services for the proposed Lindsay Road at State Route 202 Traffic Interchange, and authorize the mayor to execute the required documents.

BACKGROUND/DISCUSSION

Staff seeks the approval of the Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT). The purpose of the IGA is to identify and define the Town and State responsibilities for the review and oversight of the preliminary design and environmental services related to the proposed Lindsay Road at State Route 202 Traffic Interchange. The Town will select a consultant to prepare a Design Concept Report (DCR) and Environmental Services for the proposed addition of a traffic interchange at Lindsay. Gilbert will advertise, select, contract with, and manage the consultant who will prepare the DCR and environmental reports. ADOT will provide oversight, reviews and approvals of draft and final technical reports, as necessary for the proposed improvements.

The cost of ADOT's Project Management and Design Review fee is estimated at $30,000 for this phase of the project and is required for ADOT's involvement in the project.

The legal review was completed by Susan Goodwin.

FINANCIAL IMPACT

The project is included in the draft FY 2016-20 CIP as Project No. ST158. The agreement is occurring prior to the FY16 budget adoption and will be adjusted, if necessary, pending Council action. The cost of ADOT's Project Management and Design Review fee is estimated at $30,000 for this phase of the project.

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

STAFF RECOMMENDATION

Staff recommends approval of this Intergovernmental Agreement.

Respectfully submitted,

Kristin Myers
Transportation Coordinator

Approved By	Approval Date
Erik Guderian	4/13/2015 2:32 PM
Kenneth Morgan	4/16/2015 6:38 PM
Jack Vincent	4/20/2015 10:45 AM
Cris Parisot	4/20/2015 8:39 AM

ADOT CAR No.: IGA /JPA15-0005136-I
AG Contract No.: P001 2015 000749
Project: New Facilities (Engineering)
Section: Lindsay Road Traffic Interchange
Federal-aid No.: N/A
ADOT Project No.: H8873 01D
TIP/STIP No.: N/A
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into this date _____, 2015, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT")) and the TOWN OF GILBERT, acting by and through its MAYOR and TOWN COUNCIL (the "Town"). The State and the Town are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has delegated signature authority to the undersigned.

3. The Town will select a consultant to prepare a Design Concept Report (DCR) and Environmental Study Services for addition of a traffic interchange at Lindsay Road on SR 202L - Santan Highway. The Town will advertise, select, contract with, and manage the consultant who will prepare the DCR and Environmental Study reports. The State will provide oversight, reviews and approvals, as necessary. ADOT reviews will include initial and final DCR, draft and final technical reports and draft and final environmental document. The Town has agreed to pay ADOT's Project Management and Design Review (PMDR) fee of $30,000.00.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, invoice the Town for the PMDR costs of **$30,000.00.** If, during the development of the DCR, additional funding from the Town is required, the State will invoice the Town in increments of $5,000.00 to cover projected PMDR costs. Once the Project costs have been finalized, the State will either invoice or reimburse the Town for the difference between estimated and actual design review costs.

b. Provide oversight, reviews and approvals, as necessary. ADOT reviews will include initial and final DCR, draft and final technical reports and draft and final environmental document and provide comments to the Town as appropriate.

c. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

d. Be granted, without cost requirements, the right to enter Town right-of-way as required to conduct any and all design and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the Town.

e. Grant to the Town, its agents and/or contractors, without cost, the right to enter State rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, including without limitation, temporary rights of entry on, to and over State rights-of-way.

f. Will review the initial DCR and draft environmental and technical report, review the final DCR, final technical, and final environmental reports to provide comments to the Town as appropriate.

g. Following completion of the Project, ADOT and Maricopa Association of Governments (MAG) will adopt the results and determine if inclusion is warranted in the MAG Regional Transportation Plan for design and construction.

2. The Town will:

a. Upon execution of this Agreement and within thirty (30) days of receipt of an invoice from the State, pay to the State **$30,000.00** for PMDR costs. If, the State invoices the Town for additional costs pursuant to Section II.2.a, pays such additional costs within thirty (30) days of receipt of the invoice.

b. Advertise, select, contract with, and manage a consultant to prepare a Design Concept Report (DCR) and Environmental Services for addition of a traffic interchange at Lindsay Road on SR 202L - Santan Highway.

c. Provide the initial and final DCR, draft and final Technical, draft and final environmental reports and incorporate comments from the State as appropriate.

d. Not permit or allow any encroachments upon or private use of the public right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

e. Grant to the State, its agents and/or contractors, without cost, the right to enter Town rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, including without limitation, temporary construction easements or temporary rights of entry on, to and over Town rights-of-way.

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III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and related deposits or reimbursement. This Agreement may be cancelled at any time prior to the award of the Project contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the Town will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the final DCR, environmental document, technical reports, the engineering in connection therewith and the improvements contemplated. The Town shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The Town shall also require its contractors to name the State as an additional indemnitee in the Town contracts with its contractors. It is understood and agreed that the State's participation is confined solely to review of the initial and final DCR, draft and final technical, and draft and final environmental document and to providing comments to the Town as appropriate as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all liability, costs and/or damage incurred by any of the above arising or resulting from this Agreement; and from any other liability, damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the Town, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon execution of the parties and signing and dating of the Determination Letter by the State's Attorney General.

4. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the Town will provide information that is requested by the State to enable the Town to comply with the requirements of the Act, as may be applicable.

5. The Parties will perform their responsibilities consistent with this Agreement, and any change or modification to the Project will only occur with the mutual written consent of both Parties

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 09-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the

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event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

11. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401 and Title 34 of the Arizona Revised Statutes.

12. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

13. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

Town of Gilbert
Attn: Kenneth Morgan, P.E.
50 East Civic Center Drive
Gilbert, Arizona 85296
480-503-6516
kenneth.morgan@gilbertaz.gov

For Financial Matters:
Town of Gilbert
Attn: Erik Guderian, P.E.
90 East Civic Center Drive
Gilbert, Arizona 85296
480-503-6919
erik.guderian@gilbertaz.gov

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1. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each Party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

TOWN OF GILBERT

By _____
JOHN LEWIS
Mayor

ATTEST:

By_____
CATHY TEMPLETON
Town Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.
ITD Division Director

ATTORNEY APPROVAL FORM FOR THE TOWN OF GILBERT

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN OF GILBERT, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____,2015.

_____

Town Attorney

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: Approval of an Intergovernmental Agreement with Maricopa County for Improvements to 154th Street from Ocotillo Road to Appleby Road, Contract No. 2015-2106-0694.

STRATEGIC INITIATIVE: Infrastructure

This agreement supports Gilbert's strategic initiative for Infrastructure as it improves the local roadway network by reducing the amount of unpaved roads in Gilbert and adjacent unincorporated areas.

RECOMMENDED MOTION

A motion to approve an Intergovernmental Agreement with Maricopa County for Improvements to 154th Street from Ocotillo Road to Appleby Road.

BACKGROUND/DISCUSSION

154th Street between Ocotillo Road and Appleby Road is a half-mile unpaved local road. Residents living in this neighborhood contacted the Town about a year ago and reported significant cut-through traffic because of the bottleneck along Val Vista Road, which narrows to a two-lane road south of Appleby. In this area, 154th provides a convenient alternative route for parents dropping off and picking up their students at the nearby Weinberg Elementary School, located at the southeast corner of Appleby Road and Val Vista Drive. Traffic counts taken in the fall of 2014 verified the additional traffic volumes during those peak hours.

For the past eight months, Town staff has been working with the County to determine a potential partnership to pave this section of 154th Street. We had first looked at using the existing "Entente" agreement allowing cost sharing between Maricopa County and the Town, but since this section of 154th was never formally accepted within MCDOT's maintenance program, a different approach was necessary. In return for Maricopa County's financial participation to

pave this road, the Town of Gilbert will annex this section of road and take on future maintenance responsibilities.

The project will provide a paved roadway surface, and reduce the number of unpaved roadways within the Town of Gilbert. To minimize project costs, no additional right-of-way shall be obtained and the project scope will be limited to subgrade preparation and chip-sealing the roadway (approximately 2,640 feet). This Intergovernmental Agreement is the mechanism for Maricopa County's reimbursement to the Town of Gilbert.

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

FINANCIAL IMPACT

Approval of this Intergovernmental Agreement will allow the Town of Gilbert to bid the project for construction. There is no financial impact to the Town of Gilbert associated with the approval of this Intergovernmental Agreement.

The costs associated with ST119 are included in the proposed FY2016 CIP budget. Based on contract award and subsequent project start date, Streets Fund contingency may be necessary in current year. If that is the case, staff would bring the contingency request to council at the time of contract award for their consideration. Per the terms of the Intergovernmental Agreement, the County will reimburse Gilbert for 62% of the actual construction costs of the project, up to a maximum amount of $155,000.

This financial impact was reviewed by Cris Parisot from the Office of Management and Budget.

STAFF RECOMMENDATION

Staff recommends approval of this Intergovernmental Agreement.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	4/16/2015 6:50 PM
Jack Vincent	4/20/2015 10:43 AM
Cris Parisot	4/20/2015 11:03 AM

INTERGOVERNMENTAL AGREEMENT

BETWEEN MARICOPA COUNTY AND THE TOWN OF GILBERT

FOR IMPROVEMENTS TO 154TH STREET FROM

OCOTILLO ROAD TO APPLEBY ROAD

#TT 516

(C-64-15- 92 -M-00)

This Intergovernmental Agreement (**"Agreement"**) is between the County of Maricopa, a political subdivision of the State of Arizona (**"County"**), and the Town of Gilbert, a municipal corporation (**"Town"**). The County and Town are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorizes the County to lay out, maintain, control and manage public roads within the County.

2. A.R.S. Sections 11-951 *et. seq.* authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorizes the Town to lay out and establish, regulate and improve streets within the Town and to enter into this Agreement.

BACKGROUND

4. 154th Street from Ocotillo Road to Appleby Road is partially in the unincorporated area of the County and partially in the Town. The road surface is primarily dirt with mixed gravel.

5. The Parties desire to apply a chip seal to 154th Street from Ocotillo Road to Appleby Road, a length of approximately 2,687 feet, to provide dust mitigation for both County and Town residents. (The "**Project**")

6. The Project construction is expected to be completed fiscal year 2016. The estimated cost of the Project, including design and construction, is $250,000.

7. The Town will complete the annexation of the roadway prior to the start of the Project.

8. County financial participation shall be limited to aspects of the Project that are essential for the establishment of a safe roadway consistent with the County's cost participation policy. The County will not financially participate in Project enhancements such as landscaping, irrigation, street lighting, visual mitigation, decorative pavers, street furniture or any other items inconsistent with the County's cost participation policy unless there is a benefit to the County that can be demonstrated by a benefit/cost analysis.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the responsibilities of the County and the Town for various elements of the Project, which include, but are not limited to, cost sharing, design, permitting, construction, construction management and annexation.

TERMS OF THE AGREEMENT

10. **Responsibilities of the County:**

    10.1 The County shall provide comments to the Town within 15 working days of receipt of the design plans from the Town.

    10.2 The County shall contribute sixty-two percent (62%) of the estimated cost of the Project, not including any Town requested enhancements as described in Paragraph 8 of this Agreement, up to a maximum of $155,000.

    10.3 The County shall remit payment to the Town within 15 working days of receipt of each invoice from the Town.

11. **Responsibilities of Town:**

    11.1 The Town shall annex the area necessary for the Project prior to the start of construction.

    11.2 The Town shall act as the lead agency for all aspects of the Project and shall design and construct the Project to standards prescribed by the Town.

    11.3 The Town shall provide the County with copies of design plans for review and comment.

    11.4 The Town shall contribute the remaining balance of the Project cost, over and above the County's cost contribution as prescribed in Paragraph 10.2 of this Agreement, and shall be responsible for Town requested enhancements as described in Paragraph 8 of this Agreement.

    11.5 The Town shall invoice the County for one-half of the County's estimated cost contribution as prescribed in paragraph 10.2 of this Agreement when the Notice to Proceed is issued to the contractor to begin Project construction.

11.6 Upon completion and final acceptance of the Project construction, the Town shall invoice the County for the balance of the County's cost contribution as prescribed in Paragraph 10.2 of this Agreement.

11.7 Upon completion and final acceptance of the Project construction, the Town shall accept responsibility for the Project, including the entire project area within the Town's jurisdictional boundaries.

GENERAL TERMS AND CONDITIONS

12. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

13. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.

14. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.

15. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:

    15.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

    15.2 Any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

15.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.

15.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

16. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.

17. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting Party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting Party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting Party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

18. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Relations Branch
2901 W. Durango Street
Phoenix, Arizona 85009

Town of Gilbert
Attn: Town Manager
50 E. Civic Center Drive
Gilbert, Arizona 85296

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

19. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

20. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

21. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.

22. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Gilbert Town Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.

23. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.

24. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

25. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

26. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

27. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

28. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.

29. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.

30. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

31. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.

32. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such Party pursuant to this Agreement.

33. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.

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

35. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon completion and acceptance of the Project and fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

03/03/2015

Jennifer Toth, P.E. Date
Transportation Director

Approved and Accepted by:

APR 0 8 2015

Steve Chucri, Chairman Date
Board of Supervisors

Attest by:

APR 0 8 2015

Clerk of the Board Date

TOWN OF GILBERT

Approved and Accepted by:

John Lewis Date
Mayor

Attest by:

Town Clerk Date

APPROVAL OF DEPUTY COUNTY ATTORNEY AND TOWN ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

4/7/15

Deputy County Attorney Date

Town Attorney Date

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jessica Carnahan, Neighborhood & Outreach Services Supervisor, (480) 503-6893

MEETING DATE: April 30, 2015

SUBJECT: HOME Investment Partnership Funds

STRATEGIC INITIATIVE: Community Livability

HOME Investment Partnership Funds support Community Livability by providing assistance to Gilbert homeowners and neighborhoods.

RECOMMENDED MOTION

A motion to approve Contract No. 2015-2105-0699 in the amount of $375,634 with Affordable Rental Movement of Save the Family Foundation of Arizona utilizing Fiscal Year 2012-2013 and Fiscal Year 2014-2015 HOME Investment Partnership Funds and authorize the Mayor or designee to execute contract documents.

BACKGROUND/DISCUSSION

The Town of Gilbert is a member of the Maricopa County HOME Consortium (Consortium) in order to annually receive HOME Investment Partnership Funds from the U.S. Department of Housing and Urban Development. HOME funds are administered by the Consortium and appropriated to members to support affordable housing initiatives within the member community.

On November 13, 2014, Council approved Contract No. 2015-2105-0505 with Maricopa County HOME Consortium to utilize Fiscal Year 2012-2013 HOME Investment Partnership Funds (HOME) in the amount of $175,038 and Fiscal Year 2014-2015 HOME Investment Partnership Funds in the amount of $200,596 for a total of $375,634 to be used on HOME eligible activities.

Council also approved issuing Request for Proposals for two HOME eligible activities: Permanent Affordable Rental Housing Program and a Substantial Rehabilitation Program. These

two eligible activities were determined as the most appropriate to address housing needs as identified in the Gilbert Community Needs Assessment.

In February 2015, two separate Requests for Proposals were issued to solicit agencies to implement a Permanent Affordable Rental Housing Program and/or a Substantial Rehabilitation Program in Gilbert. There was one response to the Permanent Affordable Housing Program proposal and no responses to the Substantial Rehabilitation Program proposal.

The Permanent Affordable Rental Housing Program allows a contracting agency to utilize HOME funds for purchase and rehabilitation of Gilbert homes, which in turn are rented to financially eligible residents. The Town is a lienholder of the unit for a period of fifteen (15) years to ensure the unit is used for federally required purposes during the timeframe. The contracting agency acts as a landlord of the unit to guarantee exterior and interior maintenance is completed. In addition, tenants residing in the units are encouraged to participate in other services, such as employment counseling and budgeting classes, to warrant success and self-sufficiency with the goal of tenants moving to market rate rentals or homeownership at the completion of the program. The program meets six of the seven priority populations needing additional services identified in the Gilbert Community Needs Assessment (Families in Crisis, Low/Moderate Income, Elderly, Homeless, Special Needs and Immigrants).

Affordable Rental Movement of Save the Family Foundation of Arizona (ARM) was the only responder to one of the two Requests for Proposals. ARM was established in 1992 and is a separate 501 (c)(3) affiliate of Save the Family which aids households in maintaining their self-sufficiency by bridging the gap between affordable rent to fair-market rentals or homeownership by providing decent, safe, housing with below market rents.

ARM proposes to utilize HOME funds to purchase, rehabilitate and rent three single family attached Gilbert homes and rent to financial eligible families whose annual household income is at or below sixty percent of area median income, which is approximately $31,500 for a family of four. Families who rent ARM properties must income qualify, sign a minimum of a one year lease and pay a security deposit at move-in. Household members may participate in supportive services including money management, increasing employability, and increasing education.

ARM has met all current federal requirements with the submission of the RFP response, is required upon contract execution to provide a twenty-five percent (25%) non-federal match to the units acquired and must meet Consortium expenditure deadlines. Reporting and monitoring mechanisms are in place to ensure federal regulations and Consortium requirements are met throughout the contract period.

The contract was reviewed for form by Attorney Mike Hamblin.

The contract was reviewed by Doug Boyer, Purchasing Manager.

FINANCIAL IMPACT

Council approved contingency funds in the amount of $375,634 at the November 13, 2014 Council meeting.

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

STAFF RECOMMENDATION

Staff recommends Council approve Contract No. 2015-2105-0699 in the amount of $375,634 with Affordable Rental Movement of Save the Family Foundation of Arizona utilizing Fiscal Year 2012-2013 and Fiscal Year 2014-2015 HOME Investment Partnership Funds.

Respectfully submitted,

Jessica Carnahan
Neighborhood & Outreach Services Supervisor

Approved By	Approval Date
Marc Skocypec	4/20/2015 9:04 AM
Michael Hamblin	4/20/2015 10:51 AM
Laura Lorenzen	4/20/2015 12:13 PM
Douglas Boyer	4/20/2015 5:38 PM

DEVELOPER AGREEMENT BETWEEN
Town of Gilbert
AND
Affordable Rental Movement of Save the Family Foundation of Arizona, Inc.
FOR THE
Home Investment Partnerships Program (HOME)

Contract No. 2015-2105-0699

THIS DEVELOPER AGREEMENT MADE this _____ day of _____, 2015 (this "Agreement"), by and between the **Town of Gilbert**, hereinafter referred to as "GRANTEE" or "GILBERT", and **Affordable Rental Movement of Save the Family, Inc.**, an Arizona nonprofit corporation, hereinafter referred to as "DEVELOPER", and which is located at: 125 E. University Drive, mesa, AZ 85201. GRANTEE and DEVELOPER are sometimes referred to in this Agreement collectively as the "Parties", or individually as a "Party".

This agreement shall remain in effect until June 30, 2016 unless sooner terminated, extended or otherwise amended in accordance with the terms of this agreement.
RECITALS:

WHEREAS, GILBERT is the recipient of HOME Investment Partnerships Program Funds the U.S. Department of Housing and Urban Development (HUD).

WHEREAS, in 2015, GILBERT published a Request for Proposals (RFP) to implement a permanent affordable rental home program utilizing federal HOME Investment Partnerships Program Funds ("HOME funds") to increase the affordable housing stock within Gilbert. GRANTEE was named the qualified bidder of the RFP process to implement GILBERT's permanent affordable rental home program.

WHEREAS, the GRANTEE has submitted a proposal for use of HOME funds for an eligible project under HOME regulations.

WHEREAS, the GRANTEE is being awarded a DEVELOPER Agreement to provide permanent affordable rental housing units in Gilbert, Arizona using federal HOME funds awarded to GRANTEE by the U.S. Department of Housing and Urban Development ("HUD"), as authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 that would include the acquisition, rehabilitation and rental of up to one to two (1-2) single family dwelling units to qualified low to moderate income renters in Gilbert. The **$375,634** of HOME funds provided to the developer under this agreement include **$175,038** of **FY 2012-2013 HOME funds** and **$200,596** of **FY 2014-2015 HOME funds** allocated to the GRANTEE through its participation in the Maricopa County HOME Consortium.

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

SECTION I – GENERAL CONDITIONS

1. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
2. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
3. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
4. The GRANTEE's failure to act with respect to a breach by the DEVELOPER does not waive its right to act with respect to subsequent or similar breaches. The failure of the GRANTEE to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
5. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Arizona.
6. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arizona or the GRANTEE, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
7. The obligations undertaken by DEVELOPER pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless GRANTEE shall first consent to the performance or assignment of such service or any part thereof by another person or agency.
8. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

A. <u>DEFINITIONS</u>

As used throughout this Agreement, the following terms shall have the following meanings:

1. "**Agreement**" means the Agreement entered into between the GRANTEE and the DEVELOPER. It includes the HOME Investment Partnership Agreement and all Exhibits listed therein, and these General Conditions of the Contract for HOME

Investment. It includes all formal changes to any of those documents by addendum, change order, or other modification.

2. "**Contract Administrator**" means the staff person administering this Agreement on behalf of Gilbert.
3. "**Developer**" means a for-profit or private nonprofit individual or entity that the Jurisdiction provides HOME Funds to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use of permanent affordable rentals and (2) rehabilitating and renting housing for use of permanent affordable rental purposes.
4. **"Developer Fee"** means the amount of money GILBERT agrees to pay and the DEVELOPER agrees to accept as payment in full for project completion.
5. **"Eligible Costs"** means costs for the activities specified in Attachment A for which HOME funds are budgeted, provided that such costs are incurred in connection with the activity which is eligible under the HOME program and conform to all HOME program requirements.
6. **"Environmental Requirements"** means the requirements described in 24 CFR Part 58.
7. **"Eligible Renter"** means an individual who meets income and other requirements as defined in 24 CFR Part 92.
8. "**HUD**" means the U.S. Department of Housing and Urban Development.
9. "**HOME Program**" means the HOME Investment Partnership Program as defined in 24 CFR Part 92 as it currently exists and as it may be modified in the future.
10. "**HOME Funds**" means funds made available under 24 CFR Part 92 through allocations and reallocations, plus all repayments and interest or other return on investment of these funds.
11. "**HOME-assisted Unit**" means those units designated as HOME-assisted pursuant to 24 CFR Part 92.
12. "**Low and Moderate Income**" means a household whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD.
13. "**Very Low Income**" means a household whose annual household income does not exceed 50 percent of the median income for the area, as determined by HUD.
14. "**Period of Affordability**" means the number of years during which the property is subject to HOME requirements as specified herein.
15. "**Program Income**" means the income received by the DEVELOPER or GILBERT directly generated from the use of HOME funds or matching contributions, including proceeds from the sale of real property acquired, rehabilitated or constructed with HOME funds.
16. "**Project**" means the entire project, whether construction or rehabilitation of HOME-assisted units, which is provided for in whole or in part under this Agreement.
17. "**Project Completion**" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the HOME Program

requirements; the final drawdown has been disbursed; and all project completion information has been delivered to Gilbert, as provided for under this Agreement.

18. "**Proposal**" means the DEVELOPER's response to the GRANTEE's HOME Request for Proposals or such other submittals, and any amendments thereto.
19. "**Records**" means all pertinent books, documents, papers, accounts, reports, files, applications, sales contracts, waiting lists, income examinations, and all other records relating to the Project.
20. "**Work**" means the services and activities enumerated in Exhibit A of this Agreement.

B. PURPOSE:

The purpose of this Agreement is to provide HOME funding from the GRANTEE to the DEVELOPER for the acquisition and rehabilitation of one to two single-family housing units for rental units to eligible low-income households.

All work tasks performed under this contract shall be performed in essentially the same manner proposed in the developer's proposal as received by Gilbert on March 26, 2015. The developer's proposal is considered to be a part of this agreement and is hereby incorporated by reference.

C. USES OF FUNDS

The DEVELOPER shall use HOME funds under this agreement for the purpose of acquisition and rehabilitation of single-family housing units for the use of permanent affordable rental homes. Development costs include the actual cost of acquisition and rehabilitation, demolition of existing structures upon prior written approval of the GRANTEE, on-site improvements in keeping with the improvements of standard surrounding properties, carrying costs, and related soft costs including but not limited to financing fees, affirmative and fair marketing, staff and overhead costs directly related to carrying out the project (project-specific costs), and developer fees.

D. <u>HOME PROJECT REQUIREMENTS</u>

1. Eligible Properties. The developer shall use HOME funds only to acquire properties approved by the GRANTEE. Eligible properties:
   a) Must be located in the HOME Target Area identified in the DEVELOPER'S proposal based on the housing market analysis provided by the DEVELOPER.
   b) Must receive environmental clearance from the GRANTEE prior to acquisition. Except that the developer may execute a purchase option subject to environmental clearance.
   c) Must have only one dwelling unit on site; acquisition of two-family or other mixed owner-rental properties require GRANTEE advance approval in writing and

compliance with HOME rental restrictions.

d) Must be unoccupied or meet the voluntary sale requirements of the Uniform Relocation Act.

2. Property Standards – The DEVELOPER will carry out all HOME-assisted activities in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties, including compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable.

E. EXPENDITURE AND OBLIGATION REQUIREMENTS:

1. The DEVELOPER agrees to expend 100% of HOME funds under this agreement no later than June 30, 2016 and according to the following schedule:

   ☒ 50% of HOME funds expended and drawn by June 30, 2015

   ☒ 75% of HOME funds expended and drawn by December 31, 2015

2. The DEVELOPER agrees to identify all properties to be assisted under this agreement no later than June 30, 2015. The following obligation standards shall be applied to units acquired under this Agreement:

   (1) Funds for property acquisition are obligated by the DEVELOPER entering into a valid purchase and sales agreement with the seller of the property in compliance with all HOME requirements.

   (2) Funds for rehabilitation are obligated by completing a detailed set of plans and specifications (work write-up) and completing a detailed construction/rehabilitation cost estimate based upon those specifications. Such cost estimate may include a contingency for construction change orders of up to 15% for rehabilitation and up to 5% for new construction.

      (a) For a property that has met the requirements above, the total obligation amount will include the per-unit or prorated estimates of soft costs, developer fee and selling costs based on the cost assumptions in Attachment A.

   (3) DEVELOPER must report fund obligations on a monthly basis or when requests for reimbursements are made, whichever occurs sooner.

3. If DEVELOPER does not meet the expenditure or obligation dates, the DEVELOPER shall submit to GILBERT, a written plan specifying the actions that will be taken to bring the project into compliance, including anticipated obligation and expenditure dates. GILBERT shall make the final decisions as to what action to take, including but not limited to granting an extension of time for completion of the work, cancellation of this agreement, recapture of a portion

or all of the HOME funds provided under this agreement. In no case may the GRANTEE provide extensions beyond deadlines imposed by HUD.

F. AFFORDABILITY REQUIREMENTS:

1. The housing that is acquired with HOME funds must be single family dwelling-unit. The household renting the housing must qualify as low- or moderate- income and maintain the housing as the principal residence throughout the Period of Affordability, which shall be for a period of 15 years in accordance with HOME program requirements.

2. Recapture provisions will be used to ensure compliance with the period of affordability required by HUD at 92.254 of the HOME regulation.

3. DEVELOPER will ensure HOME funds be secured by a Promissory Note (Attachment C) and Deed of Trust (Attachment D) securing the HOME investment and naming the GRANTEE as beneficiary.

4. DEVELOPER must enter into a lease with the tenant in all HOME assisted units that comply with HOME regulation 92.253.

5. Units assisted under this agreement must be affordable to low-income renters. Renter's monthly rent shall not exceed the maximum HOME rent limits determined under HOME regulations 92.252. DEVELPOER is responsible for housing expenses which may include principal, interest, property taxes, home insurance, and HOA fees.

6. The income of each tenant must be determined initially in accordance with 92.203(a)(1)(i).

G. **OUTREACH ACTIVITIES:**

1. DEVELOPER will engage in various outreach activities to recruit potential renters, verify income eligibility, and provide supportive human services during renter's tenancy.

2. DEVELOPER will follow affirmative marketing guidelines established by the Maricopa County HOME Consortium whenever marketing projects consisting of five or more units to ensure outreach to those least likely to apply for project occupancy.

H. **METHOD OF PAYMENT:** GILBERT agrees to reimburse the DEVELOPER for the acquisition and rehabilitation costs for eligible properties upon submission of a proper

request for payment, including supporting documentation. The final request for payment shall be submitted to GILBERT no later than 30 days before June 30, 2015, in order to meet federal grant requirements. Funds spent after this date shall not be reimbursed. Payment shall be made using the following procedures:

1. Prior to each close of escrow, the developer will provide to the GRANTEE the estimated settlement statement, sales contract and copy of home inspection.
2. Each HOME-eligible property will be acquired using DEVELOPER's resources (cash and / or loans) and / or project proceeds, if any.
3. During the development process DEVELOPER will pay for rehabilitation, and other related and allowable development costs using DEVELOPER's resources.
4. DEVELOPER will receive payment for its total development costs, including the agreed upon developer fee, at the time of the unit being eligible for tenant occupation. DEVELOPER must submit non-federal match contribution to the purchase and rehabilitation of the unit and Certification of Match.
5. Payments will be made for eligible HOME related expenses actually incurred by the DEVELOPER, and will not exceed actual cash requirements. In addition, the GRANTEE reserves the right to liquidate funds available under this contract for costs incurred by the GRANTEE on behalf of the DEVELOPER.
6. Payment of HOME funds by GRANTEE to DEVELOPER in response to DEVELOPER'S request for reimbursement shall be made upon receipt from the developer of a properly executed Note and a Deed of Trust if for initial acquisition.
7. The GRANTEE reserves the right to inspect records and project sites to determine that reimbursement and compensation requests are reasonable. The GRANTEE also reserves the right to hold payment until adequate documentation has been provided and reviewed.
8. Project expenses (excluding developer fee) shall be paid based on vouchers for actual expenses incurred or paid. Requests for payment must be submitted by the DEVELOPER on forms specified by GILBERT, with adequate and proper documentation of eligible costs incurred in compliance with 92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance with the approved project budget. Budget revision and approval shall be required prior to payment of any expenses not conforming to the project budget as indicated in Attachment A.
9. The DEVELOPER may submit a final invoice upon completion of all work under this agreement. Final payment shall be made after GILBERT has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations.

I. **GRANT ADMINISTRATION**: In accordance with federal regulations, including 24 CFR 92, GILBERT is responsible for ensuring the administration of HOME Program funds in

accordance with all program requirements, including but not limited to:

1. Inspections - Conducting progress inspections of work completed and review of project files and information to protect its interests as lender and regulatory authority for the project, and will provide information to the DEVELOPER regarding any progress inspections or monitoring to assist it in ensuring compliance. The GRANTEE's review and approval of the WORK will relate only to overall compliance with the general requirements of this Agreement and HOME requirements, and all regulations and ordinances.
2. Disbursements – Managing all draws of HOME funds from HUD and payment of valid and properly documented draw requests from DEVELOPER, disbursing funds to the developer, and clearly and promptly describing any identified deficiencies that prevent a disbursement or portion of a disbursement from being approved.
3. Reporting to Maricopa County via IDIS in a manner as required by the Maricopa County Consortium.
4. Furnishing the DEVELOPER with information regarding requirements for the project, including any changes in HOME regulations or program limits that affect the project, including but not limited to income limits.
5. Monitoring the DEVELOPER for compliance with the HOME requirements through reports and on-site visits.

J. FINANCIAL RECORDS:

1. DEVELOPER's accounting system and financial records shall comply with the applicable requirements and standards of 24 CFR Part 84. Such systems shall be subject to monitoring from time to time by GILBERT or by the Department of Housing and Urban Development (HUD).

2. DEVELOPER shall adhere to applicable audit requirements as described and in accordance with OMB Circular A-133 and 24 CFR 84.21 Standards for Financial Management Systems. In addition, all DEVELOPERs must provide annual audited financial statements or required single audit reports as applicable.

3. DEVELOPER shall adhere to the repayment of investment requirements set forth in 24 CFR §92.503. Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.254, must be repaid in accordance with 24 CFR § 92.503(b)(3).

4. DEVELOPER shall adhere to procurement procedures established pursuant to 24 CFR 84.40 through 84.48, which shall ensure that materials and services are obtained in a cost-effective manner.

K. **PROJECT PROCEEDS:** All proceeds generated from DEVELOPER development activities shall be considered project proceeds and subject to the project proceeds requirements set forth in HOME Program regulations. Project proceeds shall be tracked by the DEVELOPER. Documentation supporting the amount of project proceeds received and expended shall be submitted on the periodic progress report, if requested by GILBERT. Project proceeds shall be retained and expended by the DEVELOPER to acquire additional properties under this agreement. The DEVELOPER shall return any project proceeds to GILBERT upon expiration of this agreement and final report.

L. **RECAPTURED FUNDS**: All funds recaptured because housing no longer meets affordability requirements, shall be forwarded to GILBERT in accordance with 24 CFR § 92.503.

M. **REPORTS/RECORD RETENTION:**

1. Project Reports - Reports as required or requested by GILBERT shall be submitted not less than quarterly. Such reports include, as appropriate, project setup/completion report, quarterly progress reports, project proceed reports, MBE/WBE information, program income reports, match reports, performance reports and other HUD required reporting data. Progress reports shall include acquisition, rehabilitation and tenant eligibility data.

   The developer shall collect and maintain project beneficiary information pertaining to household size, income, race, and the presence of female headed households in order to determine low and moderate income benefit in a cumulative and individual manner as required by HUD.

2. Access – GILBERT and the United States Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining performance, to books, documents and papers, and the right to examine records. However, nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

3. Administration (Records/Reports and Incorporation by Reference): Pursuant to 24 CFR §92.508 and all referenced sections the DEVELOPER shall maintain records for six (6) years after all HOME requirements have been satisfied; and shall submit to GILBERT upon request, the following records and reports:

   a) Records demonstrating that participating citizens served under this Contract meet the income and other criteria required by federal law and that no unlawful discrimination occurs in the solicitation or selection process of lower income

persons or group; and that no conflict of interest exists. Records pertaining to income eligibility, property standards, affordable rents, lease requirements and affirmative marketing activities must be kept on a continuing basis throughout the period of affordability.

b) Project Closeout – The DEVELOPER's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, accounting for use of funds, provision of all reports and records required by the GRANTEE.

N. ENVIRONMENTAL CONDITIONS:

1. The DEVELOPER agrees to comply with: the National Environmental Policy Act of 1969 (P.L. 91-190) pursuant thereto 40 CFR Parts 1500 – 1508; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities pursuant thereto Title 24, CFR Part58, Subpart A; CPD Notice 01-11 HOME Environmental Review Requirements and with all conditions required in the process of the environmental assessment.

2. Air and Water - The DEVELOPER agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

   a) Clean Air Act, 42 USC, 7401, et seq., as amended.
   b) Federal Water Pollution Control Act, as amended, 33 USC 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.
   c) Environmental Protection Agency (EPA) regulations pursuant to 40 CFR part 50, as amended.
   d) DEVELOPER agrees to comply with conditions set forth by the Air Pollution Division of Maricopa County Environmental Services or other County agency, as required.

3. Flood Disaster Protection - In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the DEVELOPER shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes. (In the case of housing, the homeowner must obtain and maintain flood insurance as a condition of funding, or funds may not be utilized.)

4. Historic Preservation - The DEVELOPER agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that is listed or eligible for the National Register of Historic places, or included on any state or local historic property inventory or any archaeological findings.

O. THE DEVELOPER AGREES TO:

1. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, familial status, age or disability. DEVELOPER shall take affirmative action to insure that applicants for employment and employees during employment are treated without regard to their race, color, religion, sex, national origin, familial status, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship.

2. Not discriminate against any applicant for service because of race, color, religion, sex, national origin, familial status, age or disability in the admission or access to, or treatment in, its federally assisted programs or activities. DEVELOPER shall, in all solicitations or advertisements, state that all qualified applicants shall receive consideration for service without regard to race, color, religion, sex, national origin, familial status, age or disability. DEVELOPER agrees to post in conspicuous places available to employees and applicants for employment or service, notices setting forth the provisions of these non-discrimination clauses. All DEVELOPERs shall administer all services in accordance with the Civil Rights Act of 1968 and the Fair Housing Amendment Act of 1988 and Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" pursuant to Title VI of the Civil Rights Act.

3. During the term of this Contract, indemnify, hold, protect and save harmless GILBERT and any and all of its officers, agents, and employees from and against any and all actions, audits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by GILBERT, brought, made, filed against, imposed upon or sustained by GILBERT, its officers, agents, or employees in and arising from or attributable to or caused directly or indirectly by the negligence,

wrongful acts, omissions or from operations conducted by the DEVELOPER, its officers, agents or employees, or by any person or persons acting on behalf of DEVELOPER and with DEVELOPER's knowledge and consent, expressed or implied.

4. Give all notices and comply with all Laws, ordinances, rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Contract. If the DEVELOPER observes that any of the contract documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify GILBERT, in writing, and any necessary changes shall be accomplished by appropriate written modification.

5. Should the DEVELOPER perform any work contrary to applicable laws, ordinances, rules, building codes and/or regulations, it shall assume full responsibility, therefore, and shall bear all cost incurred due to its negligence. Any dispute not disposed of by mutual contract by the parties hereto shall be decided in accordance with the applicable Arizona laws, ordinances, and codes of the state and local governments.

6. Comply with and require all contractors and subcontractors to comply with all of the applicable provisions of the HOME Program. All contractors and subcontractors who perform service pursuant to this Contract shall be in compliance with all applicable state and local licensing, bonding, and insurance requirements. None of the terms, conditions, and requirements covered by this Contract can be assigned.

7. Acknowledge the contribution of the HOME Program in all published literature, brochures, programs, flyers, etc., during the term of the Contract.

8. Execute and abide by Certifications mandated by FEDERAL GRANT requirements listed in **Attachment F - HOME CERTIFICATIONS**.

9. Obtain and comply with the most recent HUD-issued applicable HOME Program Rent Limits, Income Limits, Mortgage Limits and Maximum per Unit Subsidy Limits throughout the period of affordability.

10. Comply with HOME conflict of interest provisions of 92.356, which apply to the award of contracts under the agreement and the selection of households that will occupy HOME-assisted units.

P. <u>THE DEVELOPER CERTIFIES:</u>

1. That it possesses legal authority to execute this Contract.

2. That its governing body has duly adopted or passed as an official act, a resolution, motion, or similar action authorizing the person identified as the official representative of the DEVELOPER to execute this Contract and to comply with the terms of this Contract.

3. That it is familiar with and shall comply with 24 CFR Part 92 governing activities funded with HOME dollars.

4. That neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

5. That the project shall be carried out and services administered in compliance with all federal and state laws and regulations as follows:

6. The parties to this Contract agree that they will utilize and make available the HOME funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These regulations listed in 24 CFR 92.350-92.454 include:

   a) The requirements of the Fair Housing Act, 42 CFR 3601-20, and implementing regulations at 24 CFR Part 100: Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 (3 CFR, 1958-1963 Come, p.652 and 3 CFR, 1980 Come. p. 307) and implementing regulations at 24 CFR 107: and Title VI of the Civil Rights Act of 1694, 42 U. S. C. 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);

   b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S. C. 6101-07) and the regulations at 24 CFR146;

   c) The prohibitions against discrimination on the basis of handicap under Section504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

   d) The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

   e) The requirements of section 3 of the Housing and Urban Development Act of1968, 12 U.S.C. 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects);

f) The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding Women's Business Enterprise, and regulations S. 85.36 (e) and of section 281 of the National Housing Affordability Act; and

g) The requirements of Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" pursuant to Title VI of the Civil Rights Act.

7. The parties to this Contract agree that they will prepare and adopt acceptable procedures and requirements for affirmatively marketing units in the HOME projects, when HOME assisted housing contains 5 or more rental units, by providing information about the availability of HOME-assisted units that are vacant at the time of completion or that later become vacant. The parties agree that they will make good faith efforts to provide information and to otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing during the period of affordability. These procedures and requirements are not applicable when units are occupied by families referred from a Public Housing Authority's (PHA) waiting list, or to families receiving tenant-based rental assistance provided from HOME funds.

8. GILBERT, as the participating jurisdiction, assumes all the responsibilities for environmental review, decision making, and action under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such projects as Federal projects in accordance with 24 CFR Part 58. The CITY will assume the responsibilities for the Request for Release of Funds, if applicable. The DEVELOPER agrees not to commit or incur any expenditure for HOME activities until this environmental review process has been completed. The parties further agree that the provision of any funds to the project is conditioned on GILBERT'S determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. Should it be determined that the DEVELOPER has incurred expenses in violation of the NEPA requirements, the DEVELOPER will be responsible for the full costs of expenditures and repayment of any related reimbursement. The DEVELOPER agrees to provide all necessary assistance to GILBERT in completing this environmental review process.

9. The parties to this Contract agree to abide by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4291-4655) and the governmental implementing regulations at 49 CFR Part 24 as they apply to this HOME Program.

10. The parties to this Contract agree to abide by the Davis-Bacon Act (40 U.S.C. 276a-5)

and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the provisions of 24 CFR Part 24 regarding Government-wide Debarment and Suspension as they apply to this HOME Program.

11. The parties to this Contract agree to abide by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) as they apply to HOME Program.

12. The Parties to this contract agree to abide by the Drug-Free Workplace Act of 1988 as it applies to this HOME Program.

13. Housing assisted with HOME funds constitutes HUD-assisted housing for the purposes of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is therefore subject to 24 CFR Part 35.

14. No person who is an employee, agent, consultant, officer or elected official, or appointed official who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a decision making position or who will gain from inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.

15. No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (DEVELOPER) when acting as an owner, developer or sponsor) may occupy a HOME assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

16. HOME funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.

17. The DEVELOPER warrants that it is incompliance with A.R.S. §41-4401 and further acknowledges:

    a) That the DEVELOPER and its subcontractors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A;

b) That a breach of a warranty under subsection a above, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;

c) That the contracting government entity 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 provided under subsection a above and that the contractor agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection; and

d) That nothing herein shall make any contractor or subcontractor an agent or employee of the contracting government entity.

e) That DEVELOPER shall comply with all other applicable laws.

Q. <u>GILBERT AGREES TO:</u>

1. Complete all Environmental Reviews (ERs) in a timely manner.
2. Provide Technical Assistance to DEVELOPER on a continuing basis.
3. Approve all requests for reimbursement, review all requests for Contract amendments and make recommendations thereof in a timely manner.
4. Monitor timely implementation of DEVELOPER's project including encumbrance obligation. Make recommendations for compliance.
5. Be the lien holder for all real estate developed, if applicable.

R. <u>ACTIVITY COMPLETION</u>:

1. Upon the final payment to the DEVELOPER by GILBERT, the HOME activity shall be considered complete. Upon completion of the scope of work, all unspent HOME resources shall be returned to GILBERT for reallocation. The DEVELOPER shall continue to be responsible for compliance activities for the period of affordability as required by the HOME program.

2. The DEVELOPER shall provide an annual report to GILBERT that details the status of each property, including owner occupancy, any refinancing or lien activity, and if a resale has occurred evidence that the subsequent purchaser meets HOME program requirements.

S. <u>GENERAL PROVISIONS:</u>

1. It is expressly understood by the parties hereto that this Contract has been negotiated and executed in anticipation of receipt of funds by GILBERT from the U.S. Department of Housing and Urban Development (HUD) pursuant to the HOME Program and that therefore, the terms, conditions and sums payable under this Contract are subject to any changes or limitations which may be required by HUD and the HOME Program regulations. Notwithstanding any other provisions of this Contract, any payment to DEVELOPER by GILBERT under this Contract is contingent upon the actual receipt of funds from HUD.

2. All written communication between the DEVELOPER and GILBERT shall be sent to Contract Contact Persons:

DEVELOPER:	Affordable Rental Movement of Save the Family, Inc.
Name / Title:	Jacki Taylor, Chief Executive Officer
Address:	125 E. University Drive Mesa, AZ 85201
Phone:	(480) 898-0228
Fax:	(480) 898-9007
Email:	jtaylor@savethefamily.org

TOWN:	Town of Gilbert
Name / Title:	Marc Skocypec, Deputy Town Manager
Address:	50 E. Civic Center Drive Gilbert, AZ 85296
Phone:	(480) 503-6862
Fax:	(480) 497-4943
Email:	Marc.skocypec@gilbertaz.gov

If the information for either party changes, written notification will be provided to the other parties to the agreement.

3. Both parties acknowledge that no member of the governing body of, or any employee, of GILBERT who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains has any personal interest direct or indirect in this Contract.

4. This Contract supersedes any and all other contracts and no other contract or amendment hereto shall be effective unless executed in writing and signed by GILBERT, and DEVELOPER. GILBERT or the DEVELOPER may request changes. If approved by GILBERT, any such request shall be incorporated into written amendments to this Contract.

5. This Contract shall be governed by and construed in accordance with the laws of the

State of Arizona and all applicable federal laws and regulations.

6. The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

7. This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements and undertakings are hereby expressly cancelled.

8. GILBERT may, at any time, by written order, make changes within the general scope of this Contract in any one or more of the following areas:

   a) Work Statement activities reflecting changes in Federal, State, GILBERT regulations, policies or requirements;

   b) Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by Funding Source or GILBERT regulations, policies or requirements. It is the responsibility of the DEVELOPER to ensure the latest documents are consulted and followed.

T. INSURANCE REQUIREMENTS:

1. DEVELOPER, at DEVELOPER's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to GILBERT.

2. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of GILBERT, constitute a material breach of this Contract.

3. The DEVELOPER's insurance shall be primary insurance as respects to GILBERT, and any insurance or self-insurance maintained by GILBERT shall not contribute to it.

4. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect GILBERT.

5. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to GILBERT under such policies. The DEVELOPER shall be solely responsible for the deductible and/or self-insured retention and GILBERT, at its option, may require the DEVELOPER to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6. GILBERT reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. GILBERT shall not be obligated, however, to review such policies and/or endorsements or to advise DEVELOPER of any deficiencies in such policies and endorsements, and such receipt shall not relieve DEVELOPER from, or be deemed a waiver of GILBERT's right to insist on strict fulfillment of DEVELOPER's obligations under this Contract.

7. The insurance policies required by this Contract, except Workers' Compensation, shall name GILBERT, their agents, representatives, officers, directors, officials and employees as additional insureds.

8. The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of DEVELOPER's work or service.

9. Commercial General Liability. DEVELOPER shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $2,000,000 Products/Completed Operations Aggregate and a $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage shall be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

   a) The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party action over claims.

b) The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for DEVELOPER's operations and products and completed operations.

10. Automobile Liability. DEVELOPER shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than$1,000,000, each occurrence, with respect to DEVELOPER's vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

11. Workers' Compensation. The DEVELOPER shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of DEVELOPER's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.

12. Professional Liability. The DEVELOPER retained by the CITY to provide the work or service required by this Contract shall maintain Professional Liability insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the DEVELOPER, or any person employed by the DEVELOPER, with a limit of not less than $1,000,000 each claim.

13. Certificates Of Insurance

a) Prior to commencing work or services under this Contract, DEVELOPER shall furnish GILBERT with Certificates of Insurance, or formal endorsements as required by the Contract, issued by DEVELOPER's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number and title.

b) In the event any insurance policy(ies) required by this Contract is/are written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the DEVELOPER's work or services and as evidenced by annual Certificates of Insurance.

c) If a policy does expire during the life of the Contract, a renewal certificate must be sent to GILBERT fifteen (15) days prior to the expiration date.

14. Self-Insurance

In lieu of any insurance requirements in this contract, GILBERT understands that the DEVELOPER may be self-insured, and GILBERT accepts this self-insured program. (This acceptance is based upon the DEVELOPER'S representation of its financial strength, including its most recent Balance Statement and Statement of Cash Flow or Revenue. DEVELOPER agrees to timely notify GILBERT as to any substantial change in its financial strength.)

15. Cancellation And Expiration Notice

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to GILBERT.

U. REVERSION OF ASSETS:

1. Upon expiration of this Contract, the DEVELOPER shall transfer all remaining funds or other assets relating to the HOME Investment Partnerships Program to GILBERT. A written letter of intent to terminate must be submitted to GILBERT a minimum of 30 days prior to termination of Contract. All unencumbered funds as of the date specified in the "Contract Term" paragraph (on page one) of this Contract shall be reallocated GILBERT per Reallocation Policy.

2. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84, which include but are not limited to the following:

   a) DEVELOPER shall transfer to GILBERT any HOME funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified.
   b) Real property under DEVELOPER'S control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the HOME application for the period consistent with the continued affordability requirements.

3. In the event that DEVELOPER declares bankruptcy or closes operation for any reason, all assets including real property and equipment which were acquired, in whole or in part, with funds under this Agreement shall revert back to GILBERT.

V. SUSPENSION AND TERMINATION:

1. In accordance with 24 CFR 85.43, GILBERT may suspend or terminate this Contract if DEVELOPER violates any term or condition of this Contract or if DEVELOPER fails

to maintain a good faith effort to carry out the purpose of this Contract. In the event of such termination or suspension, all funds awarded to developer pursuant to this agreement shall immediately be deemed revoked and canceled. In the event of termination, developer shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the date of termination.

2. GILBERT or DEVELOPER may terminate this Contract for convenience in accordance with 24 CFR 85.44. Both parties shall agree upon the termination conditions including the effective date of the termination. The party initiating the termination shall notify the other party in writing stating the reasons for such termination.

3. This Contract is subject to termination pursuant to A.R.S. §38.511.

SECTION II – HOME CERTIFICATIONS

In accordance with the provisions of the Home Investment Partnerships Act and with 24 CFR 92.150 of the Home Investment Partnership Program Rule, the DEVELOPER certifies that:

A. Before committing any funds to a project, The DEVELOPER will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

B. The DEVELOPER will only utilize HOME funds to pay for eligible activities and costs of those activities permitted in 24 CFR 92.205 through 92.209.

C. The DEVELOPER will NOT utilize HOME Funds to pay for activities prohibited under 24 CFR 92.214, including capital and operating funds for Public Housing.

D. The submission of the program description is authorized under State and local law (as applicable), and that the DEVELOPER possesses the legal authority to carry out the Home Investment Partnership (HOME) Program, in accordance with the HOME regulations;

E. The DEVELOPER will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR Part 24 and the requirements of 24 CFR 92.353;

F. The DEVELOPER will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CRF Part 135.

G. The DEVELOPER will use HOME funds pursuant to its Consolidated Plan(s) approved by HUD and all requirements of 24 CFR Part 92;

H. The DEVELOPER will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about:
   a) The dangers of drug abuse in the workplace;
   b) The participating jurisdiction's policy of maintaining a drug-free workplace;
   c) Any available drug counseling, rehabilitation, and employee assistance programs; and
   d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:

   a) Abide by the terms of the statement; and
   b) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the AGENCY in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal AGENCY has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:

   a) Taking appropriate personnel action against such an employee, up to an including

termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

I. To the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative contract;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative contract, the DEVELOPER will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. The DEVELOPER will require that the language of paragraph (H) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative contracts) and that all Subcontractors shall certify and disclose accordingly.

SECTION III – ATTACHMENTS

A Scope of Work
B Work Statement
C HOME Project Secured Promissory Note
D HOME Project Deed of Trust and Assignment of Rents
E MATCH Certification
F State Contractor Employment Verification Form
G HOME Certifications

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

DEVELOPER:

By:_____

_____
Title

_____
Date

_____

TOWN OF GILBERT

By:_____
Town Manager

_____
Date

APROVED AS TO FORM:

Town Attorney

ATTEST:

_____
City Clerk

EXHIBIT A
SCOPE OF WORK

Contractor shall perform the following services and adhere to the federal regulations of HOME Investment Partnership Funds as follows:

- Contractor will purchase 1-2 vacant dwelling units within Gilbert Town limits;
- Contractor will take title of the dwelling unit(s) upon close of escrow, naming the Town of Gilbert as a second lien holder;
- Contractor will rehabilitate dwelling units to meet Housing Quality Standards as described in 24 CFR 92.251 and maintain dwelling units to the standard during the period of affordability;
- Contractor will be responsible for all maintenance, insurance and expenses incurred on behalf of the dwelling unit(s) acquired under the agreement;
- Contractor will rent dwelling units as permanent affordable rental homes to qualified low- to moderate- income households whose annual household income does not exceed 60% of area median income.

HOME Regulations:

- Contractor must provide a 25% non-federal match to the HOME funds utilized;
- Contractor must provide a complete housing market analysis with the proposal in accordance with HOME regulations;
- Dwelling unit(s) must be maintained as affordable rental housing for an affordability period of 15 years;
- The appraised value of the dwelling unit(s) after rehabilitation must not exceed $210,425.00;
- Contractor must adhere to annual rent controls as required by HOME fund regulations during the period of affordability.

Timeline:

- Dwelling units must be under contract for purchase by June 30, 2015;
- Reimbursement requests for dwelling unit purchase and rehabilitation must be submitted by December 31, 2015;
- Dwelling units must be occupied by an income eligible household by June 30, 2016.

EXHIBIT B
WORK STATEMENT

Agency Name: Affordable Rental Movement of Save the Family, Inc.

Address: 125 E. University Dr., Mesa, AZ 85201

Phone: 480-898-0228 Fax: 480-898-9007

E-mail: jtaylor@savethefamily.org Website: www.savethefamily.org

DUNS #: _____ HOME Funds Request: $375,634

Description of activity: The Affordable Rental Movement (ARM) of Save the Family Foundation of AZ proposes to purchase and rehabilitate three single family homes (2 or 3 bedroom) and rent them to income qualified (below 60% of AMI) families in the Town of Gilbert (several potential locations have been identified to benefit three low income households.

Specific location of proposed units: Proposed properties include: 1295 N. Ash St, #111, Gilbert, AZ 85233 and 20 S. Buena Vista Ave., # 102 & 211, Gilbert, AZ 85296

Beneficiaries:

Total households to be served: 3
At or below 30% of median: _____
At or below 50% of median: _____
At or below 80% of median: _____
Other (please specify): Below 60% AMI

Timeline:

Tasks	**Start Date**	**Completion Date**
Find 3 (2 or 3 bedroom single family-attached)housing units in Gilbert	April 15, 2015	May 30, 2015
Complete Environmental Review process	May 1, 2015	June 15, 2015
Bid, acquire and contract award	May 1, 2015	June 30, 2015
Rehabilitation units to Housing Quality Standards as described in 24 CFR 92.251	June 15, 2015	September 30, 2015
Project completion		June 30, 2015
Tenant selection and move in	September 30, 2015	June 30, 2015

Budget:

	HOME Amount	Cash Match	Other Resources	Total
Acquisition	$348,850	$87,202.50		$436,052.50
Rehabilitation	$7,634	$3,750		$11,384
Administrative Costs				
Developer Fees	$19,150	$4,787.50		$23,937.50
Other (specify)				
Other (specify)				
TOTAL	$375,634	$95,740		$471,374

Match:

Amount	**Form of Match**	**Specific Source**
$10,000	In-kind	Professional Services
$35,000	In-kind	Volunteer Hours
$10,000	In-kind	Family Sponsorships
$15,000	Cash	ARM support staff
$6,500	Cash	Career Development staff
$9,175	Cash	Program support staff
$10,075	Cash	Property tax abatement
Total: $95,750		

EXHIBIT C
PROMISSORY NOTE

When recorded, mail to:
Town of Gilbert
Town Manager's Office
50 E. Civic Center Drive
Gilbert, Arizona 85296

TOWN OF GILBERT
HOME PROGRAM
PERMANENT AFFORDABLE RENTAL PROGRAM

SECURED PROMISSORY NOTE

$

Gilbert, Arizona

FOR VALUE RECEIVED, Affordable Rental Movement of Save the Family Foundation of Arizona **("Maker")** promises to pay to the Town of Gilbert, an Arizona municipal corporation **("Payee")**, at, Gilbert, AZ 85296, or at such other place as the Town may from time-to-time designate, in lawful money of the United States of America, the principal sum of PRINCIPAL SUM.

1. The sums advanced under this Note shall be used to purchase the property located at ADDRESS, Gilbert, Arizona, as more fully described in Exhibit 1 **(the "Property")**. Payment of this Note will be secured by a deed of trust **(the "Deed of Trust")** from the Maker to Payee to be recorded against the Property.

2. The term of this Note shall be 15 years from the date written above, provided however, that no event of default under this Note shall have occurred during said term. If an event of default occurs during the term of this Note, said term shall not expire unless the default is cured as provided herein or until this Note is paid in full. Upon expiration of the term of this Note, the debt evidenced by this Note shall be forgiven.

3. Maker shall have the right to prepay this Note, in whole, without penalty, discount, or premium.

4. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within fifteen (15) days of demand; (ii) any sale, lease, exchange, conveyance, assignment, refinance or other transfer of the Property without the prior written consent of Payee; or (iii) any violation of the covenants or restrictions set forth in that certain Declaration of Affirmative Land Use Restrictive Covenants, between Make and Payee, dated on or about the date of this Note.

5. Upon the occurrence of any event of default, or at any time thereafter, at the option of the Payee, the entire unpaid principal sum of this Note shall become immediately due and payable. This option may be exercised at any time following any such event. The failure to exercise this option shall not constitute a waiver of the right to exercise such option in any subsequent even of default. Payee's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

6. Payee shall not exercise any right or remedy provided for herein because of any default of maker unless, in the event of a monetary default, Maker shall have failed to pay the outstanding sums within a period of thirty (30) calendar days after the date of the notice that payment was due, or in the event of a nonmonetary default, Payee shall have first given written notice thereof to Maker, and Maker shall have failed to cure the nonmonetary default within a period of thirty (30) calendar days after the date of such notice; provided that if the nonmonetary default cannot be cured within thirty (30) calendar days and Maker proceeds diligently with effort to cure such default until it shall be fully cured within no more than sixty (60) calendar days after the giving of such notice, Payee shall not exercise any right or remedy provided for herein until such sixty (60) day period shall expire. Notwithstanding the foregoing, Payee shall not be required to give any notice or allow any part of the grace period if Maker shall have filed a petition in bankruptcy or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if Maker shall have made an assignment for the benefit of creditors, or if a receiver or trustee is appointed for Maker and such appointment or such receivership is not terminated within forty-five (45) days. With respect to any right to cure or cure period provided in this paragraph 7, performance of a cure by an entity or partner of Maker shall have the same effect as would like performance by Maker.

7. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof, or of any installment hereof, to the release of any party liable for this obligation. Any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

8. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney fees, for the collection of this Note upon default. Maker shall pay immediately, upon demand, all costs and expenses of Payee, including without limitation reasonable attorney's fees, if Payee seeks to have the Property abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

9. If Payee shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the Property or the title thereto or the interest of the Payee under the Deed of Trust, including without limitation, any form of condemnation or

eminent domain proceeding, Maker shall reimburse Payee immediately upon demand for all costs, charges, and attorneys' fees incurred by payee in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Property.

10. All payments required under this Note shall be delivered to the Town of Gilbert, 50 E. Civic Center Drive, Gilbert, AZ, 85296 or such other place as the Payee notifies Maker in writing.

11. This Note shall be binding upon Maker, its successors and assigns.

12. This Note shall be construed in accordance with and be governed by the laws of the State of Arizona.

13. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. This Note shall be secured by a Deed of Trust on the Property executed by Maker and recorded in the Office of the County Recorder of Maricopa County, State of Arizona.

IN WITNESS WHEREFOR, the undersigned has executed this Note on the date first written above.

_____

_____

STATE OF ARIZONA)

) ss.

County of Maricopa)

BE IT REMEMBERED, that on this _____ day of _____ 20____

Before me the undersigned, Notary Public in and for said County and State, personally appeared the within named_____

_____

known to me to be the identical individual(s) described in and who executed the within loan and Note and acknowledged to me that the said individual(s) executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal the day and year written above.

_____

Notary Public

My Commission Expires:

_____

EXHIBIT 1

Legal Description

LEGAL DESCRIPTION:

EXHIBIT D
DEED OF TRUST

When recorded, mail to:
Town of Gilbert
Town Manager's Office
50 E. Civic Center Drive
Gilbert, Arizona 85296

TOWN OF GILBERT
HOME PROJECT
DEED OF TRUST AND ASSIGNMENT OF RENTS

DATE:

PROPERTY ADDRESS: _____, Gilbert, Arizona

TRUSTOR:

TRUSTOR'S MAILING ADDRESS:

BENEFICIARY: Town of Gilbert, an Arizona municipal corporation

BENEFICIARY'S ADDRESS: 50 E. Civic Center Drive, Gilbert, Arizona 85296

TRUSTEE: Michael Hamblin, Town Attorney and a member of the State Bar of Arizona, 50 E. Civic Center Drive, Gilbert, Arizona 85296

WHEREAS, Trustor is the owner in fee simple of the residential land and improvements located thereon as Property in Maricopa County, State of Arizona, legally described as:

This Deed of Trust made between Trustor, Trustee and Beneficiary above named,

WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with Power of Sale, the above-described real property and all buildings, improvements and fixtures located thereon or hereinafter erected thereon, together with the leases, rents, issues profits or income thereof (all of which are hereinafter called "property income"); SUBJECT,

HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

FOR THE PURPOSE OF SECURING:

A. Performance of each agreement of Trustor herein contained.

B. Payment of the indebtedness evidenced by that promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of $ _____ executed by Trustor in favor of Beneficiary.

C. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or Trustor's successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; and, do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary fire insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured thereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4. To pay before delinquent, all taxes and assessment affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust, including, without limited the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note(s) secured by this Deed of Trust or at the highest legal rate, whichever be the greater rate. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on said premises or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor; however, the right to sue therefore and ownership thereof subject to this Deed of Trust), and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time-to-time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; 9c) join in granted any easement thereon; (d) join in or consent to any extension agreement subordinating the lien, encumbrance or charge thereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of the Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall by Deed of Release and Full Reconveyance release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such Deed of Release and Full Reconveyance of any matters shall be conclusive proof of the truthfulness thereof. The grantee in such Deed of Release and Full Reconveyance may be described as "The Person or Persons Legally Entitled Thereto."

10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

11. That upon default by Trustor in the payment of any indebtedness hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Did of Trust, said note(s) and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee's sale in a manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place affixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of the sale to payment of all sums then secured hereby and all other sums due, under the terms hereof, with accrued interest, and, the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. Sec. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

The purchaser at the Trustee's sale shall be entitled to immediate possession of the property against Trustor and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statues, together with costs and reasonable attorney's fees. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

12. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee here shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, right, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

13. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

14. That Trustee accepts this Trust when this Deed of Trust duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in

which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee. In the event Trustee is made a party in any legal or court proceeding as a result of litigation between Trustor and Beneficiary or between a third party and either or both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever is the non-prevailing party.

15. Time is of the essence of the Deed of Trust and each and every provision hereof.

16. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's mailing address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. Sec. 33-809.A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.

17. In the event that Trustor shall sell, convey, or alienate or otherwise transfer the subject property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first obtained, said Beneficiary, to the fullest extent provided by law, shall have the right at its option to declare any indebtedness or obligation secured by this Deed of Trust, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

TRUSTOR:

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this _____ day of _____ 20_____,

by_____

_____

My commission will expire: _____

_____ NOTARY PUBLIC

ATTACHMENT E

MATCH CERTIFICATION

(Insert Match Certification Here)

ATTACHMENT F

State Contractor Employment Record Verification Form and
Employee Verification Worksheet
To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited City/Town contract meet all conditions contained herein. Failure to complete and submit this form and attached worksheet on or before the requested date to the above cited address and/or falsification of any information provided herein shall be considered a material breach of the contract.

Contract Number/State Agency/Division:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. The contractor has identified all contractor and subcontractor employees who perform work under the contract on the attached Employee Verification Worksheet and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Contractor (Employer) or Authorized Designee:

_____

Printed Name: _____

Title: _____

Date (month/day/year): _____

ATTACHMENT G
HOME CERTIFICATIONS
SPECIAL PROVISIONS

In accordance with the provisions of the HOME Investment Partnership Act and with 24 C.F.R. § 92.150 (submission requirements) of the HOME Investment Partnership Program Rule, the CONTRACTOR certifies that:

(A) Before committing any funds to an activity, the CONTRACTOR shall evaluate the activity in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(B) The CONTRACTOR shall only utilize HOME Program funds to pay for eligible activities and costs of those activities permitted in 24 C.F.R. §§ 92.205 through 92.209 and not specifically prohibited under §92.214 (prohibited activities).

(C) The CONTRACTOR understands that tenant-based rental assistance is an element of a Consolidated Plan. However, tenant-based rental assistance must be approved as part of an original application for project funding.

(D) The submission of the program description is authorized under State and local law (as applicable), and that the CONTRACTOR possesses the legal authority to carry out the HOME program in accordance with HOME regulations;

(E) The CONTRACTOR shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations and the requirements of 24 C.F.R. § 92.353 (displacement, relocation, and acquisition);

(F) The CONTRACTOR shall comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 C.F.R. Part 135.

(G) The CONTRACTOR shall use HOME Program funds pursuant to its Consolidated Plan(s) approved by HUD and all requirements of 24 C.F.R. Part 92 (HOME Investment Partnership Program);

(H) The CONTRACTOR shall provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CONTRACTOR'S workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about:

   i. The dangers of drug abuse on the workplace;

   ii. The CONTRACTOR's policy of maintaining a drug-free workplace;

   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee that performs any work under this Agreement be given a copy of the statement required by subparagraph (a) above;

d. Notifying the employee in the statement required by subparagraph (a) above that, as a condition of employment under this Agreement, the employee shall:
    i. Abide by the terms of the statement; and
    ii. Notify the CONTRACTOR in writing of his or her conviction for a violation of a criminal drug statue occurring in the workplace no later than five (5) calendar days after such conviction;
e. Notifying GILBERT in writing, within ten (10) calendar days after receiving notice under subparagraph d (ii) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every grant officer and other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph d(ii) above, with respect to any employee who is so convicted
    i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    ii. Requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program approved for such purposes by a federal, State, or local health, law enforcement or other appropriate agency.
g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs a, b, c, d, e, and f above.

(I) To the best of its knowledge and belief:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of GILBERT, to any person or influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant, loan, or cooperative agreement;

b. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions; and

c. The CONTRACTOR shall require that the language of paragraph (F) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and agreements under grants, loans, and cooperative agreements) and that all Subcontractors shall certify and disclose accordingly.

_____	_____
Signature (CONTRACTOR Representative)	Date
_____	_____
Printed/Typed Name	Title

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Ryan Blair, Project Manager, 503-6906

MEETING DATE: April 30, 2015

SUBJECT: Approval of Engineering Services Contract with Brown and Caldwell for the Well Site Upgrades Project CIP No. WA093, Contract No. 2015-7009-0685.

STRATEGIC INITIATIVE: Infrastructure

This Project Supports Gilbert's Strategic Initiative for Infrastructure as it expands and improves current system and meets the needs of Gilbert's citizens.

RECOMMENDED MOTION

- A motion to approve the Engineering (A/E) Services Contract with Brown and Caldwell for Well Site Upgrades, CIP Project No. WA093, Contract No. 2015-7009-0685, in an amount not to exceed $339,928.00; and
- Authorize an FY2015 Water Fund contingency transfer in the amount of $59,000 and authorize the Mayor to execute the required documents

BACKGROUND/DISCUSSION

This project is included in the FY 2015-19 Capital Improvements Plan (CIP) and provides design, bidding, and construction management services for improvements to the Town of Gilbert's, existing Well Site 5 potable water pump station/reservoir facility. This site was chosen because of age and ongoing maintenance costs. This well site is the oldest of well sites that have had no upgrades. The past several years there have been ongoing maintenance repairs that have cost time and money. The Site 5 facility is located northwest of the Cooper Road and Guadalupe Road intersection, approximately one-half mile west of Cooper Road on North Nevada Street. This project will be procured through the Design-Bid-Build Procurement method. This project is anticipated to include the following major components.

- Remove four-way (cross) pipe junction on reservoir fill pipe and connect fill pipe directly to reservoir, including “manifold” aeration header. (Similar to GILBERT Reservoir No. 3 Replacement Project – Plans dated September 2013)
- On reservoir fill pipe, move altitude valve above ground, install new valve and magnetic flow meter, and remove existing bypass line.
- On discharge pipe, bring flow meter vault above ground and eliminate hydropneumatic tank.
- Remove and replace existing buried valves on backfill and discharge water mains located on the north side of the facility, outside the perimeter wall and add an additional valve.
- Replace valves and fittings on existing booster pump suction and discharge pipes.
- Add surge anticipator valve to be located in the available space originally allocated for fourth pump and to discharge back to the reservoir. Include surge analysis to be developed based on the GILBERT’s existing water system model.
- Add panel-mounted “S::Can” water quality monitoring unit.
- Add tablet chlorinator with pre-fab enclosure and concrete foundation pad.
- Add mixer and aeration pumps, and associated piping to the existing steel reservoir (including aeration header). These improvements are to be similar to those detailed in GILBERT’s Reservoir No. 3 Replacement Project (plans dated September 2013).
- Add two pad-mounted ground level ventilation blowers for existing steel reservoir. (Similar to GILBERT Reservoir No. 7 project – Plans dated June 2014)
- Replacement of the existing standby generator with a new generator. (It is assumed that the existing above-ground fuel tank will be suitable for use with the new generator.)
- Replace the existing electrical switchboard with the following:
    - A NEMA 3R walk-in electrical enclosure (MCC) switchboard for air conditioned service entrance with lightning arrestor, Salt River Project (SRP) metering, and main circuit breaker.
    - A NEMA 3R Motor Control Center (MCC) with automatic transfer switch, surge protector, variable frequency drives for the three booster pumps and proposed reservoir ventilation blowers, and 15 kVA 120/240 volt panel board.
    - Add a programmable logic controller (PLC) section with radio/modem to the MCC.
- Replace the existing Supervisory Control and Data Acquisition (SCADA) unit with a PLC per above.
- Replace SCADA antenna, pole, transmission line and conduit.
- Replace three existing constant-speed booster pump motors with inverter duty motors.
- Eliminate existing booster pump pushbutton stations.
- Replace the discharge pressure transmitter for pump control.
- Replace underground conduits.

- Site topographic survey of the existing facility for reference to support the design and construction.
- Arc flash hazard and short circuit studies, overcurrent protection device settings, and arc flash hazard labeling will be specified to be provided by the Contractor.
- Existing onsite SRP electrical service will be reused.
- Instrumentation and control Loop Diagrams will be specified to be provided by the SCADA PLC supplier.
- Electrical schematic diagrams will be generic, but include control logic to function as required. Equipment manufacturers to submit detailed diagrams with terminal numbers, wire numbers, nameplate schedules, etc.
- Electrical and control circuit wiring, cables, and conduit to be shown on single line and control single line diagrams.
- Well 15 automatic level control logic resides in the Well 15 PLC and not in the Wonderware SCADA system. Modification of Well 15 automatic level control consists of replacing signals sent from the Wonderware SCADA system for Site 5 reservoir level and the Arsenic Treatment Facility run permissive with the signals from the added wireless I/O.
- Spare discrete input exists at the Well 15 PLC for the ATF run permissive.
- Spare analog input exists at the Well 15 PLC for the Site 5 Reservoir Level.
- GILBERT is responsible for coordination of any software changes during this project. Services required to address any changes by others to the Wonderware HMI application that impacts the project are not included.

The Contract was reviewed for form by the Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is identified in the FY 2015-19 CIP as Project No. WA093 and is funded through the Water Fund. This Approval requires authorization of an FY2015 Water Fund Contingency transfer in the amount of $59,000. The proposed contract amount of **$339,928** for Engineering Services exceeds the total CIP professional services line budget of **$281,830.**

Project Accounting Code: WA093-7520-8011

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

STAFF RECOMMENDATION

Staff has reviewed the fees associated with this work and finds they meet Gilbert's expectations for the services provided and recommends approval of the Engineers Service Contract.

Respectfully submitted,

Ryan Blair
Project Manager

Approved By	Approval Date
Eliana Hayes	4/16/2015 12:18 PM
Kenneth Morgan	4/16/2015 6:48 PM
Jack Vincent	4/20/2015 4:39 PM
Cris Parisot	4/20/2015 9:28 AM
Douglas Boyer	4/20/2015 5:19 PM

ARCHITECTURAL/ENGINEERING (A/E) SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____, 20___, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as the "GILBERT" and **Brown and Caldwell**, hereinafter referred to as the "A/E."

FOR THE PURPOSE of providing professional architectural or engineering services for the Town of Gilbert on the **Well Site Upgrades 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 $1,760,000. 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 **Mark Courtney, PE** as Project Manager and all communications shall be directed to him. Key A/E Personnel are set forth in Exhibit B. "Key Personnel" includes the A/E employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Project. Prior to changing such designation A/E shall first make a written request to and obtain the approval of GILBERT.

1.3.7 A/E's subcontracts are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of Subcontractors on Exhibit B, either by adding, deleting or changing subcontractors, shall require the written consent of GILBERT.

1.3.8 A/E shall obtain its own legal, insurance and financial advice regarding A/E's legal, insurance and financial obligations under this Agreement.

1.3.9 A/E shall provide required reports on the progress of the Services and the design budget to GILBERT or, if a separate Construction Manager is retained by GILBERT, then such

reports shall be provided to the Construction Manager. A/E shall coordinate its activities with GILBERT's representative and Construction Manager, if any.

1.4 Responsibility of GILBERT

1.4.1 GILBERT shall cooperate with the A/E by placing at his disposal all available information concerning the site of the Project, including all previous plans, drawings, specifications, and design and construction standards; assistance in obtaining necessary access to public and private lands; legal, accounting, and necessary permits and approval of governmental authorities or other individuals. GILBERT agrees to obtain its own legal, insurance and financial advice GILBERT may require for the Project.

1.4.2 GILBERT shall provide A/E with the budget for the Project in order that preparation of the Contract Documents will be consistent with such budget.

1.4.3 GILBERT shall provide A/E with any technical requirements of GILBERT, which shall be incorporated into the specifications and Contract Documents.

1.4.4 GILBERT designates **Ryan Blair** as its Project Representative. All communications from GILBERT to PM/CM, the architect or engineering firm and the construction contractor ("Construction Contractor") shall be directed to the Project Representative.

2. CONTRACT TIME AND CONTRACT SUM

2.1 Contract Time: The Contract Time and any applicable schedule of Services are set forth in Exhibit C.

2.2 Contract Sum: The Basis of Compensation to A/E for Services rendered under this agreement is set forth in Exhibit D and as follows:

2.2.1 A fee for all approved project labor not to exceed three hundred thirty-nine thousand, nine hundred twenty-eight dollars ($339,928) The labor hours and fee breakdown is indicated in Exhibit D. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.

2.2.2 A fee for all approved project expenses not to exceed zero dollars ($0).

2.2.3 The total cost to GILBERT for the Services described in this Agreement shall not exceed three hundred thirty-nine thousand, nine hundred twenty-eight dollars ($339,928) (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. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and A/E shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: A/E shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each occurrence on A/E's owned, hired, and non-owned vehicles assigned to or used in the performance of the A/E's Services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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

5. INDEMNIFICATION

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

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

6. TERMINATION OF THIS AGREEMENT

6.1 Termination: GILBERT may, by written notice to the A/E, terminate this Agreement in whole or in part with seven (7) days notice, either for GILBERT's convenience or because of the failure of the A/E to fulfill his contract obligations. Upon receipt of such notice, the A/E shall: (1) immediately discontinue all Services affected (unless the notice directs otherwise), and (2) deliver to GILBERT copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the A/E in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the A/E in the event of substantial failure by GILBERT to fulfill its obligations.

6.2 Payment to A/E Upon Termination: If the Agreement is terminated, GILBERT shall pay the A/E for the Services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

7. ASSURANCES

7.1 Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the A/E for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the A/E of the A/E's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.

7.2 Examination of Records: The A/E agrees that duly authorized representatives of GILBERT shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the A/E involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data: Original documents, such as tracings, plans, specifications, maps, basic survey notices and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement or any change order are and will remain the property of GILBERT unless otherwise agreed to by both parties. GILBERT may use such documents for other purposes without further compensation to the A/E; however, any reuse without written verification or adaptation by A/E for the specific purpose intended will be at GILBERT's sole risk and without liability or legal exposure to A/E. Any verification or adaptation of the documents by A/E for other purposes than contemplated herein will entitle A/E to further compensation as agreed upon between the parties.

7.4 Litigation: Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.5 Independent Contractor: A/E shall be an independent contractor and not an agent of GILBERT and shall direct and supervise the Services required by this Agreement and shall be responsible

for all means, methods, techniques, sequences and proceedings associated with the Services and shall be responsible for the acts and omissions of its employees, agents and other persons performing any of the Services under a contract with the A/E.

7.6 Exclusive Use of Services – Confidentiality: The services agreed to be provided by A/E within this Agreement are for the exclusive use of GILBERT and A/E shall not engage in conflict of interest nor appropriate GILBERT work product or information for the benefit of any third parties without GILBERT consent.

7.7 Sole Agreement: There are no understandings or agreements except as herein expressly stated.

7.8 Caption: Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.

7.9 Time is of the Essence: The timely completion of the Project is of critical importance to the economic circumstances of GILBERT.

7.10 Controlling Law: This Agreement is to be governed by the laws of the State of Arizona.

7.11 Immigration Law Compliance Warranty:

7.11.1 As required by A.R.S. § 41-4401, A/E hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A/E further warrants that after hiring an employee, A/E verifies the employment eligibility of the employee through the E-Verify program.

7.11.2 If A/E uses any subcontractors in performance of the Services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

7.11.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. A/E is subject to a penalty of $100 per day for the first violation, $500 per day for the second violation, and $1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. A/E shall not be deemed in material breach of this Contract if the A/E and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

7.11.4 Gilbert retains the legal right to inspect the papers of any A/E or subcontractor employee who works on the Contract to ensure that the A/E or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

7.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

7.12 Equal Treatment of Workers: A/E shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. A/E shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). A/E shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by A/E or its employees.

7.13 Notices: Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

GILBERT:	A/E:
Patrick Banger Town Manager Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Ronald L. Ablin, PE Vice President Brown and Caldwell 201 East Washington Street Phoenix, AZ 85004

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:_____

Title:_____

EXHIBIT A
ENGINEER SCOPE OF WORK
FOR DESIGN-BID-BUILD PROJECT

A. GENERAL

1. The Project is generally described as follows: This project consists of the design, bidding, and construction phase services for miscellaneous improvements to the Town of Gilbert, existing Site 5 potable water pump station/reservoir facility. Brown and Caldwell (ENGINEER) will provide professional services for the miscellaneous improvements as detailed in this scope of work. The Site 5 facility is located northwest of the Cooper Road and Guadalupe Road intersection, approximately one-half mile west of Cooper Road on North Nevada Street. The miscellaneous improvements will be procured through the Design-Bid-Build procurement method. The miscellaneous improvements project will include the following major components:

- Remove four-way (cross) pipe junction on reservoir fill pipe and connect fill pipe directly to reservoir, including "manifold" aeration header. (Similar to GILBERT Reservoir No. 3 Replacement Project – Plans dated September 2013)
- On reservoir fill pipe, move altitude valve above ground, install new Cla valve and magnetic flow meter, and remove existing bypass line.
- On discharge pipe, bring flow meter vault above ground and eliminate hydropneumatic tank.
- Remove and replace existing buried valves on backfill and discharge water mains located on the north side of the facility, outside the perimeter wall and add an additional valve.
- Replace valves and fittings on existing booster pump suction and discharge pipes.
- Add surge anticipator valve to be located in the available space originally allocated for fourth pump and to discharge back to the reservoir. Include surge analysis to be developed based on the GILBERT's existing water system model.
- Add panel-mounted "S::Can" water quality monitoring unit.
- Add tablet chlorinator with pre-fab enclosure and concrete foundation pad.
- Add mixer and aeration pumps, and associated piping to the existing steel reservoir (including aeration header). These improvements are to be similar to those detailed in GILBERT's Reservoir No. 3 Replacement Project (plans dated September 2013).
- Add two pad-mounted ground level ventilation blowers for existing steel reservoir. (Similar to GILBERT Reservoir No. 7 project – Plans dated June 2014)
- Replacement of the existing standby generator with a new generator. (It is assumed that the existing above-ground fuel tank will be suitable for use with the new generator.)
- Replace the existing electrical switchboard with the following:
    - A NEMA 3R walk-in electrical enclosure (MCC) switchboard for air conditioned service entrance with lightning arrestor, Salt River Project (SRP) metering, and main circuit breaker.

  - A NEMA 3R Motor Control Center (MCC) with automatic transfer switch, surge protector, variable frequency drives for the three booster pumps and proposed reservoir ventilation blowers, and 15 kVA 120/240 volt panel board.
  - Add a programmable logic controller (PLC) section with radio/modem to the MCC.
- Replace the existing Supervisory Control and Data Acquisition (SCADA) unit with a PLC per above.
- Replace SCADA antenna, pole, transmission line and conduit.
- Replace three existing constant-speed booster pump motors with inverter duty motors.
- Eliminate existing booster pump pushbutton stations.
- Replace the discharge pressure transmitter for pump control.
- Replace underground conduits.
- Site topographic survey of the existing facility for reference to support the design and construction.
- Arc flash hazard and short circuit studies, overcurrent protection device settings, and arc flash hazard labeling will be specified to be provided by the Contractor.
- Existing onsite SRP electrical service will be reused.
- Instrumentation and control Loop Diagrams will be specified to be provided by the SCADA PLC supplier.
- Electrical schematic diagrams will be generic, but include control logic to function as required. Equipment manufacturers to submit detailed diagrams with terminal numbers, wire numbers, nameplate schedules, etc.
- Electrical and control circuit wiring, cables, and conduit to be shown on single line and control single line diagrams.
- Well 15 automatic level control logic resides in the Well 15 PLC and not in the Wonderware SCADA system. Modification of Well 15 automatic level control consists of replacing signals sent from the Wonderware SCADA system for Site 5 reservoir level and the Arsenic Treatment Facility run permissive with the signals from the added wireless I/O.
- Spare discrete input exists at the Well 15 PLC for the ATF run permissive.
- Spare analog input exists at the Well 15 PLC for the Site 5 Reservoir Level.
- GILBERT is responsible for coordination of any software changes during this project. Services required to address any changes by others to the Wonderware HMI application that impacts the project are not included.

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. The design will include the miscellaneous improvement items identified in Paragraph A.1 of this scope, and the overall goal of the project is to maximize the improvements that are constructed within the project construction budget. Starting with the conceptual estimate (30%), ENGINEER shall coordinate

with GILBERT to compare the estimated construction costs with the construction budget, develop a preliminary prioritization of the proposed improvements, and discuss cost saving opportunities that may be incorporated in the design. Bid alternates may be provided in the final contract documents to allow GILBERT flexibility in construction bidding and award. ENGINEER shall complete the Design and Construction Documents, such that the Engineering Estimate for construction of the Project designed by ENGINEER does 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.

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 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), and the Americans with Disabilities Act, as determined by permitting agencies.

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. ENGINEER shall attend one (1) public meeting/open house for this project. The public meeting will be held approximately two (2) weeks prior to commencement of construction activities.

9. 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 Meet with GILBERT and its representatives to prepare a detailed design schedule. The ENGINEER shall produce the final design schedule in a format acceptable to GILBERT .

1.1.2 This design schedule shall identify specific tasks including, but not limited to: interviews, data collection, required GILBERT filing standards, analysis, report preparation, planning, engineering programming, concepts and schematic design

preparation, 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.

1.1.3 Review the developed work plan with GILBERT and its representatives to familiarize them with the proposed tasks and design schedule and develop necessary modifications.

1.1.4 Participate in a general Project kick-off meeting to include the ENGINEER'S appropriate Sub-consultants, GILBERT staff, and/or other stakeholders.

1.1.4.1 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.

1.1.4.2 Identify and review pertinent information and/or documentation necessary from GILBERT for the completion of the Project.

1.1.4.3 Review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

1.1.4.4 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.

1.1.4.5 Prepare and distribute minutes of the project kick-off meeting.

2. DEVELOPMENT OF ENGINEERING PROGRAM

Identify design issues relating to functional need, directives and constraints imposed by regulatory codes, complete design checklist as provided by GILBERT. The design of the Project shall take into consideration impacts of the Project on neighboring residential 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 Check with GILBERT Town ENGINEER and Planning Department and identify plans for property development adjacent to the project and identify all planning and zoning stipulations for ROW and Easement dedications along with stipulations for developer construction and/or construction cost participation.

2.1.7 Check with the Town ENGINEER to determine if any property or Right of Way should be annexed.

2.1.8 Become familiar with GILBERT property acquisition requirements.

2.1.9 Review GILBERT "As Built" plans that impact the project.

2.1.10 Obtain a list of Special Issues and concerns from the GILBERT Project Manager for the project.

2.1.11 Determine if an Intergovernmental Agreement will be needed with the County, SRP or neighboring community for condemnation, cost sharing, or coordination.

2.2 Manage the design schedule and budget to meet GILBERT requirements.

2.3 (NOT APPLICABLE)

3. (NOT APPLICABLE)

4. DELIVERABLES

ENGINEER shall present and review with GILBERT the summary and detail of the Pre-Design Phase Services work.

5. (NOT APPLICABLE)

C. DESIGN PHASE

1. GENERAL

1.1 The proposed improvements at each of these locations 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 (NOT APPLICABLE)

1.1.3 During the Design Phase it is anticipated that progress meetings will be convened bi-weekly between the ENGINEER, GILBERT 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 48 hours 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.

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, and risers.

2.3.2 ENGINEER shall obtain necessary as-built information and perform potholing (Allowance) to adequately identify underground utilities. It is assumed that potholing will not be required to identify underground utilities for the design. However, we included an allowance in case the need arises.

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.

1. MATERIALS INVESTIGATION AND DESIGN (NOT APPLICABLE)

3.2. Pavement Design (NOT APPLICABLE)

4. PUBLIC INFORMATION MEETINGS

The Town of Gilbert will be responsible for organizing and scheduling a public information meeting. The ENGINEER shall allow for attendance and preparation of materials for the open-house public information meeting, occurring approximately 2 weeks prior to start of construction. The ENGINEER shall also be prepared to discuss impacts to traffic and access during construction. GILBERT will be responsible for any fees or costs associated with securing a venue for the open-house meetings as well as costs for advertisements or "fliers" to inform the public of these meetings.

5. RAILROAD COORDINATION (NOT APPLICALBE)

6. UTILITY COORDINATION

6.1 The ENGINEER shall obtain as-built information, shall indicate existing utilities and planned relocations on construction plans, and shall assist the PM/CM, if applicable, 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 agency and GILBERT standards.

6.2 The ENGINEER shall participate in a utility coordination meeting with SRP at an agreed upon location. The ENGINEER shall organize and lead the meeting and shall prepare and distribute meeting minutes to all attendees.

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.

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 30% plans.

6.4 Utilities Conflicts and Adjustments

6.4.1 The ENGINEER shall determine any utility conflicts that require the utility to be relocated or adjusted, 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 (Not Applicable)

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 & Clearance Letter

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 (NOT APPLICABLE)

7. RIGHT-OF-WAY (NOT APPLICABLE)

8. ROADWAY DESIGN (NOT APPLICABLE)

9. SITE 5 FACILITY MISCELLANEOUS IMPROVEMENTS DESIGN

9.1 The ENGINEER shall prepare 30% Initial Design, 60% Preliminary Design, 95% Final Design, and 100% Construction Documents using AutoCAD format.

9.2 30% Initial Design Submittal. The following material shall be developed and submitted for review:

9.2.1 Initial plans and sections for the Site 5 facility miscellaneous improvements, as described in this scope of work.

9.2.2 Initial location of valves, vaults, drains, air release assemblies and blow-offs

9.2.3 Initial location of connections to other lines or facilities

9.2.4 Initial location of fire hydrants(NOT APPLICABLE)

9.2.5 Location of existing utilities and identification of initial utility conflicts

9.2.6 Initial location of proposed utilities by others(NOT APPLICABLE)

9.2.7 Final ROW and easement requirements(NOT APPLICABLE)

9.2.8 Final Geotechnical Report(NOT APPLICABLE)

9.2.9 Final survey information

9.2.10 Initial summary of quantities

9.2.11 Specification section listing

9.2.12 30% ENGINEER'S construction cost estimate

9.3 60% Preliminary Design Submittal. The following material shall be developed and submitted for review:

9.3.1 Preliminary design sheet with index and general notes, summary sheets and special details

9.3.2 Preliminary plans, drawings, and details for the Site 5 facility miscellaneous improvements, as described in this scope of work.

9.3.3 Final location of valves, vaults, drains, air release assemblies and blow-offs

9.3.4 Final location of connections to other lines or facilities

9.3.5 Final location of fire hydrants(NOT APPLICABLE)

9.3.6 Identification of final utility conflicts and preliminary plans of utility installations and/or relocations to be included in project construction

9.3.7 Preliminary special details

9.3.8 Preliminary landscape and irrigation restoration plans, summaries, and details (if required) (NOT APPLICABLE)

9.3.9 Preliminary Summary of quantities

9.3.10 Specification section paragraphs

9.3.11 Preliminary Bid Schedule

9.3.12 60% ENGINEER'S construction cost estimate

9.4 95% Final Design Submittal. The following final material shall be completed, checked and submitted for review:

9.4.1 Design sheet(s) with index and general notes

9.4.2 Summary sheets

9.4.3 Special details

9.4.4 Final plans, drawings, and details for the Site 5 facility miscellaneous improvements, as described in this scope of work.

9.4.5 Utility installation/relocation plans and details to be included in project construction

9.4.6 Landscape and irrigation restoration plans and details (if required) (NOT APPLICABLE)

9.4.7 Final summary of quantities

9.4.8 Final design calculations

9.4.9 Final specifications

9.4.10 Special Conditions

9.4.11 Final Bid Schedule

9.5 100% Construction Documents Submittal. The following material shall be submitted to GILBERT for completion of the project:

9.5.1 A complete reproducible set of sealed and signed contract plans necessary to bid and construct the improvements identified in this contract.

9.5.2 A complete reproducible set of sealed and signed specifications and Special provisions necessary to bid and construct the improvements identified in this contract.

9.5.3 A complete reproducible bid schedule necessary to bid and construct the improvements identified in this contract.

9.5.4 Electronic versions of all plan sheets in fully AutoCAD compatible format on compact disk (CD) in CD-R format.

9.5.5 Final and complete quantity summaries.

9.5.6 Final survey computations and original field books.

9.5.7 100% ENGINEER'S construction cost estimate.

9.6 With the support of the PM/CM, if applicable, ENGINEER shall prepare and submit the plans and applications for plan approval, permit to construct, and approval of construction from the Maricopa County Environmental Services Department (MCESD). GILBERT will be responsible for permit fees and expedited review fees required by the County.

10. SANITARY SEWER DESIGN (NOT APPLICABLE)

11. RECLAIMED WATER MAIN/SEWER FORCE MAIN (NOT APPLICABLE)

12. DRAINAGE DESIGN

13. IRRIGATION DESIGN (NOT APPLICABLE)

14. STRUCTURES DESIGN (NOT APPLICABLE)

15. LANDSCAPE AND LANDSCAPE IRRIGATION DESIGN (NOT APPLICABLE)

16. SIGNING DESIGN (NOT APPLICABLE)

17. PAVEMENT MARKING DESIGN (NOT APPLICABLE)

18. STREET LIGHTING AND TRAFFIC SIGNALIZATION DESIGN (NOT APPLICABLE)

19. COST ESTIMATES

19.1 The ENGINEER will prepare detailed quantity summaries and construction cost estimates at the 30%, 60%, and 100% design submittals.

19.2 The ENGINEER will support GILBERT's value evaluation processes. The ENGINEER shall incorporate GILBERT'S comments and suggestions unless the ENGINEER believes the comments do not conform to good engineering practice.

19.3 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.

20. SPECIFICATIONS

20.1 The ENGINEER shall develop technical specifications for the project in a format that follows ENGINEER guide specifications, using CSI 1995 format (Divisions 1 through 17).. Specifications shall be developed as follows:

20.1.1 Schematic Design (30%) – List the technical Specification sections to be included in the Contract Documents.

20.1.2 Design Development (60%) – Include a paragraph summary of all technical Specification sections.

20.1.3 Construction Documents (95-100%) – Provide the complete technical Specification package suitable for constructing the project.

21. SPECIAL PROVISIONS

21.1 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 100% Submittals.

21.2 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 open, utility trench close ups, and critical materials requiring advanced purchase.

22. BID SCHEDULE

The ENGINEER shall assist the PM/CM in the development of, if applicable, or shall prepare the Bid Schedule for all items determined to be pay items for the project. Bid Schedules will be prepared in GILBERT'S standard format and will be provided at the 60%, 95% and 100% Submittals.

23. REVIEWS AND SUBMITTALS

23.1 Review and coordination of the ENGINEER'S work by GILBERT will continue through the project development process.

23.2 Submittals for review shall be made when the studies and/or plans have been developed to the following levels of completion:

23.2.1 (Not Applicable)

23.2.2 Pre design/30% design

23.2.3 60% design

23.2.4 95% design

23.3 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.

23.4 GILBERT'S review of submittals will include technical content, incorporation of previous comments and completion of design and details, as well as:

23.4.1 Conformance with GILBERT requirements.

23.4.2 Completeness of the contract documents.

23.4.3 Compatibility of plans, specifications, and Special provisions.

23.4.4 Coordination between disciplines, phases and outside parties.

23.4.5 Clarity of the contract documents.

23.4.6 Consistency of presentation.

23.4.7 Return any documents and other materials provided for use on this project.

24. DELIVERABLES

24.1 All reproduction is to be provided by 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:

24.1.1 Thirty percent (30%) submittal – thirty percent (30%) working drawings, and required reports.

24.1.2 Sixty percent (60%) submittal – sixty percent (60%) working drawings, specifications, Special provisions, and required reports.

24.1.3 Ninety Five percent (95%) submittal – ninety five percent (95%) working drawings, specifications, engineering calculations, Special provisions and bid schedule.

24.1.4 Final (100%) Submittal – final drawings, specifications, engineering calculations, Special provisions and bid schedule.

24.2 At each submittal ENGINEER shall provide the following:

24.2.1 A statement indicating any authorized changes made to the program from the last submittal.

24.2.2 A statement certifying that the deliverables were reviewed using the ENGINEER'S QA/QC program prior to submittal.

24.2.3 Project Design File including all correspondence, meeting, back check comments, checklists, calculations, etc. to date.

24.2.4 Statement of requirements for testing and inspection of service for compliance with construction documents and applicable codes.

D. BIDDING PHASE [WITHOUT PM/CM]

1. PROJECT MANAGEMENT

1.1 ENGINEER shall assist GILBERT in preparing notices and advertisements to solicit bids for the Project.

1.2 (NOT APPLICABLE)

1.3 In conjunction with GILBERT, ENGINEER shall conduct a Pre-bid Conference. These conferences shall be forums for GILBERT and ENGINEER to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, GILBERT'S administrative requirements, technical and other information.

1.4 ENGINEER shall respond to inquiries related to the Contract Documents. ENGINEER shall tabulate and maintain a summary of the inquiries received (verbal and written) and the responses made.

1.5 ENGINEER shall review Addenda for clarity, consistency and coordination among the bidders.

1.6 ENGINEER shall assist GILBERT in conducting the bid opening and shall evaluate the bids for bidder responsibility (including previous experience, capabilities and reputation for similar work), bidder responsiveness (including conformance to instructions, specifications and financial data required) and price. ENGINEER shall also advise GILBERT of the acceptability of subcontractors and material suppliers proposed by bidders. ENGINEER shall make recommendations to GILBERT concerning the acceptance or rejection of bids.

1.7 ENGINEER shall assist GILBERT in evaluating any bid protest filed.

1.8 In consultation with GILBERT, ENGINEER shall conduct a Pre-Construction Conference during which ENGINEER shall review the Project organization, communication protocols, security, responsibilities and other general project procedures and other matters set forth in the Construction Contract documents.

1.9 ENGINEER shall assist GILBERT in verifying that the Contractor has secured the building permits, bonds, insurance, labor affidavits and waivers as required by the Contract Documents. Such action by ENGINEER shall not relieve the Contractor or GILBERT of their responsibilities to comply with the provisions of the Contract Documents.

2. TIME MANAGEMENT

ENGINEER shall monitor compliance with the Master Schedule and recommend revisions to GILBERT as appropriate.

3. COST MANAGEMENT

3.1 (NOT APPLICABLE)

3.2 Upon receipt of the bids, ENGINEER shall evaluate the bids, including alternate prices and unit prices, and shall make a written recommendation to GILBERT in regard to the award of each construction contract.

4. MANAGEMENT INFORMATION SYSTEM (MIS) (NOT APPLICABLE)

E. CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

1.1 ENGINEER shall provide and maintain a management team on the Project site to provide contract administration and to be GILBERT'S representative and to establish and implement coordination and communication procedures among ENGINEER, GILBERT and Contractors. Construction observation for the Project shall be performed by personnel of ENGINEER with sufficient expertise to determine whether the construction is proceeding in accordance with the Construction Contract Documents.

1.2 ENGINEER shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, contract schedule adjustments, change orders, substitutes and payment requests and the maintenance of Logs for tracking all relevant information related to the above. ENGINEER shall maintain daily job reports. As GILBERT'S representative at the construction site, if provided for in the Construction Phase Procedures approved by GILBERT, ENGINEER shall be the party to whom Requests for Information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment applications shall be submitted.

1.3 ENGINEER shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding GILBERT against defects and deficiency in the work of the Contractor. While ENGINEER shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the construction contractor in the performance of its contract, nor be responsible for the failure of the construction contractor to carry out work in accordance with the Contract Documents, ENGINEER shall nevertheless advise GILBERT whether the construction means, methods, techniques, sequences or procedures will delay the work or cause a defect in the work. ENGINEER may reject work and transmit to GILBERT and Contractor a notice of nonconforming work when it is the opinion of ENGINEER or GILBERT that the Work does not conform to the requirements of the Contract Documents. ENGINEER is not authorized as a part of this service to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. No action taken by ENGINEER shall relieve any or all of the Contractors from their obligation to perform their work in strict conformity with the Contract Documents and in strict conformity with all other applicable laws, rules and regulations. Such limits of authority shall be made clear and enforced by GILBERT in the Contractor's Contract Documents. Communication between ENGINEER and Contractor with regard to Quality Review shall not in any way be construed as binding ENGINEER or GILBERT as releasing the Contractor from the fulfillment of any of the terms of his Contract Documents. ENGINEER is not responsible for, nor does ENGINEER control, the means and methods of construction for the Project. It is understood that ENGINEER'S action in providing Quality Review as stated herein is a service to GILBERT and by performing as provided herein, ENGINEER is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the construction work for the Project.

1.4 ENGINEER shall conduct weekly coordination meetings at the Project site with each Contractor and GILBERT. ENGINEER shall record, transcribe and distribute minutes to all attendees and GILBERT.

1.5 ENGINEER shall coordinate technical inspection and testing. ENGINEER shall be provided a copy of all inspection and testing reports on the day of the inspection or test or within a reasonable time period. ENGINEER is not responsible for providing, nor does ENGINEER control, the actual performance of technical inspection and testing. ENGINEER is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for any part of such inspection and testing.

1.6 ENGINEER shall review the contents of requests for changes to the contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests and make recommendations to GILBERT with respect to acceptance of the requests. ENGINEER will implement GILBERT'S decisions regarding all requests for changes. All changes to the Agreement between GILBERT and Contractor shall be only by change orders executed by GILBERT.

1.7 As required by the Contract Documents, ENGINEER shall receive from the Contractor As-Built record drawings, operation and maintenance manuals; warranties and guarantees for materials and equipment installed on the Project, and review such documents for completeness.

ENGINEER will forward operation and maintenance manuals, warranties and guarantees to GILBERT. ENGINEER shall draft contractor's as-built record drawing, provide as-built certification stamped and sealed by a professions ENGINEER and provide a reproducible sent to GILBERT and provide a complete CD of the record as built drawings.

1.8 In consultation with GILBERT'S inspectors (when applicable), ENGINEER shall review the Contractor's request for substantial completion and final completion and recommend to GILBERT when the Project and the Contractor's Work has achieved substantial and final completion. ENGINEER shall, prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work which does not conform to the Contract Documents based on input from GILBERT'S inspectors (when applicable). This list shall be attached to the Certificate of Substantial Completion. ENGINEER shall issue the Certificate of Substantial Completion and Certification of Final Completion to the Contractor.

In consultation with GILBERT'S inspector (when applicable), ENGINEER shall provide to GILBERT a written recommendation regarding final payment to the Contractor.

2. TIME MANAGEMENT

2.1 (NOT APPLICABLE)

2.2 ENGINEER shall review each Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Contract Documents. If changes in the Master Schedule maintained by ENGINEER are appropriate, ENGINEER shall make such modifications as approved by GILBERT.

2.3 ENGINEER shall, on a monthly basis, review the progress of construction of each Contractor, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to GILBERT. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. ENGINEER shall advise and make recommendations to GILBERT concerning the alternative courses of action that GILBERT may take in its efforts to achieve contract compliance by the Contractor.

2.4 (NOT APPLICABLE)

2.5 ENGINEER shall review the recovery schedule submitted by the Contractor for compliance with the Contract Documents.

3. COST MANAGEMENT

3.1 The Contractor's Construction Schedule shall have the total contract price allocated among the Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities all equal the total contract price. ENGINEER

shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule Reports and the Contractor's compliance in accordance with the Contract Documents.

3.2 ENGINEER shall establish and implement a change order control system. All proposed change orders shall first be described in detail by ENGINEER in a request for a proposal to the Contractor, and shall be accompanies by technical drawings and specifications prepared by the ENGINEER. In response to the request for a proposal, the Contractor shall submit to ENGINEER for evaluation detailed information concerning the cost and time adjustments, if any, as may be necessary to perform the proposed change work order. ENGINEER shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor's basis of the cost and time impacts of performing the work. ENGINEER shall make recommendations to GILBERT as to engineering soundness of the proposed change and whether ENGINEER believes the change in the work is in the best interest of the Project, prior to GILBERT'S execution of change orders. ENGINEER shall verify that change order work and adjustments of time, if any, required by approved change orders have been incorporated in to the Contractor's Construction Schedule.

3.3 In instances when a lump sum or unit price is not determined prior to performing work described in a request for a proposal, ENGINEER shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractor's incurred by the Contractor in performing the work.

3.4 ENGINEER shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's work. ENGINEER shall make appropriate adjustments to each payment application and shall provide and forward to GILBERT a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by ENGINEER and delivered to GILBERT. The issuance of a Certificate of Payment by ENGINEER shall constitute a representation by ENGINEER to GILBERT, based on ENGINEER'S observations and inspections at the site and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; that, to the best of ENGINEER'S knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, and to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the application for payment); and that the Contractor is entitled to payment in the amount certified. Issuance of a Certificate of Payment shall not be a representation that ENGINEER has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the contract sum.

4. MANAGEMENT INFORMATION SYSTEM (MIS)

4.1 ENGINEER shall prepare and distribute Schedule Update Reports during the Construction Phase on a monthly basis. The Reports shall compare the actual construction dates to scheduled construction dates of each separate contract, milestone dates (if any), and to the Master Schedule for the Project.

4.2 ENGINEER shall prepare and distribute Project Cost Reports during the Construction Phase on a monthly basis. The Reports shall specify actual Project and construction costs compared to GILBERT-approved Project and Construction Budget.

4.3 ENGINEER shall make written recommendations to GILBERT on the impact of construction changes that may result in revision to the Project and Construction Budget.

4.4 ENGINEER shall prepare and distribute Cash Flow Reports during the Construction Phase on a monthly basis. The Reports shall specify actual cash flow as compared to projected cash flow.

4.5 ENGINEER shall prepare and distribute the Progress Payment Reports to GILBERT. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this Report shall be a Certificate of Payment that shall be signed by ENGINEER, and delivered to GILBERT for use by GILBERT in making payments to the Contractor.

4.6 ENGINEER shall prepare and distribute Change Order Reports during the Construction Phase on a monthly basis. The Report shall list all GILBERT-approved change orders by number, a brief description of the change order Work, the cost established in the change order time impacts, if any, and percent of completion of the change order work.

4.7 ENGINEER shall verify that safety programs are submitted to GILBERT by each contractor, as required by their Contract Documents. ENGINEER shall not be responsible for or have any liability in whole or in part for Contractor implementation of or compliance with Contractor safety programs and safety laws, regulations, etc., nor shall ENGINEER be responsible for the adequacy, or completeness, of Contractor Safety Programs or the Contractor's compliance and performance thereof. ENGINEER has no responsibility for review of safety programs.

5. SCADA PROGRAMMING

Objectives: Provide documented PLC program for installation in RTU panel. Add screens to HMI at Water Treatment Plant (WTP) SCADA for monitoring and alarming of Site 5. Assist Contractor with startup as it relates to RTU programming.

Activities:

- Program PLC to monitor data points listed in contract drawing sheets.
- Document PLC logic to assist with maintenance and troubleshooting functions of Operations staff.
- Program OIT screens to display status and alarms from PLC.
- Modify existing HMI screens to display new data points from RTU PLC program.

- Modify WTP SCADA polling and I/O driver configuration for communications with RTU PLC.
- Setup IP Address of the RTU radio so that it can communicate with the SCADA Master radio.
- For the purpose of this scope and fee, it is assumed that the programming start up assistance will include five site visits for a total of 40 hours (including travel).
- Provide a 4-hour training session with Operations Staff on the RTU and SCADA screens.
- Add a discrete Arsenic Treatment Facility permissive to Well 15 PLC program coming from a wireless I/O point to replace input from the SCADA.
- Add the Site 5 Reservoir Level analog input to Well 15 PLC program coming from a wireless I/O point to replace input from the SCADA.
- Modify Well 15 Automatic Level Control PLC logic to use new reservoir level input and run permissive.
- Assist in setup of wireless I/O points (Arsenic Treatment Facility Well Run Permissive and Site 5 Reservoir Level) to provide signals to Well 15 PLC.
- Provide Backfill Valve control with a flow set point that closes on a high reservoir level set point or a low system pressure set point.
- Provide Site 5 Pump Control logic as follows:
- Bumpless transfer of pumps between PLC auto and PLC manual control.
- Pumps will rotate Lead, Lag1, Lag2 with lowest hours to start first.
- Booster Pump Pressure PID tuning (Proportional, Integral, Derivative) to be accessible for tuning adjustments from SCADA. Include a pressure deadband adjustable within 0.5 PSI.
- Pump speed to be displayed in Percent at SCADA and Hertz at local OIT.
- Pump speed control will use a PID loop based on system pressure with one pressure setpoint for all pumps. All running pumps will run at the same PID output speed.
- Each pump position, Lead, Lag1, and Lag2 will have their own On Delay timer and Off Delay timer that is adjustable from SCADA.
- For SCADA screens, a flashing "L" when a pump is in local control, a flashing "M' when the pump is in remote manual control, and an "A" when the pump is in remote auto control. Red is on or running and Green is off or stopped.

Deliverables: Documented PLC and OIT programs for RTU panel furnished in electronic format. HMI screens and database modified in SCADA HMI application. Backup copy, in electronic format, of HMI application after modifications.

F. POST-CONSTRUCTION PHASE

1. SUBSTANTIAL COMPLETION INSPECTION

The ENGINEER shall participate in a substantial completion inspection, prepare a punch-list of items noted during the walk-through, and transmit these to GILBERT.

2. FINAL COMPLETION INSPECTION

2.1 The ENGINEER shall participate in a final completion inspection, ensure that the substantial completions punch-list items have been completed, and transmit his final comments to GILBERT.

2.2 ENGINEER shall compile manufacturers' operations and maintenance manuals, warranties and guarantees as received from the Contractor, and submit such documents to GILBERT.

2.3 ENGINEER shall assist GILBERT in obtaining an Occupancy Permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

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 mylars using information provided on the **certified** Contractor red-line drawings. Upon completion of the as-built drawings, ENGINEER shall certify the as-built drawings. Certification means 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

The ENGINEER shall participate in the warranty inspection, generate comments resulting from that inspection, and transmit them to GILBERT.

EXHIBIT B
ENGINEER'S KEY PERSONNEL AND SUBCONTRACTORS

ENGINEER'S KEY PERSONNEL:

Mark Courtney	Project Manager
Tracy Moraca	Senior QAQC
Nate Luong	Project Engineer
Hugh Pace	Senior Electrical Engineer
Ken Chandler	Senior Controls/Instrumentation Engineer
Teresa Muller	Senior Mechanical/HVAC Engineer
Chris Resop	Senior CAD Designer/Technician
Brandon Billing	Surge Analysis Engineer
Dawn Anderson	Structural Engineer
Candice Barnett	Project Assistant
Jay Laba	Estimator
Paul Conrow	Senior Programmer
Craig Tweed	Senior CM Oversight
Dan Reuss	Construction Manager
Choya Worsham	Senior Inspector

SUBCONTRACTORS:

Arizona Surveying and Mapping	Survey

EXHIBIT C
SCHEDULE OF WORK

Promptly after the execution of this Agreement, the ENGINEER shall prepare and submit for approval to GILBERT a Schedule of Work showing the order in which ENGINEER proposes to carry our ENGINEER'S work. The schedule shall apply to the completion of all services listed hereunder within the times established by this Agreement. The Schedule shall be in the form of a progress chart clearly delineating all important increments and review dates. ENGINEER shall update the Schedule of Work on a monthly basis and deliver to GILBERT along with the monthly billing.

1. ENGINEER shall complete all work and services required under the Pre-Design Services within ten working days after written authorization from GILBERT to proceed.

2. ENGINEER shall complete all work and services required under the Design Services within seventy working days after receipt of a written authorization from GILBERT to proceed.

3. ENGINEER shall complete all work and services required under Bidding Phase within forty working days after receipt of a written authorization from GILBERT to proceed.

4. ENGINEER shall complete all work and services required under Construction Phase within one hundred thirty working days after receipt of a written authorization from GILBERT to proceed. Excluded from this duration is the time associated with the construction document back-check stage.

5. ENGINEER shall proceed with all work and services required under the Post-Construction Phase, upon the commencement of construction, and shall continue through completion and acceptance of the Project by GILBERT.

The durations stated above exclude the review periods required by GILBERT and all other regulatory agencies.

All times to complete tasks set forth in this Exhibit are of the essence. If delays in schedules are imposed by GILBERT'S inability to comply with requested meeting schedules, ENGINEER shall maintain the right to request an adjustment in schedule if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by GILBERT.

EXHIBIT D
PAYMENT SCHEDULE

A. COMPENSATION

1. The consideration of payment to ENGINEER, as provided herein shall be in full compensation for all of ENGINEER'S work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.

2. Such amount shall be based upon the Schedule attached hereto

B. METHOD OF PAYMENT

1. Invoices shall be on a form and in the format provided by GILBERT and are to be submitted to GILBERT via GILBERT'S authorized representative.

2. Upon receipt and approval of ENGINEER'S invoices, GILBERT agrees to make payments within thirty days of receipt of the invoice as follows:

Phase	Cumulative Amount
Design and Construction	$339,928

C. REIMBURSABLE COSTS

ENGINEER will be reimbursed for expenses up to a maximum amount of $0.

Gilbert, Town of (AZ) -- Gilbert Misc Well Site Improvements (Site 5)

Phase	Phase Description	Project Manager	Project Assistant	Senior QA/QC	Project Engineer	Sr. Engineer (Electrical)	Sr. Engineer (Controls)	Sr. Engineer (Mech/HVAC)	Sr. CAD Designer/ Technician	Engineer (Surge Analysis)	Engineer (Structural)	Estimator	Senior Programmer	Sr. CM Oversight	Construction Manager	Senior Inspector	Total Labor Hours	Total Labor Effort	Potholing/Utility Coordination Allowance	Survey Sub Cost	Total Effort
		$170.00	$70.00	$170.00	$140.00	$170.00	$170.00	$170.00	$108.00	$146.00	$146.00	$142.00	$166.00	$170.00	$130.00	$98.00					
100	**Design Phase**	64	78	64	196	122	92	56	448	80	64	88	0	0	0	0	**1,352**	**$182,464**	$7,000	$3,100	**$192,564**
101	Pre & Conceptual Design (30%)	24	26	24	100	40	30	24	160	80	24	40	0	0	0	0	**572**	$78,104	$7,000	$3,100	**$88,204**
102	Preliminary Design (60%)	16	20	20	40	40	30	16	144	0	20	24	0	0	0	0	**370**	$49,620	0	0	**$49,620**
103	Construction Documents	16	28	20	40	40	30	16	144	0	20	24	0	0	0	0	**378**	$50,180	0	0	**$50,180**
104	Bidding Assistance	8	4	0	16	2	2	0	0	0	0	0	0	0	0	0	**32**	$4,560	0	0	**$4,560**
200	**Construction Phase Services**	0	40	0	0	40	40	16	0	0	0	0	210	24	240	416	**1,026**	**$130,028**	0	0	**$130,028**
201	Construction Management	0	40	0	0	40	40	16	0	0	0	0	0	24	240	416	**816**	$95,168	0	0	**$95,168**
202	Programming	0	0	0	0	0	0	0	0	0	0	0	210	0	0	0	**210**	$34,860	0	0	**$34,860**
300	**Post-Construction Phase Services**	4	0	4	8	8	8	4	48	0	0	0	0	0	0	64	**148**	**$17,336**	0	0	**$17,336**
301	Substantial Completion Inspection	0	0	0	0	0	0	0	0	0	0	0	0	0	0	16	**16**	$1,568	0	0	**$1,568**
302	Final Completion Inspection	0	0	0	0	0	0	0	0	0	0	0	0	0	0	16	**16**	$1,568	0	0	**$1,568**
303	Record Drawings	4	0	4	8	8	8	4	48	0	0	0	0	0	0	16	**100**	$12,632	0	0	**$12,632**
304	Warranty Inspection	0	0	0	0	0	0	0	0	0	0	0	0	0	0	16	**16**	$1,568	0	0	**$1,568**
	Total Not-to-Exceed	**68**	**118**	**68**	**204**	**170**	**140**	**76**	**496**	**80**	**64**	**88**	**210**	**24**	**240**	**480**	**2,526**	**$329,828**	**$7,000**	**$3,100**	**$339,928**

Gilbert, Town of (AZ) -- Gilbert Misc Well Site Improvements (Site 5)						
Phase	Phase Description	Total Labor Hours	Total Labor Effort	Potholing/ Utility Coord Allowance	Sub Cost (Survey)	Total Effort
100	**Design Phase**	**1,352**	**$182,464**	$7,000	$3,100	**$192,564**
101	Pre & Conceptual Design (30%)	**572**	$78,104	$7,000	$3,100	**$88,204**
102	Preliminary Design (60%)	**370**	$49,620	0	0	**$49,620**
103	Construction Documents	**378**	$50,180	0	0	**$50,180**
104	Bidding Assistance	**32**	$4,560	0	0	**$4,560**
200	**Construction Phase Services**	**1,026**	**$130,028**	0	0	**$130,028**
201	Construction Management	**816**	$95,168	0	0	**$95,168**
202	Programming	**210**	$34,860	0	0	**$34,860**
300	**Post-Construction Phase Services**	**148**	**$17,336**	0	0	**$17,336**
301	Substantial Completion Inspection	**16**	$1,568	0	0	**$1,568**
302	Final Completion Inspection	**16**	$1,568	0	0	**$1,568**
303	Record Drawings	**100**	$12,632	0	0	**$12,632**
304	Warranty Inspection	**16**	$1,568	0	0	**$1,568**
	Total Not-to-Exceed	**2,526**	**$329,828**	**$7,000**	**$3,100**	**$339,928**

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

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACT DATED:
A/E: (Name)
PM/CM: (Name)

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

_____

_____

_____

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

CONTRACT TIME will be increased by:

SUBSTANTIAL COMPLETION as of this Change Order:

Approved/Accepted by:

A/E _____
(Name) (Date)

PM/CM _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Ryan Blair, Project Manager, 503-6906

MEETING DATE: April 30, 2015

SUBJECT: Approval of the Construction Services Contract with Talis Construction Corporation for the Western Canal Trail Project

STRATEGIC INITIATIVE: Infrastructure

This project expands and improves current trail system and meets the needs of Gilbert's citizens

RECOMMENDED MOTION

Approve a Construction Services contract with Talis Construction Corporation, for the Western Canal Trail Project, CIP No. PR011, contract No. 2015-7012-0649 in an amount not to exceed $939,952.00 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Plan (CIP) which provides for the construction of a trail along the Western Canal from Cooper Road to ½ mile west of McQueen Road to the Railroad Tracks. The scope of work consists of construction/reconstruction of a multi-use path within the SRP easement, repair and stabilization of existing SRP maintenance road embankment slopes, installation of pedestrian node Ramada and group Ramada structures with pedestrian amenities, tie-ins to existing trails/sidewalks, and signal modifications.

In September 2012, staff was informed by Salt River Project that the Municipal Aesthetics Program was being revised and updated. As part of the program revision, Canal Multiple Use projects will now be eligible for Aesthetic funding in the form of a reimbursement. On February 19, 2015 Council approved the request to accept SRP Aesthetics Program Funding for this project. The total estimated amount for construction that will be reimbursed is approximately $751,591.47.

On April 2, 2015 bids were publicly opened for this project. A total of 2 bids were received with Talis Construction Corporation being the lowest bidder. The bid results were as follows:

- Talis Construction Corporation $939,952.00 (1,007,399.50 including bid alternate)
- Val-E-West Construction Inc $1,152,319.75 (1,274,127.75 including bid alternate)

The Contract was reviewed for form by Special Counsel, Susan Goodwin.

FINANCIAL IMPACT

This project is included in the 2015-19 CIP as Project No. PR011 and is funded through General Fund. The proposed contract amount of $939,952.00 is within the overall construction CIP Budget of $960,000. The total estimated amount for construction that will be reimbursed through the Municipal Aesthetics Program is approximately $751,591.47. Due to SRP Aesthetics reimbursement program guidelines, any area outside of the USA Fee/SRP Right-of-Way will not be eligible for reimbursement. Based on this guideline, Gilbert will be responsible for approximately $188,360.53 in expenditures.

Project Accounting Codes: PR011-7540-8404 $939,952.00

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 Construction Services Contract.

Respectfully submitted,

Ryan Blair
Project Manager

Approved By	Approval Date
Eliana Hayes	4/13/2015 3:37 PM
Kenneth Morgan	4/16/2015 6:46 PM
Jack Vincent	4/20/2015 4:30 PM
Laura Lorenzen	4/20/2015 12:15 PM
Douglas Boyer	4/20/2015 3:53 PM

CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT

Project:	**Western Canal Trail Project**
CIP No.:	**PR011**
Contract No.:	**2015-7012-0649**
Date:	**March 26, 2015**

CONSTRUCTION SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the "GILBERT" and Talis Construction Corporation, a 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 **Western Canal Trail Project** and is generally described as follows: Complete construction services for improvements to the Western Power-line Trail along the Western Canal from the UPRR spur (1/2 mile west of McQueen Road) to Cooper Road includes construction and/or reconstruction of a multi-use path within the SRP easement, repair and stabilization of existing SRP maintenance road embankment slopes, installation of pedestrian node Ramada and group Ramada structures with pedestrian amenities, tie-ins to existing trails/sidewalks, pathway lighting Conduits, and signal modifications. 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 **100** 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 **120** 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 three hundred seventy dollars and no cents ($370) 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 three hundred seventy dollars and no cents ($370) 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 $112.00 per hour. The rate for the work by the Project Engineer for this Contract is $ 120.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is $ 90.00 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 nine hundred thirty-nine thousand, nine hundred fifty-two dollars and no cents ($939,952.00) 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

The following documents are pertinent to the Project:

5.1 This Contract (pages 1 to 8 inclusive).

5.2 Addenda consisting of Numbers N/A inclusive.

5.3 The project Specifications dated 03/15 entitled Western Canal Trail Improvements

5.4 The project Drawings comprised of a set entitled Western Canal Trail Project

5.5 Performance Bond (page F1,F2) and Payment Bond (page G1,G2).

5.6 The approved CPM Construction Schedule dated N/A

5.7 The project General Conditions (pages 1 to 99 inclusive).

5.8 The project Supplementary Conditions (pages SC1 to SC2 inclusive.

5.9 Notice to Proceed dated N/A

5.10 CONTRACTOR'S List of Subcontractors (pages A6 to A7 inclusive.

5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page A6).

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)

6.0 MISCELLANEOUS

6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.

6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.

6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.

6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or

creating the CONTRACT on behalf of GILBERT is, at any time while the CONTRACT or any extension thereof is in effect, an employee or agent of any other party to the CONTRACT in any capacity or a consultant to any other party to the CONTRACT with respect to the subject matter of the CONTRACT. In the event GILBERT elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:	CONTRACTOR:
Patrick Banger Town Manager Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Manuel Lopez Vice President Talis Construction Corporation 2342 S McClintock Dr. Tempe, AZ 85282

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 form or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____

CONTRACTOR

_____

By:_____

Title:_____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS
WITH SEPARATE PROJECT MANAGER/CONSTRUCTION MANAGER (PM/CM)

For

Project:	**Western Canal Trail Project**
CIP No.:	**PR011**
Contract No.:	**2015-7012-0649**
Date:	**March 26, 2015**

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid price for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on **March 26 2015 at 1:00 pm** Arizona Time, in Room 300 Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other

General Conditions costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to the GILBERT at the end of the project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.11 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2.1 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope which shall be marked as indicated in the Notice and Call for Bids. It is the sole responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms
B. Bid Bond
C. No Collusion Affidavit
D. Authorized Signature Form
E. Bidder's Questionnaire
F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for **90 days** following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least **ten percent (10%)** of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to PM/CM a written request for an interpretation or correction thereof. The request must be made in writing and delivered at least six (6) days prior to bid opening. PM/CM shall immediately forward such request to ENGINEER. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be mailed or delivered to each person receiving a set of CONTRACT DOCUMENTS. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. PM/CM in consultation with ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to PM/CM at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. PM/CM will submit the alternative product for review to ENGINEER

who will consider and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a sub proposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a sub proposal or Quoting prices to other BIDDERS, but must quote the same sub proposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and shall furnish the required bonds within ten (10) working days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in Five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received thereunder by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within **120** working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within **100** working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within **120** working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 PM/CM AND ENGINEER

1.17.1 This PROJECT will be coordinated by a PM/CM, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, PM/CM will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) transmit submittals and other information as appropriate to ENGINEER, (4) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (5) make recommendations to GILBERT regarding requests for payment, (6) maintain PROJECT records, (7) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (8) do other tasks related to the coordination of the WORK.

1.17.2 Generally, ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 PM/CM will be retained by GILBERT during the construction and until final payment to the CONTRACTOR is made. PM/CM will advise and consult with GILBERT. All instructions to

CONTRACTOR shall be forwarded through PM/CM. PM/CM will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of PM/CM in its administration of the CONTRACT, or by inspections, tests or approvals required. In the case of termination of the CONTRACT of PM/CM, GILBERT shall appoint a PM/CM against whom CONTRACTOR makes no reasonable objection and whose status under the CONTRACT DOCUMENTS shall be that of the former PM/CM.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACTS identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of the Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of the Town Clerk of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by PM/CM, or (4) a written order for a minor change in the WORK issued by PM/CM.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty Period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance. GILBERT'S REPRESENTATIVE is not the same person as the PM/CM.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PM/CM: The Firm or person or their properly authorized assistants designated by GILBERT to oversee the construction of the PROJECT.

2.1.29 PROJECT: Means the same as "WORK" as defined below.

2.1.30 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.31 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.32 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.33 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.34 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when PM/CM certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.35 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.36 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.37 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify PM/CM.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinance and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT'S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in

this CONTRACT but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, PM/CM, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all WORK or services required to be performed under the terms of subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 Policy Deductibles and or Self Insured Retentions: The policies set forth in these requirements may provide coverage which contains deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to GILBERT. CONTRACTOR shall be solely responsible for any such deductible or self insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this CONTRACT. Such certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

3.3.10.1 GILBERT, PM/CM, ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's as follows:

A. Commercial General Liability – Under ISO Form CG 20 10 11 85 or equivalent.

B. Auto Liability – Under ISO Form CA 20 48 or equivalent.

C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 All policies, including Workers Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of WORK performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30-day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations

Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Offices, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, PM/CM, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, PM/CM, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, PM/CM, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any excess insurance is utilized to fulfill the requirements of this paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official.

3.5 INDEMNIFICATION

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

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

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as PM/CM may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property.

CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated thereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT, PM/CM and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is stopped for safety reasons. The PM/CM, with GILBERT approval, shall issue a stop work order until the violation ceases. The PM/CM shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, PM/CM, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, PM/CM, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER'S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 PM/CM will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed thereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or PM/CM has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and PM/CM have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or PM/CM make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from PM/CM.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications

given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give PM/CM access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to PM/CM and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify PM/CM, who shall immediately notify ENGINEER. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, PM/CM shall be so notified in writing. PM/CM shall immediately notify ENGINEER who will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

4.6.2.1 As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program.

4.6.2.2 If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

4.6.2.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of $100 per day for the first violation, $500 per day for the second violation, and $1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

4.6.2.4 Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

4.6.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

4.6.3 Equal Treatment of Workers. CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the WORK. CONTRACTOR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). CONTRACTOR shall protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of PM/CM does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of PM/CM be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of PM/CM. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR'S operations shall be in accordance with the Manual on Uniform Traffic Control Devices, Latest Edition. These operations shall cause no unnecessary inconvenience to the public and public access rights shall be considered at all times. Unless otherwise authorized in the Specifications or on a temporary basis by PM/CM, traffic shall be permitted to pass through the Work area. CONTRACTOR shall coordinate with the various agencies to include governmental, commercial and public, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 CONTRACTOR shall become familiar with and follow GILBERT'S procedures when submitting traffic control plans for approval.

4.8.4 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.5 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of PM/CM, are required.

4.8.6 CONTRACTOR shall provide an asphalt paved surface for any temporary bypass that is in place longer than ten (10) CALENDAR days.

4.8.7 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.8 CONTRACTOR shall provide PM/CM with the emergency phone number of his representatives.

4.8.9 CONTRACTOR representative shall be available for contact twenty-four (24) hours per day, seven (7) days per week.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of PM/CM and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with PM/CM'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and PM/CM has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as

defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.17.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by PM/CM for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by PM/CM. Where an area is

indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.20.3 In the event of abnormal weather conditions, such as windstorms and rainstorms, CM@R shall immediately inspect his Work area and take all necessary actions to insure that the project Site is protected and maintained.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to PM/CM, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications. Approval by TOWN does not guarantee acceptance of the final Work, which will be determined by the ENGINEER, after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the construction items involved nor in CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to PM/CM. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to PM/CM for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If PM/CM finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to **10** WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first **10** WORKING DAYS lost due to bad weather conditions.

4.23.3 To receive consideration, a request for extension of time must be made in writing to PM/CM stating the reason for said request, and such request must be received by PM/CM within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 PM/CM shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S, ENGINEER'S or PM/CM'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S and PM/CM'S additional services made necessary by such default, neglect or failure. If the payments then or thereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to PM/CM one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by PM/CM. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 PM/CM will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. PM/CM will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by PM/CM if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to PM/CM one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 PM/CM will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, PM/CM will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit

the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 Monthly Updates

5.1.3.1 CONTRACTOR shall submit to PM/CM each month an up-to-date status report of the work. The status report shall include:

A. Monthly Cash Flow Report projected through end of the project with the baseline projected cash flow remaining unchanged for the duration of the project and actual cash flow updated on a monthly basis. Cash flow reporting shall be in a format provided by PM/CM.

B. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

C. Actual start/finish dates for activities as appropriate.

D. Identification of processing errors, if any, on the previous update reports.

E. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

F. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

G. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

H. Anticipated Work during the next reporting period.

I. Work accomplished during the current reporting period.

J. Identify problems and potential solutions.

5.1.3.2 PM/CM will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use PM/CM's determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate PM/CM'S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly, as determined by PM/CM, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to PM/CM for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to PM/CM, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to PM/CM, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. PM/CM will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed Contract Schedule, Contract Schedule monthly updates, Contract Schedule revisions and recovery schedules:

5.1.5.1 **FOR VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed Contract Schedule will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **FOR HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide a CD containing the schedule files.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight (8) copies of the SIS shall be submitted to PM/CM at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of PM/CM.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted

CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the PM/CM, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the PM/CM the backlog of work.
- In addition, PM/CM may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the PM/CM finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, PM/CM may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to PM/CM for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to PM/CM. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of PM/CM OR ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of PM/CM or ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with PM/CM. If the protest is against a demand, instruction, ruling or decision of PM/CM, it shall be filed with the Town Clerk.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, PM/CM shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of PM/CM, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give PM/CM access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS

shall be regarded as a part thereof and PM/CM will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by PM/CM.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify PM/CM. PM/CM shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall immediately notify PM/CM, who shall notify ENGINEER. PM/CM and ENGINEER shall proceed as prescribed in Section 4.5 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed therefore.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 TESTING AND INSPECTION

5.9.1 The CONTRACTOR shall obtain an independent laboratory or testing company and pay all costs of testing required by the Contract documents, including testing required by MAG, the Specifications, the Town of Gilbert, and other jurisdictional bodies. A copy of all test results shall be furnished to PM/CM in a Weekly Summary Report submitted at the weekly construction progress meeting (time and date to be set upon Contract award) for tests performed from the preceding week. At substantial completion, the CM@R shall submit a final test report containing all test results which certifies the work complies with the Specifications. This report shall be sealed by a professional engineer registered in the State of Arizona who was responsible for overseeing the testing and sampling.

5.9.2 CONTRACTOR shall furnish PM/CM with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. PM/CM shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting and facilitating the progress of the WORK. PM/CM shall be furnished with such information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of PM/CM, it must, if required by PM/CM, be

uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.3 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.4 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, PM/CM before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to PM/CM any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give PM/CM timely notice of its readiness so PM/CM may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to PM/CM.

5.14 COOPERATION BETWEEN CONTRACTOR AND HOMEOWNER'S ASSOCIATIONS

If requested by GILBERT and authorized by an adjacent Homeowner's Association (HOA), CONTRACTOR shall enter into a separate contract with the requesting HOA for paving work that includes the same terms and conditions applicable to the requesting HOA, including unit prices, as this contract.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, PM/CM shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to PM/CM of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unit prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the PM/CM.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish PM/CM with an itemized cost breakdown together with supporting data including the quantities used in computing the unity price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the PM/CM, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the PM/CM. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section 6.2.2.1. "First Line Supervision" shall mean a working foreman or lead craft worker other than the Project superintendent.

6.2.2.3 Actual cost of the Project superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the Project superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; office and field coordination and supervision, including the Project superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1.

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise PM/CM within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER

for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to PM/CM within five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by PM/CM on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping: In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as PM/CM may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by PM/CM. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and PM/CM shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation: CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by PM/CM unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. PM/CM shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call PM/CM'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. PM/CM shall immediately notify ENGINEER who shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to PM/CM. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the

WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. PM/CM and ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by PM/CM at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to PM/CM, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. PM/CM shall immediately forward such shop drawings, product data and samples to ENGINEER. CONTRACTOR shall cooperate with PM/CM and ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 CONTRACTOR shall:

7.3.7.1 Review each submittal and check for compliance with Contract Documents.

7.3.7.2 Stamp each submittal with uniform approval stamp before submitting to PM/CM.

A. Stamp to include project name, submittal number, specification number, CONTRACTOR reviewer's name, date of submittal has been reviewed, checked, and approved for compliance with the Contract Documents.

B. PM/CM will not transmit review submittals to the A/E that do not bear CONTRACTOR'S approval stamp and will return them to the CM@R without action.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods

designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by PM/CM; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

PM/CM shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by PM/CM. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by PM/CM. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or PM/CM, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of PM/CM and ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from PM/CM, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for PM/CM'S and ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER AND PM/CM

Neither ENGINEER'S nor PM/CM'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER or PM/CM to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK. CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or

private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and PM/CM. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to PM/CM.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF THE GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT, that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.23 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.23.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of Substantial Completion of the Work, or designated portion thereof, is the date certified in writing by PM/CM when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that GILBERT may use or occupy the Project, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the Work by PM/CM as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall either release, or otherwise operate to excuse, CONTRACTOR from his duty to complete the remainder of the Work within the Contract Time including liability for liquidated damages.

9.2.2 Final Completion: The Final Completion Date is the date when all items of the Work are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected and a Final Completion Certificate is issued.

9.2.3 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss 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 CM@R agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT five hundred dollars and no cents ($500) for each working day that expires after the time specified in Section 4 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 five hundred dollars and no cents ($500)for each working day that expires after the time specified in Section 5 for final completion and readiness for final payment.

9.3 SPECIAL DAMAGES

9.3.1 The CONTRACTOR shall be responsible for all costs associated with additional time expended by PM/CM due to time extensions granted by GILBERT for the CONTRACTOR'S convenience. The costs shall be paid by the CONTRACTOR at the rate established in Form CIP2.3 –Construction Services Contract, Paragraph 3.2. These costs shall be paid by the CONTRACTOR at no additional cost to GILBERT.

9.4 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.4.1 VERTICAL PROJECTS

9.4.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.4.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.4.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.4.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

9.4.1.5 Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.4.2 HORIZONTAL PROJECTS

9.4.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.4.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.5 RECORD DRAWINGS

9.5.1 CONTRACTOR shall provide accurate data and field notes as construction progresses, for preparation of the "Record" drawings by A/E or PM/CM. Such red-lined drawings shall reflect current changes, shall be kept on site and made available for review by PM/CM at the time the CONTRACTOR submits the monthly pay application.

9.5.2 The CONTRACTOR'S monthly progress payments will not be processed until PM/CM has reviewed the Record Drawings and found that they are updated through the payment date.

9.6 COMPLETION AND INSPECTION

9.6.1 Substantial Completion inspection: When CONTRACTOR believes that the WORK is substantially complete, it shall request in writing a substantial completion inspection. Within five (5) days of the receipt of such request, PM/CM shall make a punch list inspection or inform CONTRACTOR that the WORK is not ready for the inspection. Upon completion of the deficient WORK, CONTRACTOR shall again request a substantial completion inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend the inspection, CONTRACTOR shall be charged for the cost of PM/CM, ENGINEER and other design professionals who attended the substantial completion inspection.

9.6.2 Punch list: PM/CM shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. No one is authorized to amend the CONTRACT DOCUMENTS by use of the punch list, which is solely for the benefit of CONTRACTOR to enable him to determine what items must be corrected before final acceptance will be recommended by the PM/CM. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6.3 Final Inspection: When CONTRACTOR believes that the punch list items have been addressed, he shall request in writing a Final Inspection. Within five (5) days of the receipt of such request, PM/CM shall make a Final Inspection or inform CONTRACTOR that the Work is not ready for Final Inspection. CONTRACTOR shall be present at the Final Inspection. The purpose of the Final Inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders and all interpretations and instructions previously issued. If during the Final Inspection it is determined that the CONTRACTOR has not completed the punch list items, and a second inspection is required, CONTRACTOR shall be charged for the cost of PM/CM, A/E and other design professionals who attend the second inspection.

9.7 FINAL ACCEPTANCE

9.7.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by PM/CM, including WORK found to be incomplete pursuant to Section 9.6, CONSTRUCTION MANAGER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of PM/CM'S final inspection. GILBERT will make final acceptance in writing promptly after receiving PM/CM'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.7.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance

pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on Town of Gilbert Invoice Form with accompanying A.I.A. Form G-702 and G-703, May 1983 or current edition entitled "Application and Certificate for Payment", (1 copy) utilizing complete provisions provided by the form.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.1.4 CONTRACTOR shall submit a cash flow projection that identifies estimated monthly payments to GILBERT based on the cost loaded schedule.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by PM/CM for WORK completed through the last day of the preceding calendar month. If requested by the PM/CM, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. If multiple GILBERT funding sources are identified in the CONTRACT DOCUMENTS, each pay estimate shall identify each funding source for each quantity in the estimate. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to PM/CM a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by PM/CM, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the PM/CM, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by

GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to PM/CM:

10.6.2.1 Red-line construction record drawings.

10.6.2.2 Warranties.

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly an concisely detailed.

10.6.2.4 Affidavit Regarding Settlement of Claims.

10.6.2.5 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.3 Upon receipt of the submittals required in Section 10.6.2, PM/CM shall prepare a written estimate of the sum due to CONTRACTOR. This estimate shall take into account the CONTRACT SUM, as adjusted by any CHANGE ORDERS, amounts already paid, and sums to be retained for incomplete WORK, liquidated damages, and for any other cause under the CONTRACT DOCUMENTS. PM/CM shall prepare a statement of final inspection, stating that the work has been given a final inspection, that CONTRACTOR has submitted the required documents, setting forth with detail any deviations in the WORK as completed from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. PM/CM'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. PM/CM shall provide a copy of the statement of final inspection and PM/CM'S estimate of the sum due to CONTRACTOR.

10.6.4 If CONTRACTOR contests the estimate of sums due prepared by PM/CM, within five (5) working days following delivery to CONTRACTOR of CONSTRUCTION MANAGER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to PM/CM'S final

estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of PM/CM'S estimate.

10.6.5 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.6.6 The making of final payment shall constitute a waiver of Claims by GILBERT except those arising from liens, Claims, security interests or encumbrances arising out of the Contract and unsettled; failure of the Work to comply with the requirements of the Contract Documents; or terms of special warranties required by the Contract Documents.

10.6.7 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

10.7 USE OF GILBERT'S ALLOWANCE

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shalll be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of TALIS Construction Corporation,

CONTRACTOR'S License No. 099126A

A corporation organized and existing under the laws of the State of Arizona; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. 1 dated 3-26-15; No. 2 dated 3-31-15
No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by Aztec Engineering for the consideration hereinafter set forth.

2. To hold his Bid open for not less than ninety days (90) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $500 per working day
Final completion - $500 per working day

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above.

NAME OF BIDDER: TALIS CONSTRUCTION CORPORATION

TOWN OF GILBERT
BID SCHEDULE

ROADWAY

Bid Item No.	Item Description	Unit	Quantity	Price	Amount
205.01150	ROADWAY EXCAVATION	CY	3275	$ 12.50	$ 40,937.50
301.01000	SUBGRADE PREPARATION	SY	14881	$ 4.00	$59,524.00
321.01300	ASPHALT CONCRETE PAVEMENT (SUPERPAVE 3/4" MIX, HIGH TRAFFIC)	TON	12	$350.00	$ 4,200.00
324.01060	PORTLAND CEMENT CONCRETE PAVEMENT (PCCP), 6" THICK CLASS AA	SY	8788	$ 29.00	$254,852.00
340.01110	VERTICAL CURB & GUTTER, MAG DETAIL 220, TYPE A, H=6"	LF	123	$ 19.00	$2,337.00
340.01111	VERTICAL CURB & GUTTER, MAG DETAIL 220-2, TYPE E, H=5"	LF	27	$25.00	$ 675.00
340.01150	CONCRETE HEADER	LF	933	$ 13.00	$12,129.00
340.01321	CURB RAMP, TYPE A, MAG DETAIL 235-1	EA	1	$1,600.00	$ 1,600.00
340.01410	DRIVEWAY ENTRANCE, MAG DETAIL 250	SF	1372	$ 8.00	$10,976.00
350.01850	REMOVE CONCRETE SINGLE CURB	LF	1682	$ 5.00	$ 8,410.00
350.01900	REMOVE SIDEWALK	SF	22211	$ 1.50	$ 33,316.50
351.22200	RELOCATE GATE	EA	1	$1,700.00	$ 1,700.00
610.10510	1" WATER SERVICE T.O.G. STD DTL 62	EA	1	$1,500.00	$ 1,500.00
	ROADWAY SUBTOTAL				$438,157.00

TRAFFIC

401.01000	TRAFFIC CONTROL	LS	1	$10,500.00	$10,500.00
465.01000	TRAIL SIGN MOUNTED ON SQUARE STEEL TUBE, TOG STD DTL 79	EA	6	$500.00	$3,000.00
464.02010	SIGN POST (SQUARE TUBE)	LF	30	$18.00	$540.00
470.00002	PEDESTRIAN SIGNAL MODIFICATIONS	LS	1	$16,000.00	$16,000.00
471.61300	3 INCH PVC FIBER OPTIC CONDUIT AND 2.5" SCHEDULE 40 CONDUIT IN SHARED TRENCH	EA	1692	$7.50	$12,690.00

TRAFFIC SUBTOTAL $42,730.00

LANDSCAPE

430.00001	GENERAL LANDSCAPE	LS	1	$12,000.-	$12,000.00
430.11010	PICNIC TABLE	EA	10	$2,300.00	$23,000.00
430.11020	BENCH	EA	3	$1,300.00	$3,900.00
430.11030	LOOP BIKE RACK	EA	18	$400.00	$7,200.00
430.11040	TRASH RECEPTACLE	EA	5	$1,400.-	$7,000.00
430.11050	BARBEQUE GRILL	EA	4	$650.00	$2,600.-
430.11060	DRINKING FOUNTAIN	EA	1	$9,200.-	$9,200.-
430.11070	PET WASTE STATION	EA	8	$725.-	$5,800.-
430.11008A	RAMADA STRUCTURE A (5'x13') INCLUDING SOLAR PANEL COMPONENTS	LS	3	$16,200.-	$48,600.-
430.11008B	RAMADA STRUCTURE B (30'X50') INCLUDING SOLAR PANEL COMPONENTS	LS	1	$58,000.	$58,000.-
430.40000	DECOMPOSED GRANITE, 2" THICK	SY	10710	$11.50	$123,165.-
440.00001	GENERAL IRRIGATION	LS	1	$7,500.-	$7,500.-

LANDSCAPE SUBTOTAL $307,965.00

GENERAL

105.01000	CONSTRUCTION SURVEY AND LAYOUT	LS	1	$12,000	$12,000.-
107.01000	STORM WATER POLLUTION PREVENTION PLAN (SWPPP)	LS	1	$5,100.	$5,100.-
109.09000	MOBILIZATION/DEMOBILIZATION	LS	1	$8,500	$8,500.-
112.01000	CONTRACTOR'S QUALITY CONTROL	LS	1	$12,000.	$12,000.-
230.01000	DUST PALLIATIVE	LS	1	$13,500.-	$13,500.-
	TOWN OF GILBERT CONTROLED ALLOWANCE	ALLOWANCE	1		$100,000

GENERAL SUBTOTAL $151,100.00

TOTAL BID PRICE (BASE BID ONLY)

(Base Bid and Town of Gilbert Controlled Allowance Inclusive) $ 939,952.00
(In Numbers)

Nine hundred-Thirty-Nine Thousand Nine hundred- DOLLARS CENTS
(In Words) Fifty-Two and no/100

TOTAL BID PRICE
(Base Bid, Alternate Bid and Town of Gilbert Controlled Allowance Inclusive)

$ 1,007,399.50
(In Numbers)

One Million Seven Thousand Three hundred Ninety-Nine Dollars fifty Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Gilbert Reserves the Right to utilize the base bid with or without the Add Alternate line items in determining the lowest bid.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this 2nd day of April, 2015.

TALIS Construction Corporation
Name of BIDDER (Company)

2342 S. McClintock Drive
Address of BIDDER

Tempe, Arizona 85282
City, State, Zip Code

LIGHTING (ADD ALTERNATE)

471.61212	SCH. 40 PVC ELECTRICAL CONDUIT, 2 1/2" W/ 1/4" NYLON PULL ROPE (TRENCH)	LF	4793	$ 7.50	$ 35,947.50
471.61400	DIRECT BORE, 2.5" SCHEDULE 40 PVC CONDUIT	LF	140	$ 40.-	$ 5,600.-
471.60055	NO. 5 PULL BOX	EA	74	$ 350.-	$ 25,900.-
	TOTAL LIGHTING ADD ALTERNATE BID				$ 67,447.50

TOTAL BID PRICE
(Base Bid, Alternate Bid and Town of Gilbert Controlled Allowance Inclusive)

$ 1,007,399.50
(In Numbers)

One Million Seven Thousand Three hundred Ninety-Nine Dollars fifty Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Gilbert Reserves the Right to utilize the base bid with or without the Add Alternate line items in determining the lowest bid.

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Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

480-557-6100
Area Code/Telephone Number

480-557-6200
Fax Number

Manuel Lopez - Vice President
Authorized Officer/Title

Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative this bid and the administration of this bid for and on behalf of the Company named above.

Corporate Secretary (signature) or

Partner Signature

Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	SUBCONTRACTOR/ SUPPLIER	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1.			
2.			
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1.

2.

3.

4.

5.

Submitted by:_____

(Bidder)

Signed By: _____

Name and Title: _____

COPY(s) OF BIDDER'S STATE OF ARIZONA CONTRACTOR'S LICENSE(S)

Attach copy of required license(s)

STATE OF ARIZONA

LICENSE No. 099126

Office of the Registrar of Contractors

STATE OF ARIZONA
OFFICE OF THE REGISTRAR } ss.

To All Whom It May Concern:

This is to Certify That

TALIS CONSTRUCTION CORPORATION (CORP.)

having been shown to possess all the necessary qualifications, and having complied with all the requirements of the law, is by order of the Registrar of Contractors on the 9TH day of SEPTEMBER in the year of our Lord One Thousand Nine Hundred and 93, duly licensed and admitted to engage in and pursue the business of

A-
GENERAL ENGINEERING

Contractor in the State of Arizona. Given under my hand and the seal of the Registrar of Contractors in my office, City of Phoenix, this 9TH day of SEPTEMBER, 19 93.

Registrar of Contractors 1931

DIRECTOR

IMPORTANT NOTICE
YOU MUST:

- REPORT DISASSOCIATION OF QUALIFYING PARTY **IN WRITING** WITHIN 15 DAYS. [SEE A.R.S. § 32-1154(A)(19) AND § 32-1151.01]
- REPORT A CHANGE OF ADDRESS **IN WRITING** WITHIN 30 DAYS. [SEE A.R.S. § 32-1151(B)(1)]
- REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY. [SEE A.R.S. § 32-1151.01]
- REPORT ANY CHANGE OF LEGAL ENTITY SUCH AS ANY CHANGE IN THE OWNERSHIP IN SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY. [SEE RULE R-4-9-110]

Talis Construction Corporation

2342 S Mcclintock Dr
Tempe, AZ 85282-2674

THIS IS YOUR IDENTIFICATION CARD
DO NOT DESTROY

LICENSE EFFECTIVE THROUGH: 08/31/2015
STATE OF ARIZONA
Registrar of Contractors CERTIFIES THAT
Talis Construction Corporation

CONTRACTORS LICENSE NO 99126 CLASS A

General Engineering

THIS CARD MUST BE PRESENTED UPON DEMAND

William A. Mundell
DIRECTOR, ARIZONA REGISTRAR OF CONTRACTORS

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, TALIS Construction Corporation, (hereinafter "Principal"), and the Ohio Casualty Insurance Company, a corporation duly organized under the laws of the State of New Hampshire, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for CIP No PR011; Contract No 2015-7012-0649 - Western Canal Trail Project.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this 1st day of April, 2015.

TALIS Construction Corporation
Principal

President
Title

Witness:

The Ohio Casualty Insurance Company
Surety

Witness:

Kathy Chapman

Title - Andrea T Windish, Attorney-in-Fact

Address of Surety:

62 Maple Avenue

Keene, NH 03431

* Attach Power of Attorney

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6414727

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Amy D. Scott; Andrea T. Windish; Charles A. Touche; Daniel L. Walsh; Frances Farnsworth; Joseph C. Dhuey; Saralyn Seymour; Tina K. Nierenberg; Tina Marie Berger

all of the city of Tucson, state of AZ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 13th day of January, 2014.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 13th day of January, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 1st day of April, 20 15.

By: Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

THIS IS TO CERTIFY, THAT THIS INSTRUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH THE DEPARTMENT OF INSURANCE OF THE STATE OF ARIZONA AND CONSISTS OF 1 PAGE(S)

HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THIS DEPARTMENT

FOR THE DIRECTOR OF INSURANCE THIS 10 MAY 2013.

AUTHORIZED REPRESENTATIVE

286591

CERTIFICATE NO.:

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

CERTIFICATE OF AUTHORITY

I, GERMAINE L. MARKS, Director of Insurance of the State of Arizona, do hereby certify that

THE OHIO CASUALTY INSURANCE COMPANY
Domiciled in New Hampshire
NAIC NO. 24074

has complied with the requirements of the Arizona Revised Statutes, Title 20 and is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the following kinds of insurance business:

CASUALTY WITH WORKERS' COMPENSATION
DISABILITY
MARINE AND TRANSPORTATION
PROPERTY
SURETY
VEHICLE

within the State of Arizona unless surrendered, suspended or revoked by the Director of Insurance.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix. The effective date of this certificate is October 1, 2012.

Germaine L. Marks

Germaine L. Marks
Director of Insurance

286591
273960

DIRECTOR OF INSURANCE
GREAT SEAL
STATE OF ARIZONA

AFFIDAVIT BY CONTRACTOR CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

Manuel Lopez
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is Vice President (Title) of TALIS Construction Corporation (Name of Business).

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said TALIS Construction Corp. (Name of Business) has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

(Signature)

Vice President
(Title)

TALIS Construction Corporation
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this 2nd day of April, 20 15.

Notary Public

My commission expires:
6.5.2018

OFFICIAL SEAL
KELLEY HLAVSA
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
JUNE 5, 2018

BIDDERS' QUESTIONNAIRE
[To be submitted with Bid]

Organizational Information

BIDDER: TALIS Construction Corporation
(Bidder's name)

Submitted by:

Name of Organization: TALIS Construction Corporation

Name of Individual: Manuel Lopez

Title: Vice President

Address: 2342 S. McClintock Drive

Tempe, Arizona 85282

Telephone: (480) 557-6100

Bidder's General Business Information

Check If: [x] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
1993 Arizona

b. List of Executive Officers:

Name	Title
Sandra Gonzalez	President
Manuel Lopez	Vice President

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name	Title

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [ ] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: National Bank of Arizona

Address: 6001 N. 24th Street

Phoenix, Arizona 85016

Account Manager: Scott Thompson

Telephone Number: (602) 212-8818

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER: TALIS Construction Corporation
(Bidder's name)

a. Name of Similar Project #1: Consolidated Canal Multi Use Path-Ph 3

b. Contracting Party (Owner):

Name: City of Mesa

Address: 20 E. Main Street Mesa, Arizona 85211

Telephone Number: (480) 644-3404

c. If Joint Venture, names of each participant:

_____

_____

_____

d. Contract Price: $1,005,420.00

e. Description of Similar Project #1: Construct a concrete multi use path with lighting, signage, landscaping, sidewal, ramps and amentities.
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:

Name: Chuck Watson

Address: 2342 S. McClintock Drive Tempe, Arizona 85282

Telephone Number: (480) 557-6100

g. Start date (notice to proceed issued): 5-9-12

h. Completion date provided for in the Contract: 12-13-12

i. Substantial completion date (approved by Owner): 1-31-13

j. Reasons why work was completed early, or why delays occurred:

City approved rain days and electrical submittals

k. Final price paid by Owner for the Similar Project #1: $1,091,608.00

l. If final price was 10% less or more than the original Contract Price, describe why:

None

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No _x_ If so, what was the result? _____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

None

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_x_ Describe:

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER: TALIS Construction Corporation
(Bidder's name)

a. Name of Similar Project #2: 19th Ave & Cave Creek Wash Pedestrian Trail

b. Contracting Party (Owner):

Name: City of Phoenix

Address: 1034 E. Madison Street Phoenix, Arizona 85034

Telephone Number: (602) 262-4051

c. If Joint Venture, names of each participant:

_____

_____

_____

d. Contract Price: $445,401.00

e. Description of Similar Project #2: Construct concrete multi use pathway lighting, sidewalk ramps

(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:

Name: Chuck Watson

Address: 2342 S. McClintock Drive Tempe, Arizona 85282

Telephone Number: (480) 557-6100

g. Start date (notice to proceed issued): 6-28-13

h. Completion date provided for in the Contract: 10-26-13

i. Substantial completion date (approved by Owner): 12-11-13

j. Reasons why work was completed early, or why delays occurred:

extra work per City of Phoenix

k. Final price paid by Owner for the Similar Project #2: $450,000.00

l. If final price was 10% less or more than the original Contract Price, describe why:

None

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No x If so, what was the result? _____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

None

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No x Describe:

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER: TALIS Consruction Corporation
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

See attached

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:

Yes, Removals, Grading, Pavement, Utilities, Concrete, Traffic Control, Electrical

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?

None

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

SEE ATTACHED

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes X No____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors?

Self perform all work

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes__x__ No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

TALIS Construction has a current staff of over 100 Team Members

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No __x__. If yes, described circumstances: _____

Equipment

BIDDER: TALIS Construction Corporation
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract? Explain:

Yes, TALIS owns it's fleet of Heavy Equipment, including Backhoes, Loaders, Trucks and Paving Equipment

b. Will any equipment need to be rented or leased by Bidder? Explain:

No

Project Name:
Project No.:
Contract No.:

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the performance of official or executive actions on documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR hereby declare that _____ (name(s) of person(s) authorized

is/are authorized to execute on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payroll
4. Claim
5. CHANGE ORDER
6. All other papers necessary for the performance of the contractor's obligations under the CONTRACT

For the duration of the CONTRACT or until written notice of revocation has been given whichever occurs first.

In witness whereof, CONTRACTOR's governing board of directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto and hereby verify that such Resolution remains in full force and effect.

_____
Name

_____
Vice President

_____
Title

_____
Name of Corporation

STATE OF _____ Arizona _____

County of _____ Maricopa _____

This authorization Signature Form was acknowledged before me this _____ 1st _____ day of _____ April _____, 2015 _____ by _____ Manuel Lopez _____ the authorized person of the authorized signed Notary Public, and stated that he/she executed such instrument on behalf of _____ Construction Corporation _____ for the purposes therein expressed.

OFFICIAL SEAL
KELLY HAYSA
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
JUN 5, 2015

_____
Notary Public

Form No. IP2 .2 E-
Contract Conditions with IGA for DBB Projects
Revised August 24, 2012

My Commission Expires:

6. 5. 2018

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase Order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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

_____
_____
_____

COST/TIME: Original CONTRACT SUM: $_____

Previously Authorized CHANGE ORDERS: $_____

CONTRACT sum prior to this CHANGE ORDER: $_____

CHANGE ORDER # Amount: $_____

New CONTRACT SUM: $_____

CONTRACT TIME will be increased by:

SUBSTANTIAL COMPLETION as of this Change Order:

Approved/Accepted by:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform,

provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS

PROJECT _____

_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-1.01.:

TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

FOR

WESTERN CANAL TRAIL IMPROVEMENTS

TOWN OF GILBERT

PROJECT NO. PR011

March 2015

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For the purpose of the Technical Specifications, both MAG Standards and ADOT Standards noted and revised shall be used for the Town PR011 project. However, where a direct conflict exists between the Technical Specifications and the Towns General Conditions the more stringent will prevail.

PROFESSIONAL ENGINEER SEALS:

This book of specifications and related contract documents represents the efforts of the following firm:

(1) AZTEC Engineering

Expires 6/30/17

SECTION 100

MAG SECTION 101 ABBREVIATIONS AND DEFINITIONS

101.2 DEFINITIONS AND TERMS: *is revised to read:*

Construction Manager:

The person appointed by the Town of Gilbert (Town), acting directly or through his duly authorized representative, to oversee the progress of the Work.

Engineer:

The person, firm, or corporation, including their representatives, retained by the Town to design and engineer the project, to draft specifications, plans and perform other project design functions.

MAG SECTION 105 CONTROL OF WORK

105.6 COOPERATION WITH UTILITIES: *is modified to add:*

The location of the underground and overhead utilities as shown on the plans is based on the best available information gathered from as-builts, field surveys, and Blue Stake markings. The Contractor shall not assume that this represents an exact location of the indicated utility. No guarantee is made to the accuracy of the location shown on the plans. It is the responsibility of the Contractor to verify and determine the exact location of all utilities.

The following utilities are expected to be located within the limits of this project:

Utility	Contact	Phone Number
Water (Town of Gilbert)	Tom Condit	480-503-6841
Reclaimed Water (Town of Gilbert)	Tom Condit	480-503-6841
Sewer (Town of Gilbert)	Tom Condit	480-503-6841
Salt River Project (Power)	LaVerne Steah	602 236-8386
Southwest Gas	Gene Florez	602-730-3841
Century Link (Fiber Optic)	Michael Mullins	623-215-5129
Cox Communications	Ken Degraffenreid	623-328-3423
Kinder Morgan	Boris Ratner	602-438-4214
Union Pacific Railroad	Alex Popovici	602-322-2510

105.8 CONSTRUCTION STAKES, LINES AND GRADES:

Section 105.8 of the MAG Standard Specifications is replaced with the following:

Field Staking of Temporary Construction Easements:

Prior to commencement of any field activities, the Contractor shall provide construction survey stakes to clearly define the limits of the Temporary Construction Easements (TCE) for the project as shown in the legal descriptions and exhibits for each Temporary Construction Easement as applicable for the adjacent properties.

105.8.1 Description:

The work under this section shall consist of furnishing all materials, personnel and equipment necessary to perform all surveying, staking, establishment of all pit boundaries, laying out of haul roads, and "as-built" survey. Included in this work shall be all calculations required for the satisfactory completion of projects, including grade and drain, overlay, safety, landscape, rest areas, structures, surfacing projects or combinations thereof, in conformance with the plans and these Technical Specifications.

The work shall be done under the direction of a registered professional Construction Manager or a registered land surveyor employed by the Contractor. The crew chief shall be NSPS Certified Level III, NICET Certified Level III or a registered Land Surveyor-in-Training. A minimum of 50 percent of the survey crew shall be either NSPS Certified Level II or NICET Certified Level II.

All existing cadastral corners, such as section corners, quarter corners, intersecting street centerline monuments and property corners that are destroyed by the Contractor shall be re-established by a registered land surveyor employed by the Contractor.

105.8.2 Materials, Personnel and Equipment:

The Contractor shall furnish all traffic control, including flagging for survey and staking operations, the cost being considered included in contract schedule of values 401.01000, Traffic Control.

105.8.3 Construction Methods:

105.8.3.1 General:

Field Staking of Temporary Construction Easements:

Prior to commencement of any field activities, the Contractor shall provide construction survey stakes to clearly define the limits of the Temporary Construction Easements (TCE) for the project as shown in the legal descriptions and exhibits for each Temporary Construction Easement as applicable for the adjacent properties.

Prior to beginning any survey operations, the Contractor shall furnish to the Construction Manager, for approval, a written outline detailing the method of staking, marking of stakes, grade control for various courses of materials, referencing, structure control and any other procedures and controls necessary for survey completion. A part of this outline shall also be a schedule which will show the sequencing of the survey and layout work, throughout the course of the contract, listing a percentage of completion for each month.

Control points shall be located on centerline at the beginning and ending of the project and at all points of curve (P.C.), points of tangent (P.T.), tangents to spiral (T.S.), spirals to tangent (S.T.) and angle points. On long tangents, additional points will be provided for continuity of line.

The established initial right-of-way monuments and section corners shall be protected in place and re-established by the Contractor, at no additional cost to the Town, if disturbed.

Throughout the work, the Contractor shall set all stakes including centerline stakes; offset stakes; reference point stakes; slope stakes; pavement lines, curb lines and grade stakes; stakes for sewers, roadway drainage, pipe, under drains, clearing, paved gutter,

fence, survey monuments and culverts; blue tops for subgrade, subbase and base courses; supplemental bench marks; permanent as-built elevation marks; and all other horizontal or vertical controls necessary for complete and accurate layout and construction of the work. Regardless of the staking method, construction stakes shall be marked in such a manner that all construction personnel can easily identify the stake location, elevation and other appropriate information. The coordinates of any new control points established by the Contractor during the course of the work shall be given to the Construction Manager within five working days of control point establishment.

If errors are discovered during the construction staking process and control points do not agree with the geometrics shown in the plans, the Contractor shall promptly notify the Construction Manager in writing and explain the problem in detail. The Construction Manager will advise the Contractor within five working days of any corrective actions which may be deemed necessary.

The Contractor shall be responsible for the proper layout and accuracy of all property markers which are required by the project plans.

Structure sites shall be accurately profiled and cross-sectioned and structure control points shall be set and checked to assure the proper construction or installation of each structure. Profiles shall be approved by the Construction Manager prior to constructing or installing each structure. All profile survey data shall be entered in furnished field books and preserved as a permanent project record.

The Contractor shall exercise care in the preservation of stakes, references and bench marks and shall reset them when any are damaged, lost, displaced or removed.

On all projects, the centerline layout for the final surface course shall be established by instrument survey by the Contractor and shall serve as marks for permanent traffic centerline striping. On projects requiring Contractor striping, points at 50-foot intervals shall be set for each traffic lane, crossroad, or any other area where striping will be required.

On projects where traffic is being carried through the work zone, pavements shall be marked for traffic centerline delineation before the end of each work shift. Temporary pavement markings shall conform to the requirements set forth under Section 461 of these Technical Specifications and any subsequent modifications thereto.

Any discrepancies in grade, alignment, earthwork quantities, locations or dimensions detected by the Contractor shall immediately be brought to the attention of the Construction Manager. No changes in the project plans will be allowed without the approval of the Construction Manager.

The Town reserves the right to make inspections and random checks of any portion of the staking and layout work. If, in the Construction Manager's opinion, the work is not being performed in a manner that will assure proper controls and accuracy, the

Construction Manager will order any or all of the staking and layout work redone at no additional cost to the Town.

If any portion of the Contractor's staking and layout work is ordered redone, resulting in additional rechecking by the Town, the Town shall be reimbursed for all costs for such additional checking. The amount of such costs will be deducted from the Contractor's monthly estimate.

Inspection of the Contractor's layout by the Construction Manager and the acceptance of all or any part of it shall not relieve the Contractor of its responsibility to secure the proper dimensions, grades and elevations of the several parts of the work.

105.8.3.2 Resetting Monuments:

(A) General:

The Contractor shall be responsible to maintain all existing monumentation, including section line, right-of-way and roadway monumentation. Monumentation disturbed during construction shall be re-established by the Contractor and recorded at the appropriate county recorder's office, at no additional cost to the Town.

(B) Monumentation Standards:

Section corner, quarter corner and property corner monuments shall be re-established following the procedures in the Manual of Surveying Instructions 1973, published by the U.S. Department of the Interior, Bureau of Land Management and all applicable statutes and requirements specified in the current Arizona State Board of Technical Registration's "Arizona Boundary Survey Minimum Standards."

(C) Procedures:

Section line, right-of-way and roadway monumentation re-established by the Contractor shall bear the registration number of the Land Surveyor in responsible charge of the location.

Monuments used to define section lines shall be stamped in accordance with Manual of Surveying Instructions 1973, published by the Department of Interior, Bureau of Land Management. Roadway monumentation shall be stamped in accordance with the requirements of the appropriate municipal jurisdiction.

Monuments that are re-established shall be recorded at the appropriate county recorder's office and a copy of the Corner Recordation documentation shall be submitted to the Construction Manager within five working days of recordation.

Add the following new Subsection to the MAG Standard Specifications:

105.16 MEASUREMENT:

ITEM 105.01000, CONSTRUCTION SURVEY AND LAYOUT will be measured as a single, completed unit of work, which shall include all labor, tools, and equipment such as total stations, prisms, calculators, computers, software and all other supplies and personnel necessary to finish the work.

Add the following new Subsection to the MAG Standard Specifications:

105.17 PAYMENT:

The costs for all construction survey, including the personnel, equipment, and the labor involved, will be considered paid for in the ITEM 105.01000 CONSTRUCTION SURVEY AND LAYOUT.

Traffic control and flagging necessary because of the additional staking and layout ordered by the Construction Manager or additional work resulting from contract expansion and ordered by the Construction Manager, shall conform to the requirements of Section 401 of the MAG Standard Specifications.

No separate payment shall be made for the resetting of stakes, references, bench marks, or other survey control.

Unless otherwise directed by the Construction Manager, requests for payment for additional survey work performed shall be submitted prior to the end of the monthly estimate billing period during which the work is performed.

MAG SECTION 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC

Add the following new Subsection to the MAG Standard Specifications:

107.2.1 AZPDES (NPDES) Construction General Permit Requirements,

Unless otherwise directed by the Town, the Contractor shall be responsible for compliance with the Arizona Pollutant Discharge Elimination System (AZPDES) requirements administered by the Arizona Department of Environmental Quality (ADEQ).

107.2.1.1 Regulation Compliance:

The Contractor shall take all necessary measures to assure compliance of employees and subcontractors with the AZPDES Construction General Permit for Arizona as well as all other applicable federal, state and local laws, ordinances, statutes, rules and regulations pertaining to storm water discharge and air, ground water and surface water quality. As the permittee, the Contractor is responsible for preparing, in a manner acceptable to the ADEQ and the EPA, all documents required by regulation, which shall include but not necessarily be limited to the following:

107.2.1.1.1 Notice of Intent (NOI).

107.2.1.1.2 Storm water Pollution Prevention Plan (SWPPP).

107.2.1.1.3 Notice of Termination (NOT).

107.2.1.2 NOI Submittal:

Preliminary copies of the NOI and the SWPPP shall be submitted to the County during the pre-construction conference and shall be subject to review by the County prior to implementation.

The Contractor shall ensure the completed and duly signed NOI form(s) are submitted in a timely manner to prevent a delay to project construction.

The AZPDES form shall be submitted to ADEQ's Phoenix office by certified mail or hand delivered to the address below:

Storm Water Program-Water Permits Section/NOI
Arizona Department of Environmental Quality
1110 West Washington Street, 5415B-3
Phoenix, AZ 85007

The form may also be faxed to ADEQ at 602-771-4674 or submitted via "smart NOI" accessible from the ADEQ's website:

http://www.ev.state.az.us/environ/water/permits/stormwater.html

If the construction is near impaired or unique water, the SWPPP shall be submitted with the NOI. Permit activation may require 32 business days or more for construction sites near impaired or unique waters, as well as for construction sites with special concerns, therefore, documentation is to be submitted to ADEQ as early as possible (preferably at least 32 business days prior to the desired start of construction).

All local municipalities within the construction project limits shall be notified, as applicable.

A copy of all submitted NOI forms shall be posted at the construction site. An additional copy shall be submitted to the Construction Manager.

107.2.1.3 Time Extension:

Failure by the Contractor or subcontractor of any tier to submit a NOI within the mandated time frame shall result in delay of the construction start date and no claims for extension of time will be granted for such a delay.

107.2.1.4 SWPPP:

The Contractor shall develop, implement, update and revise the SWPPP, as necessary, to assure compliance with permit requirements. The SWPPP shall be retained on the project site at all times during construction. Copies of forms and guidance for preparing the SWPPP are available in the "Drainage Design Manual for Maricopa County, Volume III Erosion Control". The manual is available at the Flood Control District, 2801 West Durango Street, Phoenix, Arizona 85009. In addition, a "Construction SWPPP Checklist" can be obtained from ADEQ for assisting in the preparation of the SWPPP.

107.2.1.5 Inspections:

The Contractor shall perform inspections of all storm water pollution control devices on the project once every fourteen (14) days and within twenty-four (24) hours of each 0.5-inch or greater storm event, as required under the provisions of the AZPDES Construction General Permit for Arizona. The Contractor shall prepare reports on such inspections and shall retain the reports for a period of at least three (3) years following the completion of the project. Inspection reports shall be submitted monthly to the County along with progress payment requests. Additionally, the Contractor shall maintain all storm water pollution control devices on the project in proper working order, which shall include cleaning and/or repair during the duration of the project and until the site is in compliance with the AZPDES permit for final stabilization and the NOT is submitted.

107.2.1.6 NOT Submittal:

Upon project completion, acceptance demobilization, and final stabilization, the Contractor shall submit to the permitting agency a completed, duly executed Notice of Termination form for each NOI issued, with a copy to appropriate municipalities, thereby terminating all AZPDES permit coverage for the project. The Contractor shall then provide to the County copies of the SWPPP, inspection information and all other documents prepared and maintained by the Contractor in compliance with the AZPDES Construction General Permit. The Contractor shall retain the originals of such documents for a period of at least three (3) years following the completion of the project and make such documents available for inspection by representatives of the Environmental Protection Agency, the Arizona Department of Environmental Quality, the County, and any municipality having jurisdiction, upon request.

107.2.1.7 Fines and Penalties:

Fines and penalties imposed by the ADEQ or the EPA for Contractor's failure to comply with any or all of the permit requirements shall be borne by the Contractor.

107.2.1.8 Payment:

The lump sum price for AZPDES will be paid for under Item 107.01000 STORM WATER POLLUTION PREVENTION PLAN (SWPPP) and shall include all material, labor, and costs relating to the NOI, NOT, and the SWPPP. This includes but is not limited to the preparation, installation, maintenance, and removal of temporary SWPPP elements, assuring proper operation of the pollution control devices installed, and all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events, runoff or releases on the project. The lump sum price for AZPDES shall be inclusive of all related costs, and no additional claims shall be made by the Contractor under any other specification provision, including changed conditions. The Contractor shall be compensated for this item at a rate of 25 percent of the total contract price paid with the first progress payment, the remaining 75 percent will be prorated over the entire length of the project.

107.5 SAFETY, HEALTH AND SANITATION PROVISIONS, add the following:

The Contractor shall provide and maintain portable toilet facilities in each area of work. Portable toilet facilities shall be cleaned not less than once weekly. The associated costs of this requirement shall be incidental to the project.

107.6.2 *is modified to add:*

The Contractor shall comply with Town Ordinance No. 1410, adopted July 23, 2002. Work on this project shall not begin before 6:00 a.m. and shall conclude prior to 7:00 p.m. each day unless otherwise approved by the Town. Work at times other than those specified will be considered on a case-by-case basis by the Town subject to Ordinance

No. 1410, the duration and type of activity proposed, and the resulting impact on adjacent residential and commercial areas.

Hours for hauling operations shall be subject to approval by, and if necessary, permits from, the Town of Gilbert, ADOT, Maricopa County and other applicable municipalities, in accordance with local ordinances.

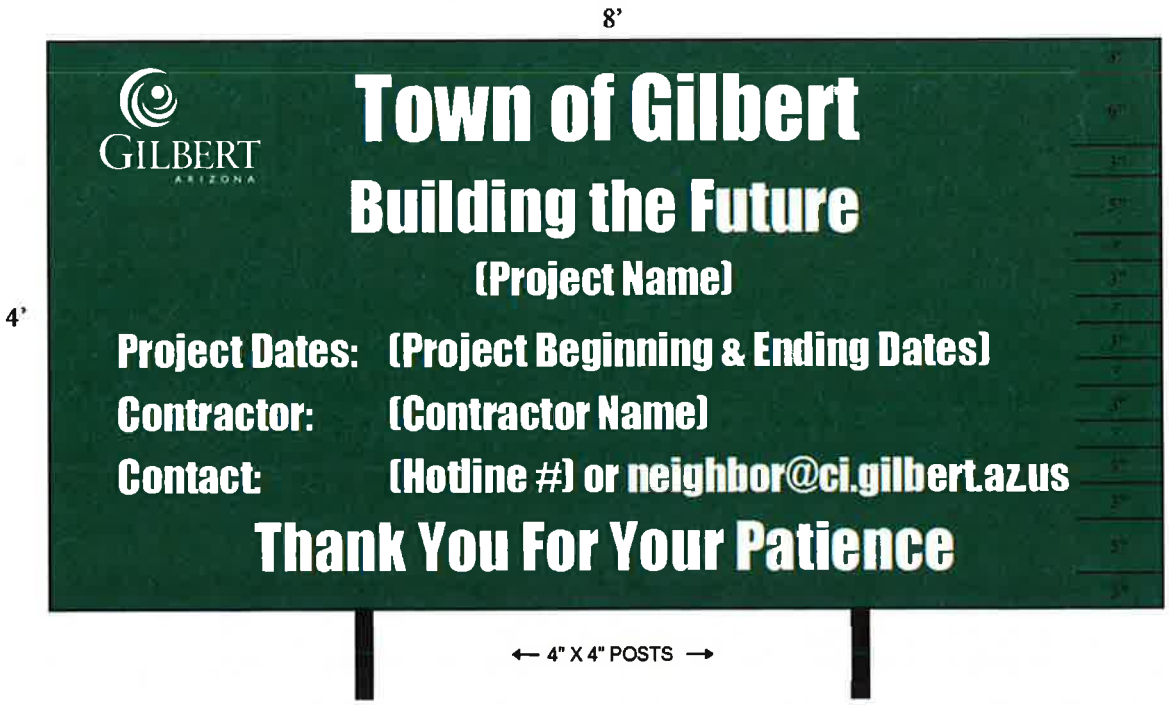
The Contractor is responsible for any construction noise mitigation measures needed to meet the Town of Gilbert Noise Ordinance, Sections 42-61 through 42-65. The Contractor shall be responsible for noise mitigation measures to ensure compliance with the noise ordinances of Maricopa County and other applicable municipalities.

107.7 BARRICADES AND WARNING SIGNS: *is modified to add:*

Construction Signs:

It shall be the responsibility of the Contractor to furnish and erect construction signs in accordance with this Specification. The signs shall be professionally prepared and subject to approval by the Town, shall be maintained by the Contractor for the duration of the project and shall be removed by the Contractor during the final project clean up. Sign locations shall be determined by the Town. The cost for the sign(s) shall be considered included as part of other contract items. No separate payment will be made for the sign(s).

The number of signs required, the size, shape, installation requirements and information to be included for construction signs is established in the detail provided:



The Contractor shall provide a 4-foot by 8-foot green signboard, as detailed herein. Typical project identification sign for general projects shall be non-reflectorized green background and non-reflectorized white letters and numerals. Letter height and spacing shall be as shown on the attached detail. Lettering shall be manufactured according to the Federal Manual on Uniform Traffic Control Devices (MUTCD) using Type "C" letters. Sign shall list the following information:

1. Project Name
2. Project Dates (Scheduled beginning and ending dates.)
3. Construction Contractor Name
4. Contractor hotline number for project **and** Town email address

The hotline number for the project will be supplied by the Contractor. The hotline is intended to be an answering service that actually answers the phone 24/7. The Contractor shall have a contact that is familiar with the project and will be reachable 24/7 to respond to any emergency that may arise in off work hours.

The hotline can not be a 24 hour "answering machine."

The Contractor shall submit a layout drawing to Town Construction Manager for approval showing the location, size and color of lettering and logos.

Sign supports shall be 4-inch by 4-inch pressure treated posts, set a minimum of 2-feet in the ground. The bottom of the sign shall be a minimum of 4-feet above the ground.

All required construction signs shall be installed by the Contractor within seven days of issue of the Notice to Proceed. The sign shall be maintained in good condition until the completion of the Contract, at which time the sign shall become the property of the Contractor.

One sign shall be erected for buildings and other limited area single sites. For multiple sites, one sign shall be erected at each site.

For linear projects one half mile or longer, place one sign at each end of the project.

MAG SECTION 108 COMMENCEMENT, PROSECUTION AND PROGRESS:

108.1 NOTICE TO PROCEED:

Add the following new Subsection:

108.1.1 Pre-Construction Conference:

After execution of the Contract by both parties and prior to the commencement of the work, the Construction Manager will schedule a pre-construction conference at the facilities of the Town of Gilbert. The Contractor shall be represented at a minimum by a company official with signature authority on behalf of its organization.

The Contractor shall submit to the Construction Manager during the pre-construction conference the following documents:

(A) List of all subcontractors

(B) List of all material sources

(C) Safety Plan

(D) Preliminary work schedule

(E) Traffic control plans

(F) Emergency telephone numbers

(G) Signing authority letter

(H) Name and telephone number of the certified safety professional

(I) Copies of all Permits required for project Construction

The following items shall be submitted at the preconstruction conference when reasonably feasible. When not submitted at the preconstruction conference, the submittal(s) shall be specifically shown in the work schedule. The submittals shall be scheduled at least 45 days prior to intended use and/or material transport to the project site.

(K) Material safety data sheets

(L) Mix designs

(M) Manufacturer's certification for all materials

(N) Shop drawings

The pre-construction conference will cover topics such as critical elements of the work schedule, payment application and the processing of invoices. Additionally, a scheduled start date for the work will be determined.

MAG SECTION 109 MEASUREMENTS AND PAYMENTS:

Add the following new Subsection:

109.10 MOBILIZATION/DEMOBILIZATION:

The Town of Gilbert will compensate the Contractor for a one-time, round trip mobilization/demobilization of the Contractor's personnel, equipment, supplies and incidentals, establishment of offices, buildings and other facilities required for the performance of the work on the project, as well as preparatory work and operations prior to the commencement of the work on the project site.

Mobilization/demobilization will be measured for payment by the lump sum as a single complete unit of work under ITEM 109.09000 MOBILIZATION/DEMOBILIZATION.

Payment for mobilization/demobilization, measured as provided above, will be made at the contract lump sum price. Payment shall be made in equal one-third portions. The first payment will be paid with the Contractor's initial billing. The second payment will be made when the total payments to the Contractor for the schedule of values, exclusive of payments for mobilization/demobilization, equals one-half of the total bid by the Contractor, exclusive of mobilization/demobilization. The remaining one-third will be paid as part of the final payment due the Contractor.

When other contract items are adjusted as provided in Section 109, and if the costs applicable to such items of work include mobilization costs, such mobilization costs will be considered as recovered by the Contractor in the lump sum price paid for mobilization, and will be excluded from consideration in determining compensation under Section 109.

If the Contractor performs a second mobilization/demobilization of personnel, material and/or equipment at the Construction Manager's express written request, the Town will compensate the Contractor for such expenses at the Contractor's actual costs. The Contractor shall provide all documentation for these costs at the request of the Construction Manager.

Add the following new MAG Section:

MAG SECTION 112 CONTRACTOR QUALITY CONTROL/QUALITY ASSURANCE SAMPLING PLAN

112.1 DESCRIPTION:

The work under this Section shall consist of consist of the Contractor obtaining an independent laboratory or testing company to conduct all of the testing required by the Contract Documents, including testing required by MAG Specifications, the Town of Gilbert, and other jurisdictional bodies. A copy of all test results shall be furnished to the Construction Manager in a Weekly Summary Report submitted at the weekly construction progress meeting (time and date to be set at the Pre-construction Conference) for tests performed from the preceding week. At substantial completion, the Contractor shall submit a final testing report containing all testing results which certifies the work complies with the project specifications. This report will need to be sealed by a Professional Civil Engineer, registered in the state of Arizona who was responsible for overseeing the testing and sampling for said testing company.

112.2 TESTING FREQUENCY:

Compaction testing procedures for the pipe bedding, trench backfill and aggregate base course will be in accordance with MAG Section 601.4.4 except aggregate base shall be compacted to 100 percent. The sampling and testing point will be in-place at the following minimum frequencies:

Aggregate Base	1 per 600 CY
Pipe Bedding	1 per 200 CY, minimum 1 per lift
Trench Backfill	1 per 200 CY, minimum 1 per lift

The Contractor will be required to conduct compaction tests at a minimum of 500 feet intervals at one (1) foot vertical lifts or at the above stated frequencies, whichever is the strictest. The maximum backfill lift for water consolidation shall not exceed four (4) feet, if mechanical compaction is used the lift shall not exceed a one (1) foot lift. Single sections of trenches less than 500 feet shall be tested at least once.

The asphalt concrete which will be utilized for the asphalt replacement will require an approved mix design. The Contractor's Quality Control testing will follow MAG 710.4 & 710.5:

Gradations	1 per 1000 tons
Asphalt Content	1 per 1000 tons
Uncompacted Voids	1 per 1000 tons
Compaction	1 per 300 tons

The concrete which will be utilized for the roadway improvements will require an approved mix design. The tests will follow MAG 725.10 at the minimum stated frequencies.

The sampling and testing under this section will be paid under Item 112.01000 CONTRACTOR'S QUALITY CONTROL.

112.3 MATERIAL CERTIFICATIONS:

No payment will be made on any materials, either installed or stored within project limits, until the Contractor has provided proper certifications as stated in the ADOT Standard Specifications for Road and Bridge Construction (2008) Section 106.05.

MAG SECTION 230 DUST PALLIATIVE APPLICATION

230.8 MEASUREMENT: *is revised to read:*

No direct measurement or payment will be made for dust palliative surface course application and materials.

SECTION 300

MAG SECTION 301 SUBGRADE PREPARATION

301.1 DESCRIPTION: *is modified to add:*

The work shall also include proof rolling of the area to be paved.

301.2 PREPARATION OF SUBGRADE: *is modified to add:*

Base Material:

Base material used below pavement shall conform to the requirements of Maricopa Association of Governments (MAG) Specifications for aggregate base (Section 702) as modified by the Town of Gilbert. Existing pavement materials (AC and AB) may be milled or pulverized and reused as fill and as aggregate base if the processed material meets MAG Section 702 for aggregate base. The base material may be also used as structural backfill around deep manholes.

The subgrade surface to receive aggregate base course material shall be proof rolled after the top 12 inches of the subgrade meets the compaction requirements, and after the subgrade has been brought to approximate shape within 0.1 to 0.2 feet of the lines and grades required by the project plans. Proof rolling shall be performed immediately following subgrade compaction operations.

Equipment:

Proof rolling shall be performed by a tractor drawn or self-propelled pneumatic-tired proof roller. The roller shall have a loading platform or a body suitable for ballast loading, supported by four pneumatic-tired wheels mounted on a rigid steel frame. The wheels shall be evenly spaced in one line across the width of the roller, and shall be arranged in such a manner that all wheels will carry approximately equal loads when operated over an uneven surface. The maximum spacing between adjacent wheels shall not exceed the tire width. The roller tires shall be maintained at an operating pressure of 120 psi. The proof roller shall weigh at least 25 tons. Charts or tabulations verifying the proof roller's specifications shall be available at all times. These charts shall at a minimum include the roller's dimensions, mass, contact areas and contact pressures over the full range of tire inflation pressures and over the full range of loading.

Ballast shall be provided that consist either of 1) ingots of known unit weight, 2) sand bags with a unit weight of 100 pounds, 3) bags of other material of known unit weight, or 4) other suitable material such that the total ballast weight is readily determinable at all times.

The proof roller shall be operated at a speed between 2 miles per hour and 5 miles per hour and the speed shall be adjusted per the Construction Manager to allow the Construction Manager to measure the deflections, ruts, or elasticity in the subgrade.

No proof rolling shall be performed during a period of rain, snow, or any other precipitation.

Each traffic lane shall be completely covered by the tire treads of the proof roller. The proof roller shall be operated in a pattern to readily allow recording of the number of coverages. The longitudinal trips of the proof roller shall have sufficient overlap ensure complete coverage.

Any permanent rutting in excess of one inch is considered failure. Any elastic movement or rutting in excess of one inch with substantial cracking is also considered failure. Any subgrade distress or failures shall be digitally photographed using a camera with a resolution of at least 3 megapixels. If soft or failed subgrade is found, compaction tests shall be completed in the upper six inches of subgrade to determine if the specified degree of compaction has been achieved. The Contractor shall correct all deficiencies found in these locations as directed by the Construction Manager. No additional measurement or payment will be made for documentation of failed subgrade. Compensation for correcting failed subgrade shall be made under the allowance established for this work.

301.7 MEASUREMENT: *Is modified to add:*

No direct measurement will be made for proof rolling; the cost is considered included in the other contract items.

MAG SECTION 310 UNTREATED BASE

310.1 DESCRIPTION: *The first paragraph is revised to read:*

Untreated base, i.e., select or aggregate base course, shall comply with Subsection 702 of the MAG Standard Specifications unless the use of a different type of material is specifically authorized in the Supplementary Conditions. Aggregate base shall be crushed in accordance with Section 702.2.

310.5 **PAYMENT**: *Is revised to add:*

Payment for aggregate base course is to be included in the cost of the ITEM 430.40000 - DECOMPOSED GRANITE, 2" THICK.

SECTION 324 PORTLAND CEMENT CONCRETE STREET PAVEMENT

324.3 CONSTRUCTION METHODS:

324.3.1 General: *is modified to add:*

At least 20 days prior to paving the Contractor shall furnish the Construction Manager the following information for review and specification compliance:

A detailed sequence and schedule of concrete placement operations including, but not necessarily limited to; width of pavement to be placed, proposed equipment, production rates, working hours, concrete hauling, placement methods, curing, sawing and sealing methods.

A detailed staking plan for subgrade controls including offset requirements.

A traffic control plan for pavement construction operations which includes provisions for the placement and maintenance of barriers required to protect the pavement from traffic for a minimum of seven days after concrete placement.

Mainline concrete pavement shall be constructed with slip-form paving equipment; however, areas inaccessible to slip-form paving equipment may be constructed with fixed side forms. Ramps and irregular pavement areas shall be constructed with either slip-form paving equipment or fixed side forms.

Unless otherwise shown on the plans, the main roadway, including concrete shoulders or distress lanes, shall be placed in a single monolithic pass, provided the finished surface of the pavement consistently conforms to the requirements for grade, alignment and pavement smoothness. Paving widths which are less than the full main roadway width shall be constructed with longitudinal joints that are located on the lane line or at the edge of the main roadway.

The Contractor may submit an alternate paving plan for review by the Construction Manager. The alternate plan shall be submitted in writing at least 45 days prior to paving and the Construction Manager's approval shall be obtained prior to proceeding with alternate paving methods.

MAG SECTION 336 PAVEMENT MATCHING AND SURFACING REPLACEMENT

336.4 MEASUREMENT: *Is modified to add:*

There shall be no separate measurement or payment for any removal and replacement of sidewalk, curb, gutter or valley gutter, associated with the matching and replacing existing pavements and surface treatments the cost being considered included in the contract bid items.

MAG SECTION 340 CONCRETE CURB, GUTTER, SIDEWALK, SIDEWALK RAMPS DRIVEWAY AND ALLEY ENTRANCE

340.1 DESCRIPTION: *Is modified to add:*

Sidewalk ramps shall have a detectable warning surface. In addition to sidewalk ramps, there are specific areas of sidewalk designated to receive the detectable warning surface where there are railroad crossings.

Where asphalt concrete is removed for the construction of new curb, gutter, sidewalk ramps or driveway ramps, asphalt concrete shall be replaced in kind.

340.2.1 Detectable Warnings: *is revised to read:*

Detectable warning surfaces shall be in accordance with the details and requirements shown in Town of Gilbert Standard Details 206A and 206B.

340.3 CONSTRUCTION METHODS: *Is modified to add:*

The Contractor shall provide a two-foot by two-foot sample of the detectable warning surface for sidewalk ramps to the Town for approval prior to installation of the surface. The proposed color for the warning mat shall be submitted to the Construction Manager for approval prior to installation of the surface.

340.3.1 Detectable Warnings: *is revised to read:*

Detectable warning surfaces shall be in installed accordance with the details and requirements shown in Town of Gilbert Standard Details 206A and 206B.

340.5 MEASUREMENT: *is modified to add:*

There shall be no measurement or payment for curb transitions, the cost being considered included in the unit price for concrete curb and curb and gutter.

There shall be no measurement or payment for asphalt concrete replaced in conjunction with the construction of new curb, gutter, sidewalk ramps or driveway ramps the cost being considered included in the contract bid items.

340.6 PAYMENT: *is modified to add:*

Payment for work under this section will be paid under Items:

340.01110 VERTICAL CURB & GUTTER, MAG DETAIL 220, TYPE A, H=6”
340.01111 VERTICAL CURB & GUTTER, MAG DETAIL 220, TYPE A, H=5”
340.01150 CONCRETE HEADER
340.01321 CURB RAMP, TYPE A, MAG DETAIL 235-1
340.01410 DRIVEWAY ENTRANCE, MAG DETAIL 250

MAG SECTION 345 ADJUSTING FRAMES, COVERS, VALVE BOXES AND WATER METER BOXES

345.1 DESCRIPTION: *is modified to add:*

This work shall consist of the removal and adjustment of frames, covers and valve boxes, to finished grade, of the Town of Gilbert and Non-Town utilities at the locations shown on the plans.

345.4 ADJUSTING MANHOLE AND VALVE COVERS: *is modified to add:*

Town of Gilbert water valve, box and cover shall be in accordance with MAG Detail 391-1.

Town of Gilbert manhole frame and cover shall be in accordance with Town of Gilbert Detail 45.

The Contractor shall contact all Non-Town utilities to coordinate the specific adjustment of their individual utility.

Damage to the existing epoxy lining of the sanitary sewer shall be repaired in accordance with Section 625 of these Technical Specifications.

SECTION 400

MAG SECTION 401 TRAFFIC CONTROL

401.2 TRAFFIC CONTROL DEVICES: *is modified to add:*

Barricades within the SRP Power Transmission Easement shall be installed with posts and foundations per the Town of Gilbert Standard Detail No. 79.

401.6 MEASUREMENT: *Section 401.6 is replaced with the following:*

Uniformed Off-duty Law Enforcement Officers, including vehicle and equipment, will be measured, paid, and coordinated as outlined in the Supplementary Conditions.

There shall be no measurement for flagmen, the cost being considered included in the unit price bid for Item 401.01000, Traffic Control.

401.7 PAYMENT: *is modified to add:*

There shall be no payment for work described in Section 401, Traffic Control, and work required to comply with the Supplementary Conditions, the cost being considered included in the contract work items.

Uniformed Off-duty Law Enforcement Officers, including vehicle and equipment, will be measured, paid, and coordinated as outlined in Section 4.8 of the General Conditions.

MAG SECTION 430 LANDSCAPING AND PLANTING

430.2 GENERAL: *Add the following:*

Contractor is to repair all areas disturbed by construction. This work includes miscellaneous grading and the installation of decomposed granite and sod.

Contractor is responsible for the installation of site amenities as identified in the project plans. Site amenities include 6' picnic tables, 6' pedestrian node benches, loop bike racks, trash receptacles, grills, drinking fountain, pet waste stations and miscellaneous concrete pavement associated with the ramada structures. In addition, the Contractor is to submit sealed and signed structural plans of the proposed ramada structures to the Town for approval.

The Contractor is responsible to prepare and oversee the preparation, implementation, and monitoring of the Storm Water Prevention Plan (SWPPP).

430.3 LAWN AREAS: *Add the following:*

430.3.4 Sod: Types of work required include fine grading and preparation of disturbed lawn area; furnishing and incorporation of soil amendments; and sodding of hybrid bermuda grass.

Contractor to provide strongly rooted sod, not less than 2 years old, free of weeds and undesirable native weeds and grasses and machine cut to pad thickness of 3/4", excluding top growth and thatch. Provide only sod capable of vigorous growth and development when planted. Sod shall be of uniform pad sizes with maximum 5% deviation in either length or width. Broken pads or pads with uneven ends will not be acceptable. Sod pads incapable of supporting their own weight when suspended vertically with a firm grasp on upper 10% of pad will be rejected. Provide sod composed principally of Hybrid Bermuda grass ("Midiron").

For sod areas, provide not less than the following quantities of specified materials per 1000 sq. ft.

- 6 cu. yd. of forest mulch (2" depth)
- 20 lbs. of sulphur
- 20 lbs. of commercial fertilizer
- 6 oz. of zinc sulfate
- 2 oz. ferrous sulfate

Top-dress fertilizer as approved for post-placement use.

Mix soil amendments and fertilizers with existing soil at rates specified. Apply soil amendments on surface of existing soil and incorporate thoroughly into top 6" before installing sod.

Fine grade sod area to a smooth even surface with loose uniformly fine texture. Lightly roll, rake, remove ridges and fill depressions to meet finish grades. Allow for maximum level of natural compaction. Remove trash, debris, stones larger than 1" diameter and other objects which may interfere with planting or maintenance operations.

Lightly moisten prepared sod area before placing sod if soil is very dry or to achieve desired compaction. Allow surface to dry off and loosen top 1" before placing sod. Do not create a muddy soil condition.

Restore prepared area to specified condition if eroded or otherwise disturbed after fine grading and prior to planting.

Installation: Lay sod within 24 hours from time of stripping. Place immediately upon arrival to site. Do not lay dormant sod.

Lay sod to form solid mass with tightly fitted joints. Butt ends and sides of sod strips; do not overlap. Stagger strips to offset joints in adjacent courses. Tamp or roll lightly to ensure contact with subgrade. Place sod on mounds and slopes with strips parallel to contours.

Protection: Erect barricades and warning signs as required to protect newly sodded areas from traffic. Maintain barricades throughout maintenance period until sod is established.

Maintenance: Begin maintenance of sod areas immediately after each area is planted and continue until sod is established and accepted by the Town.

Mow sod as soon as there is enough top growth to cut with mower set at specified height. Repeat mowing as required to maintain specified height. Remove no more than 40% of grass leaf growth in initial or subsequent mowing. Do not delay mowing until grass blades bend over and become matted. Do not mow when grass is wet. Time initial and subsequent mowing to maintain grass height at 1" to 1-1/2".

A top dressing fertilizer shall be applied to sod areas at a rate of ½ pound of actual nitrogen per 1,000 square feet of lawn area. This top dress fertilizer application shall commence after the third mowing and be reapplied at 6 week intervals through the maintenance period (minimum 2 applications).

Acceptance of Sod: At the end of the 90-day maintenance period, the Construction Manager will make an inspection to determine acceptability of the sod work.

Sodded areas will be acceptable provided requirements, including maintenance, have been complied with, and a vigorous, healthy, well-rooted, sod is established, free of weeds, bare areas greater than 1" and surface irregularities.

430.4 DECOMPOSED GRANITE AREA: *Delete entire section and replace with the following:*

The decomposed granite areas shall be cleared and grubbed in accordance with MAG Section 201. They shall be graded according to the plans. The ground shall be reasonably smooth and firm and all deleterious material and rocks larger than one inch in diameter shall be removed and disposed of before placing the mulch. The area shall be treated with pre-emergence control Surflan or equal ("or equal" must be approved by Owner's Representative) prior to and after placement of the mulch.

The decomposed granite shall be in accordance with MAG Section 795 unless specified otherwise on the plans. Mulch shall be evenly distributed on the designated areas to a depth as indicated on the plans and details.

Decomposed granite shall be 'Madison Gold' in color or equal ("or equal" must be approved by Construction Manager) and size as shown on the plan. Contractor is to submit five pound sample of each gradation for approval prior to installation.

4A ¼" Minus: To be used adjacent to pathway as shoulder material.
4B ½" Minus: To be used on slopes and in disturbed areas where turf is not to be installed

After placing and grading decomposed granite for general landscape use, the Contractor shall lightly water the mulch to remove fine material from the surface. Contractor shall settle and compact mulch areas to ensure all voids are removed and mulch has attained final settlement. Settlement of mulch shall be accomplished by water settling, rolling or other methods necessary as approved. Contractor will be responsible for repairs of any areas that settle following installation during the guarantee period.

430.10 MEASUREMENT AND PAYMENT:

Measurement and payment shall be in accordance with Section 109.

The lump sum or unit prices established on the proposal sheet shall be full compensation for furnishing all labor, material, tools, and equipment and for performing all work necessary to complete the site furnishings, ramadas, landscape, and irrigation installations as shown in the project plans and details.

General landscaping shall be measured as lump sum and paid for under ITEM 430.00001 GENERAL LANDSCAPE. This includes, but is not limited to, installation of trees, shrubs, sod, restoration of landscape areas disturbed by construction, and any other landscape related items shown on the project plans.

Decomposed Granite (2" Thick) shall be measured by the SY and paid for under ITEM 430.40000 DECOMPOSED GRANITE, 2" THICK. This includes both ¼" minus DG and ½" minus DG.

The following Section is hereby added to the MAG Standard Specifications:

430.11 SITE FURNISHINGS:

Contractor shall furnish and install the following site furnishings:

430.11.01 Picnic Tables

Picnic tables shall be as follows or approved equal.

Model Number: 100-68PL S-2 (8' top/6' seat) (ADA accessible)
Zinc Rich Epoxy Finish; Polyester Powder Coated Frame Color: Black
Recycled Plastic Slats: Redwood
Manufactured by: DuMor Site Furnishings

Model Number: 100-60PL (6' top/6' seat)
Zinc Rich Epoxy Finish; Powder Coated Frame Color: Black
Recycled Plastic Slats: Redwood
Manufactured by: DuMor Site Furnishings

Picnic Tables are to be installed per the manufacturer's recommendations at the locations shown on the project plans. Construction Manager shall approve final location of Picnic Tables prior to installation.

Picnic Tables shall be measured as each and paid for under ITEM 430.11010 – PICNIC TABLE. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.02 Benches

Benches shall be as follows or approved equal.

Model Number: 178-60PL S-2
Zinc Rich Epoxy Finish; Polyester Powder Coated Frame Color: Black
Recycled Plastic Slats: Redwood
Manufactured by: DuMor Site Furnishings

Benches are to be installed per the manufacturer's recommendations at the locations shown on the project plans. Construction Manager shall approve final location of Benches prior to installation.

Benches shall be measured as each and paid for under ITEM 430.11020 - BENCH. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.03 Loop Bike Rack

Loop Bike Racks shall be as follows or approved equal.

Model Number: 83-00 S-2
Zinc Rich Epoxy Finish; Polyester Powder Coated Frame Color: Black
Manufactured by: DuMor Site Furnishings

Loop Bike Racks are to be installed per the manufacturer's recommendations at the locations shown on the project plans. Construction Manager shall approve final location of Loop Bike Racks prior to installation.

Loop Bike Racks shall be measured as each and paid for under ITEM 430.11030 – LOOP BIKE RACK. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.04 Trash Receptacle

Trash Receptacles shall be as follows or approved equal.

Model Number: 158-32-FTO S-2
Zinc Rich Epoxy Finish with Polyester Powder Coated Frame Color: Black

Manufactured by: DuMor Site Furnishings

Trash Receptacles are to be installed per the manufacturer's recommendations at the location shown on the project plans. Construction Manager shall approve final location of Trash Receptacles prior to installation.

Trash Receptacles shall be measured as each and paid for under ITEM 430.11040 – TRASH RECEPTACLE. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.05 Barbeque Grills

Barbeque Grills shall be as follows or approved equal.

Model Number: 22-00 S-2
Frame Color: Black
Manufactured by: DuMor Site Furnishings

Barbeque Grills are to be installed per the manufacturer's recommendations at the location shown on the project plans. Construction Manager shall approve final location of Barbeque Grills prior to installation.

Barbeque Grills shall be measured as each and paid for under ITEM 430.11050 – BARBEQUE GRILL. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.06 Drinking Fountain

Drinking Fountain shall be as follows or approved equal.

Model Number: 3900SM – Chilled with aggregate finish
Manufactured by: Most Dependable Fountain

Drinking Fountain is to be installed per the manufacturer's recommendations at the location shown on the project plans and per SECTION 471 ELECTRICAL UNDERGROUND INSTALLATION. Construction Manager shall approve final location of Drinking Fountain prior to installation.

Drinking Fountain shall be measured as each and paid for under ITEM 430.11060 – DRINKING FOUNTAIN. This includes full payment for furnishing all labor, materials, tools, equipment, gravel sump, installation of electrical components and connection to power source, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.07 Pet Waste Station

Pet Waste Stations shall be as follows or approved equal.

Model Number: JJB12A
Frame Color: Black
Manufactured by: Zerowaste USA

Pet Waste Stations are to be installed per the manufacturer's recommendations at the location shown on the project plans. Construction Manager shall approve final location of Pet Waste Stations prior to installation.

Pet Waste Stations shall be measured as each and paid for under ITEM 430.11070 – PET WASTE STATION. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in installing the items complete in place as shown on the plans and specified herein.

430.11.08 Ramada Structures

Ramada Structures shall be as follows or approved equal.

Ramada Structure A
Model Number: Custom Mingus (5' x 13') with Standing Seam Steel Roof
Roof Color: Marine Green
Post Color: Black. Post to be surrounded by CMU with smooth stucco finish painted tan with stone band. See project details.
Manufactured by: Classic Recreation Systems, Inc.

Solar Panel/Light
Manufactured by: Solar King
Model Number: Solar-Powered Ramada Lighting System
Quantity: 1 per Ramada Structure

Integral color concrete pavement, ramada wall under and adjacent to Ramada Structure A and solar panel/light components to provide power to the ramada shall be installed per the approved shop drawings and project details at the locations shown on the project plans. Stucco finish on columns and CMU wall to be painted SW2828 Colonial Revival Tan (Sherwin-Williams). Integral color concrete for pavement and footers to be Cocoa 6130 (Davis Colors). All work required for the construction of the integral color concrete pavement, ramada walls including wall finish and paint, and solar components shall be paid for as part of Ramada Structure A.

Ramada Structure B
Model Number: Mesa (30' x 50') with Multi-Rib Steel Roof
Roof Color: Marine Green
Post Color: Black. Post to be surrounded by split face CMU. See project details.
Manufactured by: Classic Recreation System, Inc.

Solar Panel/Light
Manufactured by: Solar King
Model Number: Solar-Powered Ramada Lighting System
Quantity: 4

Concrete pavement under Ramada Structure B, approach slab, and solar panel/light components to provide power to the ramada shall be installed per the approved shop drawings and project details at the location shown on the project plans. All work required for the construction of the concrete pavement, approach slab, and solar components shall be paid for as part of Ramada Structure B.

Ramada structures are to be installed per the manufacturer's recommendations at the locations shown on the project plans.

Contractor shall submit shop drawings, sealed and signed by a Registered Structural Engineer, for ramada structures A and B for approval by the Construction Manager prior to placing order and installing ramada structures.

Ramada structures shall be measured as each and paid for under ITEM 430.11080A – RAMADA STRUCTURE A and ITEM 430.11080B – RAMADA STRUCTURE B. This includes full payment for furnishing all labor, materials, tools, equipment, and incidentals for completing the work involved in constructing the items complete in place as shown on the plans and specified herein.

MAG SECTION 440 SPRINKLER IRRIGATION SYSTEM INSTALLATION

440.11 MEASUREMENT AND PAYMENTGENERAL: *Add the following:*

General Irrigation shall be measured and paid for under ITEM 440.00001 GENERAL IRRIGATION. This includes, but is not limited to, installation of lateral pipe and emitters, connections to existing irrigation system, and any other items shown on the project plans.

The following Section is hereby added to the MAG Standard Specifications:

MAG SECTION 464 ROADSIDE SIGN SUPPORTS

Sign supports shall be in accordance with Section 607 of the *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction (2008*), except as modified herein:

607-2.01 General Requirements: *of the ADOT Standard Specifications is modified to add:*

Traffic signs less than 9 square feet in area shall be installed on 12-gauge 1-3/4 inch square steel tubing per Town of Gilbert Detail 79.

Traffic signs 9 square feet or greater in area shall be installed on 12-gauge 2 inch square steel tubing per Town of Gilbert Detail 79.

All sign foundations shall be per Town of Gilbert Detail 79.

All signing installed within the Town's right-of-way shall be installed by an individual that has current certification in sign installation or inspection from the International Municipal Signal Association (IMSA) or the American Traffic Safety Association (ATSSA).

607-4 Method of Measurement: *is revised to read:*

Sign posts shall be measured by the lineal foot.

607-5 Basis of Payment: *is modified to add:*

Sign posts will be paid for under ITEM 464.02010 – SIGN POST (SQUARE TUBE)

The following Section is hereby added to the MAG Standard Specifications:

MAG SECTION 465 SIGN PANELS

Sign panels shall be in accordance with Section 608 of the *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction (2008*), except as modified herein:

SECTION 608 SIGN PANELS:

608-1 Description: *of the ADOT Standard Specifications is revised to read:*

The work under this section shall consist of furnishing and installing sign panels in accordance with the details shown on the plans and the requirements set forth herein.

The sign panels shall be of the following types:

- Extruded Aluminum Sign Panels With Demountable Characters
- Flat Sheet Aluminum Sign Panels With Direct-Applied or Silk-Screened Characters (Trail Signs)
- Warning, Marker, and Regulatory Sign Panels
- Route Shields for Installation on Sign Panels
- EXIT ONLY for Installation on Sign Panels

608-2.13 Retroreflective Sheeting, Inks and Opaque Film:

As a minimum, all signing shall incorporate ASTM Type IV (High Intensity) sheeting. The exceptions are as follows:

- All Warning Signs (yellow series) shall be ASTM Type XI (fluorescent yellow) sheeting.
- All Regulatory Sings shall be ASTM Type XI sheeting.
- Street Name Signing
- Any arterial street intersection shall be ASTM Type XI sheeting.
- All other intersections shall be ASTM Type IV sheeting
- All overhead internally illuminated street name signs shall be ASTM Type XI sheeting.
- All School Area signing shall be ASTM Type XI (fluorescent yellow-green) sheeting.

All signing specified to be ASTM Type IV (high intensity) shall be 3M 3930 series sheeting or equivalent, to include the same warranty period.

All signing specified to be ASTM Type XI (diamond grade) shall be 3M 4000 series sheeting or equivalent, to include the same warranty period.

Any request to use sheeting other than 3M shall be made in writing to the Traffic Engineer 30 days in advance of installation.

Sign imaging shall be in compliance with the reflective sheeting manufacturers matched component system. Sign imaging shall consist of an acrylic based electronic cuttable film (3M 1170 series or equivalent) or silk screened (depending on the quantity of signage) with standard highway colors.

Signs shall be fabricated in accordance with the recommendations established by the manufacturer of the sign sheeting. All processes and materials used to make a sign shall in no way impact the performance, uniform appearance (day and night), or durability of the sheeting, or invalidate the sign sheeting manufacturers' warranty.

608-3.02 Installation of Sign Panels: *of the ADOT Standard Specifications is modified to add:*

The general contractor or sub-contractor installing signing within the Town's right-of-way is required to obtain a permit 15 days prior to any installation. Permit applications can be obtained from the Development Services located at 90 East Civic Center Drive, Gilbert, AZ 85296, or by calling 480-503-6700.

608-4 Method of Measurement: *is revised to read:*

Sign Panels will be measured as each.

608-5 Basis of Payment: *is modified to add:*

Sign Panels will be paid for under ITEM 465.01000 TRAIL SIGN MOUNTED ON SQUARE TUBE.

The following Section is hereby added to the MAG Standard Specifications:

SECTION 471 ELECTRICAL UNDERGROUND INSTALLATION

471.1 DESCRIPTION:

The work under this section shall consist of furnishing and installing electrical conduit, and pull boxes for traffic signals, intersection lighting, drinking fountain, and pathway (future) lighting including drilling, excavating placing and compacting backfill material in accordance with the locations shown on the Project Plan, requirements of these specifications, and MAG specifications.

471.2 MATERIALS:

471.2.1 Electrical Conduit:

All conduit and conduit fittings shall be listed by UL, and conform to NEC standards. Except as specified below, all conduit to be installed underground or in concrete structures shall be rigid polyvinyl chloride (PVC) conforming to the requirements of UL 651 for Rigid Nonmetallic Conduit. PVC conduit and conduit fittings shall be Schedule 40, heavy wall, manufactured from high impact material and shall be rated for use at 90 degrees C. High Density Polyethylene (HDPE) conduit will be considered for approval for directional boring applications.

All exposed conduit and conduit fittings to be installed above ground shall be rigid metallic type manufactured of galvanized steel conforming to requirements of UL 6 for Rigid Metallic Conduit and to NEC standards. Metal conduit in contact with dirt shall be wrapped in Scotch 50 tape.

471.2.2 Conduit Warning Tape:

Conduit warning tape shall be a four (4) mil inert plastic film specially formulated for prolonged use underground and shall be a minimum of 3 inches wide. All tape shall be highly resistant to alkalis, acids, and other destructive agents found in the soil.

Tape shall have a continuous printed message warning of the location of underground conduits. The message shall be in permanent ink formulated for prolonged underground use and shall bear the words, **'CAUTION-ELECTRIC/FIBER OPTIC LINE BURIED'** in black letters on a red background, as shown on the plans.

471.2.3 Pull Boxes:

Pull boxes, pull box covers and pull box extensions shall be constructed of polymer concrete with reinforced heavy-weave fiberglass in accordance with Town of Gilbert Standard Details 94, 95 and 96. Pull boxes and covers shall be concrete gray color and rated for no less than 8,000 lbs. over a 10 inch x 10 inch area and be designed and tested to temperatures of -55 degrees F. Material compressive strength shall be no less

than 1584 ksf. Covers shall have a minimum coefficient of friction of 0.5. Pull boxes shall be stackable for extra depth. Covers shall be secured with two (2) 3/8 inch corrosion resistant metallic hex bolts with corrosion resistant metallic washers. The bolts shall be in accordance with the requirements of Town of Gilbert Standard Detail No 96.

At the request of the Construction Manager the Contractor shall furnish shop drawings of the pull boxes.

Chipped or cracked pull boxes, covers and extensions will not be accepted.

471.3 CONSTRUCTION REQUIREMENTS:

471.3.1 Installation of Electrical Conduit:

(A) General Requirements:

Conduit shall be furnished and installed at the locations and of the sizes shown on the plans. Unless changes are necessary to avoid underground obstructions all underground conduit shall be installed in a straight line from pull box to pull box and/or from foundation to pull box and shall be of one continuous size. Any change in conduit routing must be approved by the Construction Manager and documented by the Contractor on as-built plans.

Traffic signal conduit and pull boxes shall be installed using Town of Gilbert Standard Detail No's 94, 95 and 96.

All PVC conduit shall be stored and handled in an approved manner to minimize ultraviolet deterioration due to exposure to sunlight.

The PVC conduit shall be cut square and trimmed to remove all rough edges. PVC conduit connections shall be of the solvent weld type. Purple primer conforming to the requirements of ASTM F 656 shall be applied to the joined surfaces prior to use of cement. The joint cement shall be the gray PVC cement conforming to the requirements of ASTM D 2564. Where a connection is made to rigid metallic conduit, the coupling used shall be a PVC female adapter.

Expansion joint fittings shall not be installed in PVC conduit runs between pull boxes unless specified. Expansion joint fittings shall be installed in conduit runs in which both ends of the conduit are fixed in place, such as conduit runs between two foundations.

Expansion joint fittings shall be installed in conduit runs which cross a concrete structure expansion joint. Approved expansion fittings shall allow for a linear thermal expansion of up to 6 inches.

Conduit embedded in concrete structures shall be securely attached to the reinforcing steel at intervals of approximately 12 inches. Expansion fittings shall be installed where conduit crosses expansion joints in the structure. Where bonding is not continuous,

expansion fittings shall be provided with a bonding jumper of number 6 AWG flexible wire. Where it is not possible to use expansion fittings, sleeves of sufficient size shall be installed to provide a minimum 1/2 inch clearance between the conduit and the inside wall of the sleeve. The sleeve shall be discontinuous at the expansion joints.

All existing conduits and conduit embedded in concrete structures shall be cleaned out with a mandrel and blown out with compressed air.

No field bends allowed. The number of bends between pull boxes or between pull box and foundations shall not contain more than equivalent of two quarter bends (270 degrees, total), including the bends at the pull boxes or foundations, unless authorized by the Construction Manager.

Conduit entering a pull box or foundation shall be fitted with a factory made 90 degree elbow with a minimum sweep radius per the Town of Gilbert Standard Detail.:

Approved insulated grounding bushings shall be used on steel conduit ends.

The Contractor shall place warning tape (as specified in Section 471.2.2) in all open trenches in which conduit is placed. All warning tape shall be buried at a depth of 6 inches to 8 inches below final grade.

Where conduit is to be installed under existing roadway pavement by jacking or drilling methods, the jacking and/or drilling pits shall be kept 2 feet clear of the edge of the pavement.

Conduit stub-outs under curbs or roadway edges for loop detection lead-in conductors shall conform to the requirements of Town of Gilbert Detail 99. Loop detection conduit stub-outs shall not be installed until completion of curb and gutter work. A 3-inch **"X"** shall be chiseled into the curb directly over conduit located under curbs.

Installation of conduit for underground electrical service shall be in accordance with the Town of Gilbert Details, as shown on the plans and in accordance with the requirements of the utility company providing electrical service. Conduit installed in railroad right-of-way shall be installed in accordance with the requirements of the railroad company.

(B) Conduit Depth Requirements:

Conduits installed in protected areas such as behind curbs, under side-walks, etc. that are not subject to any vehicular traffic shall be at a minimum depth of 24 inches below final grade. Conduits installed under roadways, driveways, or any open area where there is the possibility of vehicular traffic, shall be installed at a minimum depth of 36 inches below final grade. When conduit cannot be installed at the minimum depth, it shall be completely encased in 3 inches of Class C concrete in accordance with Section 725 of the MAG Standard Specifications.

Electrical Conduits installed according to the electrical utility company requirement. SRP is the designated electrical utility provider for this area, and the conduit shall be installed 48 inches below final grade or as specified in the plans.

(C) Trenching, Backfilling and Compaction:

Trenches shall not be excavated wider than necessary for the proper placement of conduit and pull boxes. Trenching shall be done in accordance with MAG Section 601. Backfilling, compaction and bedding of conduit runs shall be in accordance with MAG Section 601.4.9.

Conduit shall be installed by horizontal boring underneath the paved roadway, driveways and under matured driveways as indicated on the drawings.

Open trench excavation across any existing paved areas, shall have two (2) parallel cuts made at a distance not to exceed 16 inches. All removal and replacement of existing paved areas shall be in accordance with Section 336 of the MAG Standard Specifications.

Open trench excavation across an existing Portland concrete area shall have two (2) parallel cuts made at a distance not to exceed 16 inches. All removal and replacement of existing Portland concrete areas shall be done in accordance with Section 336.

After each excavation is complete and materials in place, the Contractor shall notify the Construction Manager for inspection, and under no circumstances shall any underground material or equipment be covered with fill without proper approval.

471.3.2 Installation of Pull Boxes:

Pull boxes of the type specified on the plans shall be furnished and installed at the locations shown on the Plan. Pull boxes shall be installed in accordance with Town of Gilbert Details 94, 95 and 96. All relocation of pull boxes to avoid driveways and/or other structures shall be approved by the Construction Manager and documented by the Contractor on the as-built plans.

Pull boxes shall be set and adjusted so that they are flush at curb or sidewalk grade. When no grade is established pull boxes shall be set as requested by the Construction Manager.

All relocation of pull boxes to avoid driveways and/or other structures shall be approved by the Construction Manager and documented by the Contractor on the as-built plans.

All pull box covers shall be secured with the required bolts and washers before final acceptance of the project.

All pull boxes shall be left in a clean condition, free of dirt and debris upon completion of

the work.

471.4 MEASUREMENT:

Conduit will be measured by the linear foot for each diameter size.

Pull boxes will be measured as a unit for each pull box size.

471.5 PAYMENT:

The accepted quantities of conduit, measured as provided above, will be paid for at the contract unit price per linear foot, which shall be full compensation for the item, complete in place, including excavation, backfill, warning tape, pull rope or bond wire and any incidentals necessary to complete the work. This includes ITEM 471.61212 SCH 40 ELECTRICAL CONDUIT, 2.5" W/ NYLON PULL ROPE and ITEM 471.61300 3" PVC FIBER OPTIC CONDUIT AND 2.5" SCHEDULE 40 CONDUIT IN SHARED TRENCH. No direct payment will be made for rigid metal conduit bends or rigid non-metallic conduit bends at pull boxes, expansion fittings and coupling fittings, the cost being considered as included in the contract price for the conduit items.

The direct bore of lighting conduit across McQueen Road will be paid for under ITEM 471.61400 DIRECT BORE, 2.5" SCHEDULE 40 PVC CONDUIT which shall include full compensation for items complete in place.

The accepted quantities for pull boxes, measured as provided above, will be paid for at the contract unit price, each, which shall be full compensation for the item, including any excavating, backfilling and landscaping necessary to complete the work.

The following Section is hereby added to the MAG Standard Specifications:

SECTION 472 TRAFFIC SIGNAL MODIFICATIONS

472.1 DESCRIPTION:

The work under this section shall consist of furnishing all materials and constructing the relocated pedestrian traffic signal pole and installation of new equestrian push buttons.

During the modification of the pedestrian traffic signal; the Contractor will be responsible for making contact with the Traffic Engineering Section to arrange for inspections. At no time shall conduit be backfilled in the Town's right-of-way without an inspection. Any questions concerning traffic signals, traffic signal interconnect or to arrange for an inspection, contact the Traffic Engineering Section at (480) 503-6186. Inspections must be scheduled a minimum of 48-hours (or 2 business days) in advance.

Traffic signal pole foundations shall include all conduits, conduit elbows, anchor bolts, rebar cages, grounding electrode, and forms required for construction of the foundation. The Contractor shall replace the existing pull box adjacent to the relocated signal pole with a new No. 7 Heavy-Duty Pull Box per ADOT Standard Drawing T.S. 1-2 set to match new sidewalk/driveway grade. Contractor shall supply and install new conduit and conductors from the relocated signal pole to the new pull box location and any conductors/splices needed to connect the new equestrian push buttons to the traffic signal controller. The traffic signal pole foundations shall conform to the requirements of ADOT Standard Detail T.S. 4.1.

The electric service pedestal and cabinet foundations shall conform to the requirements of ADOT Traffic Signal and Highway Lighting Standard Details.

472.2 MATERIALS:

472.2.1 Excavation and Backfill:

Trenches shall not be excavated wider than necessary for the proper placement of conduit and pull boxes. Trenching, backfilling and compaction shall be done in accordance with Section 601 of the MAG Standard Specifications.

All excavations within the roadway shall be backfilled and compacted in accordance with Section 211 of the MAG Standard Specifications.

472.2.2 Concrete:

Concrete used for all foundations shall be Class 'A' concrete and shall be in accordance with the requirements of Section 725 of the MAG Standard Specifications.

472.2.3 Anchor Bolts:

All anchor bolts shall be in accordance with Town of Gilbert Standard Detail PF3.

All anchor bolts shall be threaded at the top and shall conform to the plans.

Anchor bolts will be supplied by Town of Gilbert.

472.2.4 Rebar Cage:

All rebar cage shall be in accordance with Town of Gilbert Standard Detail PF3.

472.2.5 Electrical Conduit:

All electrical conduit and conduit fittings shall be in accordance with these Technical Specifications.

472.2.6 Grounding Electrode:

The grounding electrode shall be in accordance with these Technical Specifications and the detail shown in the project plans.

472.3 CONSTRUCTION REQUIREMENTS:

The excavations required for the installation of foundations and other items shall be performed in such a manner as to avoid any unnecessary damage to streets, sidewalks, landscaping and other improvements. Any damage by the Contractor's operation shall be replaced or reconstructed where determined by the Construction Manager at the expense of the Contractor. The trenches shall not be excavated wider than necessary for the proper construction of the foundations and other equipment. Excavation shall not be performed until immediately before construction of foundations. The material from the excavation shall be placed in a position that will minimize obstructions to traffic and interference with surface drainage.

All surplus excavated material shall be removed and properly disposed of within 48 hours by the Contractor, as directed by the Construction Manager. After each excavation is completed, the Contractor shall notify the Construction Manager for inspection, and under no circumstances shall any underground materials or equipment be covered with fill without the approval of the Construction Manager.

Excavation and backfill shall be in accordance with the requirements of Section 105.12 of the MAG Standard Specifications. At the end of each working period, all excavations shall be barricaded or covered, or both, to provide safe passage for pedestrian and vehicular traffic.

Excavations in the street or highway shall be performed in such a manner that not more than one traffic lane is restricted at any time, unless otherwise provided in the Technical Specifications.

Sidewalk and pavement excavations shall be kept well covered and protected to provide safe passage for pedestrian and vehicular traffic until permanent repairs are made.

The elevation of signal and lighting pole foundations shall be set as follows unless otherwise noted within the construction plans or Technical Specifications. Signal and lighting pole foundations shall be set flush with the existing or new sidewalk when sidewalk is present. Where curb exists without sidewalk, the foundations shall be set flush with a surface defined by a 1.5 percent upward slope from the top of curb. Where there is no curb or sidewalk pole foundations shall be as shown on the project plans. The dimensions and locations of foundations shall be as specified on the project plans; however, the Construction Manager may direct that changes be made in locations due to obstructions or other existing conditions. Any change in locations shall be documented by the Contractor on as-built plans. The Contractor shall verify top of foundation elevations with the Construction Manager prior to foundation construction.

Concrete shall be placed in holes which have been augured against undisturbed earth. If the material in the bottom of the hole is not firm and stable, it shall be compacted or treated as directed by the Construction Manager. The walls and the bottoms of the holes shall be thoroughly moistened prior to placing concrete.

If the soil is not stable, a deeper foundation than specified may be required or forms shall be used as determined by the Construction Manager. The forms shall be of the proper size and dimensions and shall be rigid and securely braced

Foundation forming material shall extend no more than 20 inches below the foundation final grade and shall be removed after placement and curing of concrete.

Anchor bolts shall be oriented such that the bolt pattern sides are both parallel and perpendicular to the roadway centerlines unless otherwise specified on the plans. A 25-foot coil of No. 4 AWG bare copper conductor shall be installed in accordance with ADOT Std Dwg T.S. 4-1. Anchor bolts; conduit and rebar cage shall be centered within the foundation, set at the specified height and plumb within ±1/2 degree. During placement of concrete, anchor bolts shall be securely held in proper alignment, position, and height with a suitable template.

After excavations are completed and anchor bolts and conduit installed, the Contractor shall notify the Construction Manager for inspection. Under no Circumstances shall concrete be placed without approval of the Construction Manager.

The concrete pour shall be continuous and consolidated by means of vibrators. All exposed surfaces of the foundation shall receive a finish that is smooth, level, and free of form marks.

Type 'A' foundations shall set for a minimum of three (3) days prior to installation of poles and/or cabinets.

472.4 MEASUREMENT:

The lump sum prices established on the proposal sheet shall be full compensation for furnishing all labor, material, tools, and equipment and for performing all work necessary to complete the pedestrian signal modification as shown in the project plans and details.

472.5 PAYMENT:

The accepted quantities for the pedestrian traffic signal relocation will be paid for at the contract unit price under ITEM 470.00002 PEDESTRIAN SIGNAL MODIFICATIONS. Payment shall be full compensation for the work, COMPLETE IN PLACE, including new signal pole foundations, signal pole relocation, removal and replacement of pull boxes, conduit and conductors to reconnect relocated signal poles, and new equestrian push buttons, excavations, backfill and incidentals necessary to complete the work.

No measurement or direct payment will be made for anchor bolts or re-bar cages, the cost being included in the unit price paid for foundations.

The following Section is hereby added to the MAG Standard Specifications:

MAG SECTION 474 TRAFFIC SIGNAL POLE INSTALLATION:

474.1 DESCRIPTION:

The work under this section shall consist of installing traffic signal poles, mast arms, and modifying multi-use poles in accordance with the plans, and these Technical Specifications.

Standard poles for traffic signals, anchor bolts, mast arms and other hardware required to support the traffic signal apparatus shall be furnished by the Town of Gilbert.

474.5 CONSTRUCTION REQUIREMENTS:

474.5.1 Base Plates and Poles:

High strength bolts, nuts, and washers for bases shall be assembled as specified in the Standard Details and shall be torqued as required by the Standard Details. Anchor bolts, washers, and nuts required for relocating existing poles shall be furnished by the Town of Gilbert.

Poles shall be drilled and tapped for mounting hardware as shown on the details shown in the project plans

Sidewalks, curbs, gutters, pavement, base material, lawns, plants, and any other improvements removed, broken, or damaged by the Contractor's operations shall be replaced or reconstructed with materials in accordance with these Technical Specifications. The replaced or reconstructed improvements shall be left in a serviceable condition satisfactory to the Construction Manager, and shall conform to these Technical Specifications where applicable.

Where existing pole installations are to be modified, materials and equipment shall be used, salvaged, or disposed of as specified in the Technical Specifications and as directed by the Construction Manager.

Existing poles shall be either relocated or used in place as specified in the project plans. The Contractor shall inspect the poles and provide the materials and work necessary to recondition the poles so they can be reused. Holes left in the shafts of existing poles, due to removal of items such as signal mounting assemblies, shall be repaired and painted with zinc galvanized paint.

If any poles are damaged by the Contractor's operations, such repairs or replacements shall be at no additional cost to the Department.

New poles that are damaged by improper drilling of holes will be rejected.

Concrete apron around the signal poles (with push buttons only) and pedestrian push button poles shall be constructed according to TOG standard 103.

474.5.2 Signal Poles and Mast Arms:

Poles and mast arms shall be of the type shown on the plans and shall be installed in accordance with the details shown in the project plans.

Poles shall be drilled and tapped for mounting of hardware. The use of a welding torch is not authorized.

All poles shall be plumbed to the vertical with all mast arms, signal heads, and luminaires installed. When mast arms are bolted to the pole shaft, the mast arm end over the roadway shall adjust to the horizontal.

All poles, mast arms, and luminaires shall be painted and finished accounting to the Town of Gilbert's standard requirements. Paint shall be Tenemic 379 Dark Brown, 435+379 clear.

474.6 Measurement and Payment:

See sections 472.4 and 472.5 for measurement and payment of signal pole installation and relocation.

Add the following new Section to the MAG Standard Specifications:

MAG SECTION 476 SIGNAL INDICATIONS, MOUNTING ASSEMBLIES AND SIGNAL CONTROL AND OPERATIONS:

476.1 DESCRIPTION:

The work under this section shall consist of installing vehicular and pedestrian traffic signal indications and mounting assemblies in accordance with these Technical Specifications and at the locations shown on the project plans.

476.2 MATERIALS:

The following will be furnished by the Town of Gilbert:

Pedestrian Push Button w/ Sign.

The signal poles; signal mast arms; luminaire mast arms; luminaire housing; base plates; anchor bolts, red, yellow, and green LED signal heads, the controller cabinets and controllers, LED pedestrian heads and pedestrian push buttons for this project will be supplied by the Town of Gilbert. Three (3) months prior to traffic signal installations, the Contractor shall contact and notify Richard Hooker at 480-503-6933 to order the controller cabinets and controllers for this project.

Within seven (7) days of receipt of sealed plans for this project, the Contractor shall provide to the Town a construction schedule and approximate dates for construction milestones. Upon commencement of construction through project completion, the Contractor is responsible for providing the Town with an updated construction schedule every two weeks (bi-weekly).

476.3 CONSTRUCTION REQUIREMENTS:

476.3.1 Inspection:

The Engineering Department of the Town of Gilbert shall be notified at least seventy-two (72) hours prior to the start of traffic signal construction. The Town shall provide all inspection during the construction phase of the project. Bench marks shall be preserved by the Contractor and, in case of their destruction or removal by the Contractor's employees or agents shall be replaced by the Contractor at the Contractor's expense and the Contractor and their sureties shall be liable therefore. Inspection by the Town of Gilbert shall not be considered as direct control of the individual worker or their work. The direct control shall be the responsibility of the Contractor.

The Contractor shall obtain an offsite permit prior to the start of any construction activities. This can be obtained by contacting the Engineering Department at 480-503-6846 during normal business hours.

Contractors installing traffic signals or traffic signal interconnect shall obtain the appropriate traffic engineering permits from the community development department prior to beginning any work within the Town's Right-of-Way.

During the installation of traffic signals or traffic signals interconnect the Contractor will be responsible for making contact with the traffic engineering section to arrange inspections. At no time shall conduit be backfilled in the Town's Right-of-Way without any inspection. For any questions concerning traffic signal, traffic signals interconnect or to arrange for an inspection contact the traffic engineering section at (480)503-6933. Inspections must be scheduled a minimum of 48-hours (or 2 business days)] in advance

476.3.2 Blue Stake:

All utilities shall be blue staked by the Contractor prior to the start of construction. If a utility is hit during construction activities, whether it is damaged or not, the Contractor shall immediately contact the Blue Stake Center and the utility company so the utility can be inspected.

All conduit runs are to be installed by boring under existing pavement. The Contractor shall be responsible for potholing all utility locations before boring.

The Contractor is responsible for maintaining a minimum 24-inch clearance from SRP Irrigation.

476.3.3 Field Staking:

The Contractor shall be required to field stake, after blue stake has been performed at the project sites, locations of all new pull boxes, pole foundations, and cabinet foundations to determine any potential conflicts with existing underground and overhead utilities. The Contractor shall then arrange for the Town's inspector to review and approve all locations prior to any excavation. The Town inspector may modify the locations of any equipment as required at no additional cost to the Town.

Poles and pull boxes installed on intersection corners that have not been fully improved (i.e.: no curb, gutter, and sidewalk) shall be located by a survey crew. The Contractor shall provide documentation to the Town supporting such locating.

A survey crew shall locate new curb ramps and associated sidewalk improvements. The Contractor shall provide documentation to the Town supporting such locating.

476.3.4 Control of Work and Materials:

Control of work and materials shall comply respectively with Sections 105 and 106 of the MAG Uniform Standard Specifications, except as modified by the Technical Specifications. In addition, a Certified IMSA Level II Traffic Signal Technician must

supervise all work on site. The Contractor shall submit the name of the technician and a copy of their certification to the Town of Gilbert prior to the start of construction activities. All work on the project shall take place and be supervised by this technician at all times. The technician shall be on-site at all times when work activities are taking place.

476.3.5 Poles, Mast Arms, Base Plates, Signal Heads, Pedestrian Heads, and Anchor Bolts:

New signal poles; signal mast arms; luminaire mast arms; base plates; red, yellow, and green LED signal heads; LED pedestrian heads; pedestrian push buttons; luminaire housings and anchor bolts for this project shall be provided by the Town of Gilbert.

476.3.8 Signal Turn-On:

The Contractor shall notify the Town of Gilbert Traffic Engineering representative at least forty-eight (48) hours in advance of the scheduled traffic signal activation. Contact the Town Traffic Engineer at 480-503-6932.

476.3.9 Pedestrian Push Buttons:

Pedestrian push buttons shall be provided by the Town of Gilbert. The Contractor is responsible for the installation of the pedestrian push button. In particular, the push buttons shall be mounted on the pedestrian push button posts at 42 inches above the finished surface of the sidewalk according to the Town of Gilbert Standard Details for Traffic Signal Construction.

Push buttons shall be dustproof and waterproof.

476.3.10 Traffic Control:

The Contractor shall provide a uniformed off-duty Town of Gilbert police officer for traffic control during signal testing, pole and mast arm erection, energizing, and as required by the Construction Manager. The Contractor shall contact the Town of Gilbert Off-Duty Police Request Line at 480-503-6589 at least 5 business days prior to needing an officer on site.

476.3.11 Pedestrian Ramps:

All work related to the removal and construction of the new concrete curb ramps shall be in accordance with MAG Standard Specifications and Standards and the Town of Gilbert Supplements thereto.

The following Section is hereby added to the MAG Standard Specifications:

MAG SECTION 478 ELECTRICAL CONDUCTORS:

478.1 DESCRIPTION:

The work under this section shall consist of furnishing and installing electrical conductors for traffic signals and intersection lighting in accordance with the plans, requirements of these specifications, and MAG specifications

478.2 MATERIALS

478.2.1 Electrical Conductors:

The wire shall be annealed copper and shall be uncoated unless otherwise specified. The wire shall be solid for number 10 AWG and smaller, conforming to the requirements of ASTM B 3 for annealed bare copper wire. Conductors for sizes number 8 AWG and larger shall be stranded and shall conform to ASTM B 8 for Class B stranding, unless otherwise specified, the conductors shall be insulated with THW grade thermoplastic compound and shall meet the requirements of UL 83. Insulation colors shall be permanent and an integral part of the insulation and shall not be applied as a surface treatment of coating. The insulation thickness shall conform to the requirements of the NEC. Conductor insulation shall be a solid color unless otherwise specified. The color shall be continuous over the entire length of the conductor.

Wire and cable shall be UL listed and rated at 600 volts. The UL label shall be present on each reel, coil or container of wire or cable. When requested, the Contractor shall submit to the Construction Manager the manufacturer's written certification that the product conforms to the requirements of these specifications.

All single conductors shall have plain, distinctive and permanent markings on the outer surface throughout their entire length showing the manufacturer's name or trademark, insulation type, conductor size, voltage rating and the number of conductors in the cable. Insulation colors shall be permanent and an integral part of the insulation and shall not be applied as a surface treatment coating.3

Conductor colors and sizes for use in traffic signal and intersection lighting shall match existing conductors.

(A) Wire Tagging:

Individual conductors for each vehicular and pedestrian phase group shall be secured together by two layers of plastic electrical tape and tagged with an approved wire I.D. marker (3M Scotchcode Wire Marker Tape or approved equal). Cables for each vehicular and pedestrian phase group shall be wrapped with two layers of plastic electrical tape and tagged with an approved wire I.D. marker (Scotchcode Wire Marker Tape or approved equal). Wires and cables shall be individually marked in all cabinets

and in pull boxes.

When IMSA cable is specified, wire insulation color assignment shall be in accordance with the summary shown in the project plans.

(C) IMSA Cables:

IMSA cable shall be used when specified on the plans. IMSA cables shall be polyethylene insulated copper conductors, polyvinyl chloride jacketed, rated at 600 volts for use in underground conduit or as aerial cable conforming to IMSA Specification 19-1.

The IMSA 19-1 cable shall be provided with the number and size of conductors as specified on the plans. The colors and tracers shall be permanent and an integral part of the insulation and shall not be painted; surface coated or adhered to surface. Ink strips are unacceptable. Conductor insulation colors shall be standard IMSA colors (as shown by the following table). Cable conductor color, phase and interval assignments shall be in accordance with the summary shown in the project plans..

478.3. WIRING PROCEDURES:

478.3.1 General Requirements:

All wiring shall be in conformance with the NEC and the requirements of these specifications. All wire nuts and other wiring devices shall be UL listed. Conductor sizes and colors shall be as specified on the plans or match existing for relocated signal equipment. Conductors shall be pulled into runs in a smooth continuous manner, avoiding contact with sharp objects that might damage the insulation. Approved lubricants shall be used for inserting conductors in conduit. Before installation, conductors' ends shall be taped for moisture protection until connections are made. Splices are permitted in pull boxes, pedestals and cabinets.

Conductors shall have a minimum of 36 inches of slack from the conduit end bell in the pull box.

All phase wiring shall be boxed at the intersection, terminated and spliced in the number seven (# 7) pull boxes.

478.3.2 Conductor Splices:

Splices shall be made utilizing wire nut connectors (Ideal model numbers 451, 452 and 454, or approved equal). Wire stripping length and wire size combinations shall be in accordance with the manufacturer's instructions supplied with the wing nut connector. Soldered connections will not be permitted. All phases shall be spliced in all pull boxes and unused phase wiring shall be spliced to the ground rod in the controller cabinet.

A minimum of three coats of liquid waterproof splicing compound (3M Scotch Kote or

approved equal) shall then be applied to the splice. The finished splices shall be such that their electrical and mechanical characteristics and insulation quality are equal to those of the original cable.

478.3.3 Bonding and Grounding:

All metallic enclosures such as cabinets, pedestals, poles, conduit and cable sheaths shall be bonded to form a continuous grounded system. Non-metallic portions of the system, such as PVC conduit, shall have a No. 8 AWG bare copper bond wire or detectable pull tape installed with suitable connections to form a continuous grounded system.

At each service disconnect, cabinet foundation, or where otherwise specified, an approved copper-plated ground rod shall be installed. Each ground rod shall be a one piece solid rod of the copper weld type or approved equal and shall be a minimum of 5/8 inch in diameter and 10.0 feet long. The rod shall be driven vertically into the ground to a minimum 9.0 feet below the surface. If the rod cannot be driven vertically it shall be installed in accordance with article 250-83 of the NEC. The ground rod may be located in a pull box. The service equipment neutral (grounded conductor) and the system grounding conductor (No. 8 AWG bond, solid) shall be connected to the ground rod with a copper-plated bolt or a brass bolt on the ground clamp.

The grounding electrode system shall be in accordance with articles 250-81 and 250-83 of the NEC.

Pole foundations shall have 25 feet of number 4 AWG bare copper conductor coiled and placed at the bottom of the excavation before concrete is poured. Pole foundation grounding electrodes shall be connected to the pole grounding screw in the hand hole with an approved lug connector.

A ground resistance test shall be performed for each installed ground rod prior to final connection of the utility service. Pole foundation coil grounds shall be tested as determined by the Construction Manager in the field.

The ground resistance shall be measured with a three terminal, fall of potential, direct reading, battery powered earth tester with a 0.50 to 500 ohm scale or digital read-out. The 25 ohm reading shall be approximately at mid scale.

The test shall be performed according to the manufacturer's instructions and OSHA requirements. Two auxiliary copper clad ground rods shall be driven into the ground a minimum of 3 feet. The lateral spacing for each test rod shall be given in writing on the test report form and the spacing shall be approved by the Construction Manager.

All tests shall be performed in the presence of the Construction Manager and the test results shall be written down, dated and given to the Construction Manager for approval.

Each ground rod or foundation ground shall be isolated with the bond wires disconnected when the test is being performed. The resistance to ground shall be 25 ohms or less. If it is not, additional ground rods shall be installed as required at least 15 feet from the original ground and shall be bonded to it. The test shall then be repeated for multiple grounds as necessary to achieve proper grounding below 25 ohms. As many additional ground rods shall be installed as is necessary to achieve proper grounding of 25 ohms or less.

The test shall be performed when the soil is dry. The Contractor shall not add any chemical or salt solutions to any portion of the grounding system. All grounding rods and foundation grounds to be tested shall be installed a minimum of ten days prior to testing unless otherwise determined by the Construction Manager in the field.

478.4 Measurement and Payment:

See sections 472.4 and 472.5 for measurement and payment of electrical conductors for signal pole relocation and push button installation.

The following Section is hereby added to the MAG Standard Specifications:

MAG SECTION 480 ELECTRICAL:

ITEM 480.00007 MISCELLANEOUS ELECTRICAL (AS-BUILT PLANS) (LIGHTING, SIGNALS):

1. DESCRIPTION:

The Contractor shall provide "red-line" drawings of all installed roadway lighting, traffic signals and interconnect system on project plan sheets. All measurements made for dimensioning shall be to the nearest 0.1 feet. All as-built drawings shall be 24 inch x 36 inch in size with red ink used to indicate dimensions of electrical items that are not shown on the original plan sheets. As-builts and splicing details shall be produced in such a manner that the plans and splicing detail are equal to or better than the construction documents provided.

Underground conduit shall be dimensioned from edge of roadway, starting and ending point station number, or dimensions.

All pull boxes shall indicate offset from edge of roadway. Distance from pull box to pull box and pull box to cabinet shall be dimensioned, for any and all pull boxes or cabinets used on the project, regardless of whether new or existing.

Four sets of as-built electrical plan sheets shall be submitted to the Construction Manager prior to final acceptance of electrical equipment.

2. PAYMENT:

No direct payment will be made for as-builts of all installed roadway lighting, traffic signals and interconnect system.

SECTION 600

MAG SECTION 631 WATER TAPS AND METER SERVICE CONNECTIONS

631.1 DESCRIPTION: *is modified to add:*

The work under these items shall include furnishing and furnishing necessary materials and installing new water service connections, relocating existing meters and boxes, relocating service connections, and installation of the following items: corporation stop, curb stop, appurtenant fittings, water meter box and cover, copper service pipe, tapping sleeves, gate valves, and pavement replacement (if required) at the locations shown on the project plans or as directed by the Project Manager for new landscape water service. The contractor shall perform all required operations to install new meters, reconnection of existing service lines, and relocation of existing meters including coordination with the Town, permitting, account establishment, and any fees. The Town of Gilbert will provide and bolt in the new meter to the contractor provided service.

631.2 MATERIALS: *is modified to add:*

All materials shall conform to Town of Gilbert Standards unless otherwise specified on the plans or in these Special Provisions.

631.3 INSTALLATIONS: *is modified to add:*

Water service construction shall conform to Town of Gilbert Standards and the Details in the project plans. In addition, the water service construction shall conform to MAG Standards.

The Contractor shall coordinate the installation of the water meters, including completing any applications and obtaining any necessary permits for the water meter installations. The Town of Gilbert will install the water meters.

The account for the meter shall be:

Town of Gilbert
Engineering Department
Attention: Ryan Blair
90 East Civic Center
Gilbert, Arizona 85296

The contractor shall download the Meter Applications from the Town of Gilbert website. After completing the application the contractor shall take the application with a copy of the plan sheet showing the new meter and the assigned address to Ben Cox, Plans Examiner Manager (480-503-6719), Town of Gilbert, 90 East Civic Center Drive, Gilbert, Arizona 85296.

Water service shut downs shall be performed by Town of Gilbert forces. The contractor shall provide sufficient notice to the affected property owners and the Town of Gilbert in advance of the water service shut down in a manner and within the time frames as provided in the Supplementary Conditions.
Add the following new Subsection:

631.9 MEASUREMENT AND PAYMENT:

Provide Water Service measurement is by the unit each for each location specified, complete in place. The accepted quantities of Provide Water Service, measured as provided above, will be paid for at the contract unit price each under ITEM 610.10510 1" WATER SERVICE TOG STD. DTL. 62 for water service and connection complete in place. The Town of Gilbert, where indicated, will install water meters. The Town of Gilbert has agreed to waive water system and resource development fees. The Contractor shall pay Town of Gilbert for any required meter installation cost and required permits.

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kevin Shaw, Desktop Support Supervisor, 635-7778

MEETING DATE: April 30, 2015

SUBJECT: Approval of Contract 2015-1105-0631 for Verizon to provide voice and data cellular services, peripherals, and related equipment for an amount not to exceed $391,000.

STRATEGIC INITIATIVE: Infrastructure

Equip Town personnel with voice and data communication utilizing Verizon services and equipment.

RECOMMENDED MOTION

A motion to approve contract 2015-1105-0631 with Verizon to provide voice and data services, peripherals and related cellular equipment for an amount not to exceed the budget as approved by council.

BACKGROUND/DISCUSSION

The Town of Gilbert utilizes the State of Arizona contract ADSPO13-034099 which was competitively bid through the Western States Contracting Alliance (WSCA) to purchase voice and data cellular services and related equipment through Verizon. The Town expenditures for Verizon cellular and data service are estimated to be $391,000 for FY15.

Currently, each department is responsible for budgeting and funding their Verizon accounts. Research has identified that by consolidating the departmental accounts, there are substantial savings to the Town of Gilbert. Staff has worked with the internal departments (excluding the Police Department) to consolidate expenditures into one (1) Master Verizon Account. This consolidation will result in approximately $17,000 in reduced expenditures per year. At this time, the Gilbert Police Department expenses are included in this contract, but are not part of the

consolidated account. IT will continue to work with Police Department to determine if their Verizon accounts can be consolidated into the Master Account in the upcoming fiscal year.

FINANCIAL IMPACT

Verizon services and equipment are distributed throughout the Town's departments and cost centers budgeted in the Town's operating budget.

Appropriations for voice and data expenditures for Verizon are included in the FY16 budget that will be brought to council next month. The contract for FY16 services will not exceed the amount authorized by council.

The contract was reviewed by Doug Boyer, Purchasing Administrator.

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

STAFF RECOMMENDATION

Staff recommends approval of contract 2015-1105-0631 with Verizon to provide voice and data cellular services, peripherals and related equipment for an amount not to exceed the amount authorized by council.

Respectfully submitted,

Kevin Shaw
Desktop Support Supervisor

Approved By	Approval Date
Mark Kramer	4/20/2015 8:18 AM
Jack Vincent	4/20/2015 10:42 AM
Laura Lorenzen	4/20/2015 3:11 PM
Douglas Boyer	4/20/2015 4:00 PM

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
WIRELESS SERVICES 2012-2016
Administered by the State of Nevada (hereinafter "Lead State")

MASTER PRICE AGREEMENT
Cellco Partnership d/b/a Verizon Wireless
(hereinafter "Contractor")
Contract Number: 1907
And
State of Arizona
(hereinafter "Participating Entity")
State of Arizona Contract Number: ADSPO13-034099

1. Scope: Verizon Wireless ("Contractor") and the State of Nevada, for itself and on behalf of the Western States Contracting Alliance ("WSCA" and/or "Customer"), have entered into a Master Service Agreement #1907 ("Contract") with an effective date beginning on April 10, 2012. This addendum covers the WIRELESS SERVICES for use by state agencies and other eligible entities authorized by that state's statutes to utilize **state/entity** contracts.

2. Participation: Use of specific **WSCA** cooperative contracts by agencies, political subdivisions and other entities (including cooperatives and non-profits) authorized by an individual state's statutes to use **state/entity** contracts are subject to the acknowledgement of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Pursuant to WSCA rules and policies, entities in those states without a State PA to the Master Contract are eligible to participate in this contract, to the extent permitted by their state and local procurement laws and regulations.

INDIVIDUAL CUSTOMER: Each State agency, political subdivision or other entity acting as a Participating Entity, that purchases products/services will be treated as if it was an Individual Customer. Except to the extent modified by this Participating Addendum, each agency, political subdivision or other entity will be responsible for compliance with the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency, political subdivision or other entity will be responsible for its own charges, fees, and liabilities. Each agency, political subdivision or other entity will have the same rights to any indemnity or to recover any costs allowed in the contract for its purchases. The Contractor will apply the charges to each Participating Entity individually.

The Individual Customer agrees to the terms and conditions of the Contract including the disclosure of limited account information as part of the contractual reporting requirements to WSCA and/or the Participating Entity for purposes of monitoring the contract and calculating the administrative fees. .

3. Intentionally Omitted.

4. Lease Agreements: **NONE**

5. Primary Contacts: The primary contact individual for this participating addendum are as follows (or their named successors):

Lead State

Name	Teri Smith, Purchasing Officer
Address	515 E. Musser St, Suite 300, Carson City, NV 89701
Telephone	775-684-0178
Fax	775-684-0188
E-mail	tlsmith@admin.nv.gov

Contractor

Name	Cellco Partnership d/b/a Verizon Wireless
Address	8350 East Crescent Pkwy, Attn: RJ Fenolio, Greenwood Village, CO 80111
Telephone	(702) 283-2200
Fax	(866) 917-8701
E-mail	rj.fenolio@verizonwireless.com

Participating Entity

Name	David Wisniewski
Address	100 North 15th Avenue, Phoenix, AZ 85007
Telephone	602 542-9107
Fax	602 542-5508
E-mail	david.wisniewski@azdoa.gov

6. Subcontractors:
NONE

7. Purchase Order Instructions: All Purchasing Entities issuing valid Purchase Orders will be bound by the terms and conditions of the WSCA Master Agreement including, without limitation, the obligation to pay Contractor for Service and Equipment provided. The parties acknowledge and agree that orders submitted to Contractor from a Purchasing Entity through the Purchasing Entity's Business Procurement Card are authorized Purchase Orders under the WSCA Master Agreement.

8. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: ADSPO13-034099 and the Lead State price agreement number: 1907

This Participating Addendum including Exhibits A and B, and the Master Price Agreement number 1907 (administered by the State of Nevada) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the WSCA Master Agreement, including those contained in this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

9. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"): If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

10. Participating Addendum Term: The term of this Participating Addendum will commence on the date of full execution by both parties and will continue until October 31st, 2015 unless canceled, terminated or extended as otherwise provided herein.

11. Participating Addendum Extension: The contract term is subject to additional successive periods of one year extensions with a maximum aggregate including all extensions not to exceed 5 years.

The undersigned represents and warrants that he/she has the power and authority to execute this PA, bind the respective Participating Entity, and that the execution and performance of this PA has been duly authorized by all necessary parties

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor:
By: Susan Bayer	By:
Name: Susan Bayer	Name: Todd Loccisano
Title: Procurement Manager	Title: Executive Director, Enterprise & Government Contracts
Date: 11-29-12	Date: 11/29/12

Exhibit A – Arizona Special Terms and Conditions to PARTICIPATING ADDENDUM

State of Arizona Contract Number: ADSPO13-034099

1. **Eligible Agencies (Statewide)**

This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632.

2. **Administrative Fee**

Contractor shall pay an Administrative Fee to the State in the amount of one percent (1%) of the total contract sales. The Administrative Fee is calculated based on all sales transacted under the contract, minus all taxes and any returns or credits. The Administrative Fee shall not be charged directly to the customer, e.g., as a separate line item, a fee or a surcharge, but shall be included in the contract's unit prices.

The Administrative Fee shall be submitted, along with a Quarterly Usage Report documenting all contract sales, to the State Procurement Office within thirty (30) days following the end of each calendar quarter. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, see the State Procurement Office's web site at http://spo.az.gov/Contractor_Resources/Admin_Fee.

At its option, the State may limit the applicability of the Administrative Fee to contract sales from some customers and not to others, e.g., fee is only applicable to sales from members of the State Purchasing Cooperative and not sales to State Agencies. See the State's website (above) form more information in this regard. The State will provide thirty (30) days written notice before exercising or changing this option.

Failure to remit Administrative fees in a timely manner or remit fees inconsistent with the contract's requirements may result in the State exercising any recourse available under the contract including a third party audit of all contract activity. Should an audit be required by the State, the contractor shall reimburse the State for all costs associated with the audit up to $5,000.

3. **Licenses**

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

4. **Volume of Work**

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

5. **Payment Procedures**

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices

requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

6. Non-Exclusive Contract

Any Contract entered into by the State of Arizona shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

7. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

8. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under Contract with the State is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

9. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

10. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and **will be restricted to least possible privilege**. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies,

standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statues (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

11. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

12. E-Rate Compliant

Contractor must commit to participation in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contractor.

13. Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor 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 such contractor 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 Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising directly from the work performed by the Contractor for the State of Arizona under this contract.

14. Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way

limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Blanket Contractual Liability – Written and Oral	$1,000,000
• Fire Legal Liability (Damage to Rented premises)	$ 50,000
• Each Occurrence	$1,000,000

a. The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".**

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$ 500,000
Disease – Each Employee	$ 500,000
Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required on the general liability insurance policies. Such additional insured shall be covered to the full limits of

liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources as relates to Contractor operations.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to David Wisniewski, 100 North 15th Avenue, Phoenix, AZ 85007 .

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates blanket additional insured endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to David Wisniewski, 100 North 15th Avenue, Phoenix, AZ 85007. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. If there is a claim, the State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

15. Optimization Assistance

Contractor agrees to provide at no charge rate plan optimization analysis services, recommendations and reporting on an as requested basis.

16. Employee Subscriptions for Personal Use

Employees are not authorized to make purchases for personal use from this contract and contractor must comply with section R2-7-204 of the State procurement Code.

17. Replaced Section

The following replaces section 3.7 in Exhibit B in its entirety: Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract specifically for the State are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

18. Contract Document Order of Precedence

In the event of a conflict in the provisions of the Contract, as executed by the State and Contractor as they may be amended by this Participating Addendum, the following shall prevail in the order set forth below:

1) Specials Terms and Conditions of the Participating Addendum
2) Uniform Terms and Conditions of the Participating Addendum
3) The Participating Addendum agreed to by the State and Contractor
4) The Master Services Agreement
5) The Solicitation by the State of Nevada

Attachment A – Arizona Uniform Terms and Conditions to PARTICIPATING ADDENDUM

State of Arizona Contract Number: ADSPO13-034099

1. ***Definition of Terms***. As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3 "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 *"Contractor"* means any person who has a Contract with the State.

1.5 *"Days"* means calendar days unless otherwise specified.

1.6 *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12 *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 *"State Fiscal Year"* means the period beginning with July 1 and ending June 30,

2 Contract Interpretation

2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;
2.3.2 Uniform Terms and Conditions;
2.3.3 Statement or Scope of Work;
2.3.4 Specifications;
2.3.5 Attachments;
2.3.6 Exhibits;
2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3 Contract administration and operation.

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable

times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property
Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act The Contractor shall comply with all federal, state, and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers or any employee thereof to ensure compliance. Should the State determine that the contractor and or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including but not limited to; suspension of work, termination of the contract for default and suspension and or debarment of the contractor.

3.10 E-Verify Requirements In accordance with A.R.S 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. 23-214, Subsection A.

3.11 Scrutinized Businesses In accordance with A.R.S. 35-391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.

4 Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the, contractor
4.5.2 Cancel the Contract
4.5.3 Cancel the contract and re-solicit the requirements.

5 Contract changes

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such

changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6 Risk and Liability

6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."

6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to

act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7 Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 State's Contractual Remedies

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or

services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the

Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10 Contract Claims. All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11 Arbitration. The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12 Comments Welcome. The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona 85007.

PURCHASE ORDER CONTRACT
(State of Arizona Bid List)
Contract No. 2015-1105-0631

This Purchase Order Contract is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as the "Gilbert" and **Cellco Partnership d/b/a Verizon Wireless**, hereinafter designated as the "Contractor."

RECITALS:

A. Contractor has contracted with the **State of Arizona** to provide **Wireless Voice and Data Service** pursuant to **State Contract No. ADSPO13-034099 (WSCA Contract# 1907)** (the "State Contract") and any amendments approved by the State; and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize state cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND TOWN, FOR THE CONSIDERATION HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work. Contractor shall provide the items listed in the Purchase Order(s) submitted by Gilbert in accordance with the **State of Arizona Contract # ADSPO13-034099 (WSCA Contract# 1907)** documents: as set forth on the State Procurement website, **https://az.gov** as may be amended from time to time.

2. Specific Requirements of Gilbert. Contractor shall comply with all specific purchase and delivery requirements and/or options of Gilbert, as specified in the Purchase Order(s) submitted to Contractor.

3. Payment. Payment to the Contractor for the services or supplies provided shall be made in accordance with the price list and terms set forth in the State Contract.

4. Terms of State Contract Apply. All provisions of the State Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein.

5. Certificates of Insurance. All insurance provisions of the State Contract shall apply, including without limitation, the requirement to name all agencies eligible to use the State Contract as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish Gilbert with a copy of the current Certificates of Insurance required by the State Contract.

6. Term; Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2015, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, this

Purchase Order Contract shall commence upon approval and continue through **October 31, 2016**. All Purchase Orders must be issued by Gilbert prior to expiration or termination of the underlying State Contract. The Gilbert Purchasing Officer has the authority to approve any renewal provided that: (1) the Contract amount does not exceed $100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Purchase Order Contract: The contract shall automatically renew coterminous with the underlying State Contract term. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 2015.

TOWN OF GILBERT:

By: _____
Mayor John Lewis

CONTRACTOR:

By: JOHN HARRIS
Title: DIRECTOR BUSINESS [illegible]

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

Form No. 1.3.10
Cooperative Purchasing Agreement (State)
Revised: August 22, 2013

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Timothy J. Dorn, Chief of Police, (480)635-7272

MEETING DATE: April 30, 2015

SUBJECT: FY 2015 Homeland Security Grant Program

STRATEGIC INITIATIVE: Community Livability

This grant supports community livability by improving the community's ability to prepare and respond to emergencies.

RECOMMENDED MOTION

A motion to authorize application and acceptance of a 2015 Homeland Security Grant, not to exceed $131,000 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The 2015 State Homeland Security Grant program is for projects/programs that support State of Arizona Homeland Security strategies and respective regional strategies. The grant application and award to the Town of Gilbert sustains existing programs within the Gilbert Fire and Rescue and Gilbert Police Departments and consist of;

1) Urban Area Assessment Teams – Police and Fire Terrorism Liaison Officers (TLO) Program, $13,500 provides sustainment funding to support Police and Fire TLO's and includes purchase of vehicle radio chargers, computers, satellite cell and data service, internet air card and pager service and travel to attend national conference for training (Contract # 2015-3001-0696).
2) Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) Response Team Gilbert Police Department, $54,000 which provides sustainment funds to support their team and includes purchase of ballistic helmets, radio headset accessories, and a medium size tactical robot. (Contract # 2015-3001-0697).
3) Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) Response Team Gilbert Fire and Rescue Department, $54,000 which provides sustainment funds to

support their team and includes purchase of detection meter replacement, detection meter and software maintenance, hazardous materials tools and equipment, protective suits, research hardware and travel to attend national conference for training (Contract # 2015-3002-0691).

4) Citizen Corps Training, $9,195, which provide support of Citizen Corps - Community Emergency Response Team (CERT) training and development as well as deployment of Volunteers including uniforms, backpacks, training booklets, and medical kits (Contract # 2015-3002-0692).

FINANCIAL IMPACT

Grant requirements for reporting include: quarterly programmatic reports, reimbursements, and at the grant completion a typed resource report and property control form; expense of grant funds within allowable time frame that ends September 30, 2016; town compliance with immigration law including E-Verify; compliance with national Incident management System verified by questionnaire; submittal of Town's A-133 Audit to Arizona Department of Homeland Security; adherence to federal and local procurement requirements; travel, lodging and per diem consistent with Gilbert's policies and procedures and that does not exceed state rate established by AZ Department of Administration General Accounting Office. No matching funds are required.

During the budget process, it is unknown what grant applications will be accepted for the fiscal year. As a result, an allowance is budgeted in the Grant Fund for anticipated expenditures and matching revenues.

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

STAFF RECOMMENDATION

Staff recommends approval of the application and acceptance of the 2015 Homeland Security Grant award.

Respectfully submitted,

Timothy J. Dorn
Chief of Police

Approved By	Approval Date
Kim Scott	4/20/2015 9:37 AM
Tim Dorn	4/20/2015 2:20 PM
Michael Hamblin	4/21/2015 7:59 AM
Mary Vinzant	4/20/2015 6:28 PM

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Doug Marshall, Benefits Manager, 480-503-6859

MEETING DATE: April 30, 2015

SUBJECT: Approval of Medical and Dental Plan Premiums, and Restatement of Medical Plan Summary Benefit Description

STRATEGIC INITIATIVE: Financial Plan

The Self-Insurance Trust Fund for Health Insurance Benefits is a self-funded approach to providing medical and dental benefits for employees.

RECOMMENDED MOTION

Motion to:

A) Approve the Town's medical and dental plan premiums; and

B) Approve implementation of a staged increase to retiree medical premiums over 5 years; and

C) Approve amendment and restatement of the Town of Gilbert Medical Plan Summary Benefit Description effective July 1, 2015 and authorize the Mayor to execute the document

BACKGROUND/DISCUSSION

The Town Council authorized creation of a trust to self-insure employee health benefits effective July 1, 2003 and appointed a Board of Trustees to provide fiduciary oversight. The current trustees are Chairman Tony Panepinto, Vice Chairman Les Presmyk, Councilmember Jenn Daniels, Bob Elmer, and Marc Skocypec. The Trustees annually consider reserve strength, staff

recommendations, claims trends, and market factors to formulate premium recommendations to Council.

Fiscal Year 2015-16 Medical and Dental Plan and Premium Recommendations:

In consideration of the strength of the health trust reserve but recognizing increased claims costs, including pharmacy claims, staff and the Board of Trustees have recommended a slight increase to medical premiums along with increased member copays for brand name and non-formulary drug copays. The recommended copay changes would increase member share of brand name formulary medications from $25 to $30 and non-preferred medications from $50 to $60 while preserving the same generic copay for members. This plan design change will be coupled with additional member outreach with education on cost effective use of prescription drugs.

If approved by the Town Council, the premium costs with the same Town/employee premium contribution share would be as follows:

Full Time Employee Premiums:

*Medical Base Plan	Monthly Total Premium	Monthly Gilbert Contribution	Monthly Employee Contribution
FY 15 Single Rate	$ 449.94	$ 359.96	$ 89.98
FY 16 Single Rate	$ 463.44	$ 370.76	$ 92.68

*Medical Base Plan	Monthly Total Premium	Monthly Gilbert Contribution	Monthly Employee Contribution
FY 15 Family Rate	$1,277.48	$1,021.98	$255.50
FY 16 Family Rate	$1,315.80	$1,052.64	$263.16

*Full time employees on the base plan would experience an increase of $2.70 per month for single coverage and $7.66 per month for family coverage.

**Medical National Network	Monthly Total Premium	Monthly Gilbert Contribution	Monthly Employee Contribution
FY 15 Single Rate	$ 494.94	$ 359.96	$ 134.98
FY 16 Single Rate	$ 509.78	$ 370.76	$ 139.02

**Medical National Network	Monthly Total Premium	Monthly Gilbert Contribution	Monthly Employee Contribution
FY 15 Family Rate	$1,405.22	$1,021.98	$ 383.24
FY 16 Family Rate	$1,447.38	$1,052.64	$ 394.74

**Employees who elect to participate in the national network option pay the additional cost above the base plan premium.

With the included recommendations for medical premium increases for FY 16, the premium rate of the Town of Gilbert Base Medical Plan will have increased a total of 5% since July 1, 2008.

Staff and the Board of Trustees have recommended no change in dental premiums. If approved, the premiums for active employee dental would remain as follows:

Dental Plan	Monthly Total Premium	Monthly Town Contribution	Monthly Employee Contribution
Single Rate	$ 36.28	$29.02	$ 7.26
Family Rate	$102.72	$82.18	$20.54

Retiree Premiums:

The Town of Gilbert provides employees who retiree with 10 years of Gilbert service the opportunity to continue coverage with Gilbert's medical and dental plans until age 65. Gilbert does not directly subsidize premiums. Currently, retirees are charged the same total premium that active employees are allocated at. In FY13, an actuary assessed that Gilbert incurs an ongoing cost for providing retirees medical coverage that exceeds the cost of premiums charged to the retirees. That cost is projected to grow substantially over 25 years with a projected peak in FY2036 of approximately $840,000.

The Board of Trustees has been advised that an appropriate underwriting premium differential for retirees is 25% above active premium rates. In order to mitigate impact of such a sizable increase in a single year and to provide maximum planning opportunity for current retirees to consider alternative for coverage, staff and the Board recommend introduction of a staged increase to retirees of 4.5% annually beginning on July 1, 2015 until a 25% premium differential is reached between retiree premium and active premium (approximately 5 years with compounding effect of increase). These adjustments would be in addition to any other premium changes that are implemented with any given plan year.

For July 1, 2015, the premium recommendations are:

Medical Base Plan	FY 15 Retiree Premium	FY 16 Recommended Retiree Premium
Single Rate	$ 449.94	$ 484.29
Family Rate	$1,277.48	$1,375.02

Medical National Network	FY 15 Retiree Premium	FY 16 Recommended Retiree Premium
Single Rate	$ 494.94	$ 532.72
Family Rate	$1,405.22	$1,512.51

Dental Plan	FY 15 Retiree Premium	FY 16 Recommended Retiree Premium
Single Rate	$ 36.28	$36.28
Family Rate	$102.72	$102.72

Town of Gilbert Medical Plan Summary Benefit Description (SBD):

The SBD details Plan coverage under the Town of Gilbert Medical Plan. This document is used by the plan administrator to ensure proper payment of claims, and is also used to provide full disclosure to members about the Plan's benefits. The SBD is reviewed and amended annually to incorporate appropriate changes. Proposed changes are summarized and a tracked change version of the SBD is provided for reference. The Board of Trustees has reviewed the amendments and has recommended approval with no projected financial impact. The proposed SBD has been reviewed by the plan administrator's compliance division and Quarles and Brady, special counsel for employee benefits.

FINANCIAL IMPACT

Direct cost to the Town's Fiscal Year 2014-15 budget is based on Town contributions to the medical and dental plans. All administrative costs and claims costs are paid out of premiums and plan reserve, and these elements have been considered and included in the premium recommendations.

Based on Fiscal Year 2014-15 participation, the Town contribution towards medical premium is projected to be approximately $10,850,000, an increase of about $350,000. Based on Fiscal Year 2014-15 participation, the Town contribution towards dental premium is projected to be approximately $875,000 with no increase. Only changes in participation or approval of additional positions within the Fiscal Year 2015-16 budget would modify the total cost to the Town of Gilbert.

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

STAFF RECOMMENDATION

Staff recommends approval of all items as presented.

Respectfully submitted,

Doug Marshall
Benefits Manager

Attachments: Summary of Summary Benefit Description changes
Summary Benefit Description with redline changes

Approved By	Approval Date
Carrie Bosley	4/16/2015 2:15 PM
Laura Lorenzen	4/20/2015 11:06 AM

AMENDMENT AND RESTATEMENT OF TOWN OF GILBERT MEDICAL PLAN SUMMARY BENEFIT DESCRIPTION

The Summary Benefit Description (SBD) sets forth the provisions of the plan in a detailed manner. Each year, staff, the plan administrator, and legal counsel review the Summary Benefit Description (SBD) to identify any changes that would be recommended to improve or clarify the document, legal changes that require modification to the document, and/or any plan design changes that would require update. For the FY2015-2016, the following changes are recommended:

- Definitions: 1.12 **Strike** Definition of Creditable Coverage – This language is no longer required as creditable coverage under HIPAA portability was eliminated and addressed under other requirements of the ACA.

- Plan Eligibility & Participation: 2.12 **Strike** Certification of Creditable Coverage – As with the previous item, this is stricken because creditable coverage notices are no longer required.

- 6.1(d) – Schedule of Benefits – Durable Medical Equipment, Prosthetics, Orthotics, Disposable, and Consumable Supplies – **Strike** exclusion of "catheter". This is listed as an unconditional exclusion, but is set up as a covered benefit by the administrator. Should not be excluded.

- 6.2 (m) – Outpatient Prescription Drugs – Change brand name copay from $25 to $30 and Non-Formulary copay from $50 to $60; coinciding mail order changes

- 7.1 – Exclusions – **Strike** exclusion of "catheter". See the same explanation in previous item.

SUMMARY BENEFIT DESCRIPTION

OF THE

Town of Gilbert Medical Benefit Plan

Amended and Restated July 1, ~~2014~~2015

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INTRODUCTION

Town of Gilbert, the Employer, has established the Town of Gilbert Medical Benefit Plan (Plan) in order to provide comprehensive healthcare benefits for Eligible Employees, and their Dependents. The Plan was originally established July 1, 2003.

The Town of Gilbert Medical Benefit Plan is amended and restated in its entirety effective July 1, 2014.

The Town of Gilbert Medical Benefit Plan is a self-insured public sector plan within the meaning of Arizona Statute 11-981 (hereinafter "Plan"). The Plan is not an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA). Any resemblance to an ERISA plan shall not be construed to mean it is an ERISA plan. The Plan is a self-insured medical plan intended to meet the requirements under Sections 105(b), 105(h) and 106 of the Internal Revenue Code of 1986 so the portion of the cost for coverage paid by the Employer is not taxable income to the Subscriber and any benefits received through the Plan are not taxable income to the Subscriber. This Plan is a group health plan for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and shall be administered in a manner consistent with HIPAA.

This Plan is a grandfathered plan under Patient Protection and Affordable Care Act (PPACA) and Health Care and Education Reconciliation Act (HCERA), collectively referred to as Health Care Reform.

This document is the Summary Benefit Description (SBD) that describes the basic features of the Plan and how the plan operates. It is very important to review this document carefully to confirm a complete understanding of the benefits available, as well as responsibilities, under the Plan. The SBD should be read in its entirety because many of its provisions are interrelated. Capitalized words in this document are defined in the *Definitions* section.

Rescission of Coverage Rules. Under this Plan, coverage may be retroactively cancelled or terminated if you act fraudulently or make material misrepresentations of fact in connection with your coverage under this Plan. It is your responsibility to provide accurate information and to make accurate and truthful statements Including information and statements regarding familial status, age, relationships, etc. In addition, it is your responsibility to update previously provided information and statements and to notify the Plan of changes in status, such as a divorce or a child reaching the maximum age for coverage under the Plan. Failure to do so may result in your coverage, Including the coverage of those provided coverage through you such as your spouse or children, being cancelled and such cancellation may be retroactive.

The Plan is "self-insured" which means that benefits are paid with assets from a trust established by the Employer to pay benefits under the Plan.

The Employer has contracted with the Claims Administrator to perform certain consultative and management services related to the Plan. The Employer retains ultimate authority for the Plan.

Mayo Clinic Health Solutions is the Claims Administrator and will process medical claims in accordance with the plan document and Mayo Clinic Health Solutions' internal guidelines and protocols, manage the network of Healthcare Providers, and answer benefit and claim questions. Mayo Clinic Health Solutions will be referred to as the Claims Administrator throughout this SBD.

The Claims Administrator's customer service representatives are available to answer any questions or concerns regarding the Plan. Phone lines are open from 7 a.m. to 7 p.m. (central time) Monday through Friday (excluding holidays).

For enrollment or eligibility questions, please contact Town of Gilbert.

QUESTIONS	
Customer Service (toll-free)	1-866-465-5148
Online Service Center	www.mayoclinichealthsolutions.com
Customer Service (TDD for hearing impaired)	1-800-407-2442
Town of Gilbert (enrollment or eligibility questions)	1-480-503-6857

Customer Service has access to translation services and is available to meet the needs of many non-English speaking people.

ADMINISTRATIVE INFORMATION

Plan Name	Town of Gilbert Medical Plan
Employer & Agent for Service of Legal Process	Town of Gilbert 50 E. Civic Center Drive Gilbert, AZ 85296 Employer Identification Number: 86-6000246 Contact Person: Town Manager 1-480-503-6857
Participating Employers	Town of Gilbert 50 E. Civic Center Drive Gilbert, AZ 85296 Employer Identification Number: 86-6000246
Claims Administrator	Mayo Clinic Health Solutions PO BOX 211698 Eagan, MN 55121 1-866-465-5148 ***Please Note:*** Mayo Clinic Health Solutions performs claims processing services pursuant to a contract, it does not insure benefits under the Plan.
Plan's Fiscal Year	July 1 to June 30

GRANDFATHERED STATUS UNDER HEALTH CARE REFORM

Town of Gilbert believes this Medical Benefit Plan is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your Plan may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the Plan Administrator. You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or www.dol.gov/ebsa/healthreform. This website has a table summarizing which protections do and do not apply to grandfathered health plans.

COBRA NOTICE OF RIGHTS

The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") requires most employers with 20 or more employees to offer employees and their families (spouse and/or dependent children) the opportunity to pay for a temporary extension of health coverage (called "continuation coverage" or "COBRA coverage") at group rates in certain instances where health coverage under employer-sponsored group health plan(s) would otherwise end. There is no requirement that a person be insurable to elect continuation coverage. However, a person who continues coverage must pay for the continuation coverage. At the end of the maximum coverage period (described below), individual conversion coverage will be offered if it is otherwise available under the Plan, subject to the requirement to pay the premiums required by the individual conversion health plan. There is no conversion opportunity available under this Plan. Therefore, there is no right to convert to an individual policy at the conclusion of COBRA coverage.

This notice is intended to provide a brief overview of a Member's rights and obligations under the continuation coverage provision of COBRA. It is intended that no greater rights be provided than those required by the law.

Individuals entitled to COBRA continuation ("qualified beneficiaries") are Subscribers and their Dependents who are covered at the time of a qualifying event which would normally cause coverage to end. In addition, a child born to or placed for adoption with a Subscriber during the COBRA continuation period is also a qualified beneficiary.

Qualifying Events

If a Subscriber's employment is terminated for any reason other than gross misconduct or if a Subscriber's hours worked are reduced so that Plan coverage terminates, the Subscriber and his or her covered Dependents may continue coverage under the Plan for up to 18 months.

If the Subscriber should die, become divorced, or become eligible for Medicare, the covered Dependents whose medical coverage under the Plan would be reduced or terminated may continue coverage under the Plan for up to 36 months. Also, covered children may continue coverage for up to 36 months after they no longer meet the definition of Dependent under the terms of the Plan.

Certain events may extend the 18-month COBRA continuation period:

If a Subscriber's Dependent(s) experience a second qualifying event within the original 18-month period, they (but not the Subscriber) may extend the COBRA continuation period for up to an additional 18 months (for a total of up to 36 months from the original qualifying event);

If the Subscriber became entitled to Medicare while employed (even if it was not a qualifying event for his or her Dependents because their coverage was not lost or reduced) and then a second qualifying event (such as the Subscriber's termination of employment) happens within 18 months, the Dependents may elect COBRA continuation for up to 36 months from the date the Subscriber became eligible for Medicare.

If a Subscriber or a Dependent is disabled (as determined by the Social Security Administration) on the date of the qualifying event or within the first 60 days of COBRA continuation coverage, each qualified beneficiary (whether or not disabled) may extend COBRA continuation coverage for up to an additional 11 months (for a total of up to 29 months). To qualify for this disability extension, the Employer must be notified of the person's disability status within 60 days after the Social Security disability determination is issued and before the end of the original 18-month COBRA continuation period. Also, if the Social Security Administration determines that

the qualified beneficiary is no longer disabled, the Employer must be notified within 30 days after this determination. **Important Note:** If a second qualifying event occurs at any time during this 29-month disability continuation period, then each qualified beneficiary (whether or not disabled) may further extend COBRA coverage for seven more months, for a total of up to 36 months from the termination of employment or reduction in hours of employment.

Giving Notice That a COBRA Event Has Occurred

To qualify for COBRA continuation upon divorce or loss of a child's dependent eligibility under the Plan, the Employer must be notified within 60 days of the later of 1) the event, or 2) the date the individual would lose coverage under the Plan. The Employer will then provide instructions for continuing medical coverage under the Plan.

For other qualifying events (termination of employment, reduction in work hours, or entitlement to Medicare), the Employer will provide instructions for continuing medical coverage under the Plan. In the event of the Subscriber's death, the Employer will notify the Subscriber's covered Dependents how to continue coverage under the Plan.

The Employer must be notified if a divorce or loss of a child's dependent eligibility occurs that would extend the period of COBRA coverage.

Electing and Paying for COBRA Continuation Coverage

The Subscriber and his or her covered Dependents must choose to continue coverage within 60 days after the later of the following dates:

The date of the qualifying event; or

The date the Employer notifies the Subscriber and/or his or her covered Dependents of their right to choose to continue coverage as a result of the qualifying event.

If continuation coverage is elected, the initial premium (including all premiums due but not paid) must be paid within 45 days after the election. Thereafter COBRA premiums must be paid within 30 days of each due date. The cost of COBRA coverage is 102% of the full cost of Plan coverage. For the 19th through 29th months of coverage under the disability extension, the cost of coverage will remain 102% of the full cost.

If a second qualifying event occurs during the first 18 months of coverage, the 102% rate applies to the full 36 months even if the individual is disabled. If a second qualifying event occurs during the otherwise applicable disability extension period (that is, the 19th through the 29th month), the 102% rate also applies to the 19th through 36th months of the COBRA continuation period.

Coverage During the Continuation Period

If coverage under the Plan is changed for active employees, the same changes will be provided to individuals on COBRA continuation. Qualified beneficiaries also may change their coverage elections during the annual enrollment periods or if a change in status occurs.

PRIVACY NOTIFICATON

This Plan is a "covered entity" for purposes of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rules.

HIPAA requires that "covered entities" protect the confidentiality of your private health information ("PHI").

"PHI" means health information that:

(1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university or health care clearinghouse;

(2) relates to the past, present and future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and

(3) either identifies the individual or reasonably could be used to identify the individual.

A complete description of your rights under HIPAA can be found in the Plan's privacy notice, distributed to you upon enrollment and available upon request from the Employer.

The Plan will not use or further disclose information that is protected by HIPAA except as necessary for treatment, payment and health plan operations, or as required by law. The Plan requires all of its service providers to also observe HIPAA's Privacy Rules.

Under HIPAA, you have certain rights with respect to your PHI, including certain rights to see and copy the information, receive an accounting of certain disclosures of the information and, under certain circumstances, amend the information. You also have the right to file a complaint with the Plan or with the Secretary of the U.S. Department of Health and Human Services if you believe your rights under HIPAA have been violated.

SECTION I

DEFINITIONS

This section defines the terms used in this document. These terms will be capitalized throughout this document when referred to in the context defined. There may be other terms defined in specific sections of this document.

1.1 **Allowed Charge -** the maximum dollar amount eligible for payment for a procedure or service as determined by the Plan. This Includes billed charges, contracted amounts or Usual and Customary Rates, depending on the Healthcare Provider's relationship with the Plan and/or the Healthcare Services provided.

1.2 **Ambulance** - a specially designed or equipped vehicle used only for transporting the critically ill or injured to a healthcare facility, as authorized by Arizona Statute, title 36, chapter 21.1. Such transportation service must meet local requirements for providing transportation of the sick or injured, and must be operated by qualified personnel who are trained in the application of basic life support.

1.3 **Cancer Clinical Trial** – a course of treatment that satisfies the requirements of Arizona Revised Statute 20-1057.07.

1.4 **Claims Administrator** - a third party retained by the Employer to provide services including initial determination of the validity of claims and administration of benefit payments under the Plan. Complete responsibilities of the Claims Administrator are described in a contract with the Employer. The Claims Administrator is Mayo Clinic Health Solutions.

1.5 **COBRA** - Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time and as applied through the Public Health Services Act.

1.6 **Code** – the Internal Revenue Code of 1986, as amended from time to time.

1.7 **Confinement** – a continuous stay in the Hospital(s) or extended care facility(ies) or combination thereof, due to an Illness or Injury diagnosed by a Physician, which lasts at least one day and one night.

1.8 **Continued Care** - certain specified hours of service per day provided by a Registered Nurse, Licensed Practical Nurse, or Home Health Care aide, during a period of Skilled Care needed in order to maintain an ill Member at home.

1.9 **Cost Sharing Amounts** - the dollar amount a Member is responsible for paying when Covered Services are received from a Healthcare Provider Including Copayment amounts identified in the *Schedule of Benefits* section.

(a) **Copayment** - the charge a Member must pay for certain Covered Services. Covered Services subject to a Copayment and the amounts are listed in the *Schedule of Benefits* section. A Copayment is a flat dollar amount. In some instances, the Member will be responsible at the time and place of service to pay any Copayment directly to the Healthcare Provider. In other instances, the Member will be billed by the Healthcare Provider. These arrangements are between the Member and the Healthcare Provider.

1.10 **Coverage Year** – July 1 to June 30.

1.11 **Covered Service** - Healthcare Services described in the *Schedule of Benefits* section for which benefits will be provided, based on date the Healthcare Service was received, unless limited or excluded in the *Exclusions* section.

~~**1.12** **Creditable Coverage** - defined by HIPAA and generally means coverage without a lapse of more than 63 days for each Member that was provided under:~~

~~(a) a health benefit plan (without regard to whether it was issued to a small employer and including blanket accident and sickness insurance); or~~

~~(b) part A or part B of Medicare; or~~

~~(c) medical assistance; or~~

~~(d) general assistance medical care; or~~

~~(e) a state high risk pool; or~~

~~(f) a self-insured health plan; or~~

~~(g) the Civilian Health and Medical Program of the Uniformed Services (TRICARE f/n/a CHAMPUS) or other coverage provided under United State Code, title 10, chapter 55; or~~

~~(h) a healthcare network cooperative or by a health provider cooperative under state law; or~~

~~(i) a medical care program of the Indian Health Service or of a tribunal organization; or~~

~~(j) the Federal Employees Health Benefits Plan, or other coverage provided under United States Code, title 5, chapter 89; or~~

~~(k) a health benefits plan under section 5(e) of the Peace Corps Act, United States Code, title 22, section 2504(e); or~~

~~(l) a State Children's Health Insurance Program (SCHIP);or~~

~~(m) a public health plan including any plan established or maintained by a state, the U.S. government, a foreign country, or any political subdivision of a state, the U.S. government, or a foreign country; or~~

~~(n) a plan similar to any of the above plans provided in this state or another state, or as required by law.~~

~~1.13~~1.12 **Custodial Care** - a type of care that is not Skilled Care and is designed to assist an individual to meet the activities of daily living. The care is of a nature that does not require the continuing attention of trained medical or paramedical personnel and can be provided by persons without professional skills or training, Including assistance in walking, getting in and out of bed, bathing, dressing, preparation of meals (Including special diets), supervision of medication that can be self-administered, rest cures and home care provided by family members.

~~1.14~~1.13 **Dependent** - a dependent of the Subscriber who qualifies for membership under the Plan in accordance with the requirements specified below:

(a) a Spouse.

(b) the Subscriber's child or children who meets the following requirements:

(1) is a resident of the United States; and

(2) is one of the following; and:

a) natural child,

b) stepchild,

c) legally adopted child,

d) child placed in the Subscriber's physical custody whom the Subscriber intends to adopt, or

e) a child for whom the Subscriber and/or the Spouse has been named legal guardian

(3) is one of the following:

a) less than twenty-six (26) years of age, or

b) mentally or physically disabled incapable of self-sustaining employment and dependent upon the Subscriber and Spouse (or former spouse), if applicable, for support and maintenance. The child must have been covered under the Plan immediately prior to reaching the age limitation (age 26). For the dependent child to qualify, the Plan must be notified within thirty (30) days after the date Dependent coverage would normally end. Proof of incapacity may thereafter be requested from time to time, but not more frequently than annually following the two (2) year period after the Dependent reached the age limitation (age 26).

(c) Individuals specifically excluded from the definition of a Dependent are:

(1) any person on active military duty;

(2) the grandchild of a Subscriber and/or the Spouse except as specified in Section 1.14(b)2(d) or 1.14 (b)2(e)

(3) any person covered under the Plan as a Subscriber; and

(4) any person covered by another Subscriber on the Plan.

~~1.15~~1.14**Disposable Supplies** - medical supplies that are Medically Necessary for a specific therapeutic purpose in treating an Illness or Injury and that are designed for one use only.

~~1.16~~1.15**Durable Medical Equipment** - standard model medical equipment and/or supplies which are Medically Necessary, prescribed by a Healthcare Provider for a specific therapeutic purpose in treating an Illness or Injury, and designed to be used repeatedly, generally over extended periods of time.

~~1.17~~1.16**Educational** - the primary purpose of a service or supply is to provide the Member with any of the following: training in the activities of daily living, instructions in scholastic skills such as reading and writing, preparation for an occupation or treatment for learning disabilities.

~~1.18~~1.17**Eligible Employee** - an Employee who meets the eligibility criteria for the Plan as described in the *Eligibility and Participation* section and who has not ceased to meet the eligibility criteria.

~~1.19~~1.18**Emergency** – the onset of a medical condition that manifests itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in: (1) serious jeopardy to the Member's health; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part.

~~1.20~~1.19**Employee** - any person employed by the Employer. Employee does not include the following:

(a) a self-employed individual as described in Section 401 (c) of the Code, including, but not limited to, a sole proprietor if the Employer is a sole proprietorship, a person owning more than 2% of the Employer if it is a Subchapter S corporation, a partner of the Employer if it is a partnership, and a member of the Employer if it is a limited liability company and the members are treated as partners for income tax purposes;

(b) any individual included within a unit of employees covered by a collective bargaining unit unless such agreement expressly provides for coverage of the Employee under the Plan;

(c) any individual who is a nonresident alien and receives no earned income from the Employer from sources within the United States;

(d) any individual who is a leased employee as defined in Section 414(n)(2) of the Code;

(e) any individual who performs services for the Employer through, and is paid by, a third-party (including but not limited to an employee leasing or staffing agency) even if such individual is subsequently determined to be a common law employee of the Employer; or

(f) any individual who performs services for the Employer pursuant to a contract or agreement (whether verbal or written) which provides that such individual is an independent contractor or consultant, even if such individual is subsequently determined to be a common law employee of the Employer.

~~1.21~~1.20**Employer** – Town of Gilbert, which is an Arizona city, town, or county, and any subsidiary or affiliated entities recognized by Town of Gilbert as eligible to participate and that agree to participate in the Plan.

~~1.22~~1.21**ERISA** - Employee Retirement Income Security Act of 1974, as amended from time to time.

~~1.23~~1.22**Experimental or Investigative** - a drug, device, Healthcare Service or procedure that meets any one or more of the following criteria:

(a) The drug, device, Healthcare Service or procedure cannot be lawfully marketed without approval of the U.S. Food and Drug Administration (FDA) and approval for marketing has not been given at the time the drug or device is furnished.

(b) Reliable evidence shows that the drug, device, Healthcare Service or procedure is the subject of ongoing Phase I, II, or III clinical trials. (Phase I clinical trials determine the safe dosages of medication for Phase II trials and define acute effects on normal tissue. Phase II clinical trials determine clinical response in a defined patient population. If significant activity is observed in any disease during Phase II, further clinical trials usually study a comparison of the experimental treatment with the standard treatment in Phase III trials. Phase III trials are typically quite large and require many patients to determine if a treatment improves outcomes in a large population of patients.)

(c) Reliable evidence shows that the drug, device, Healthcare Service or procedure is under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with the standard means of treatment or diagnosis.

(d) Reliable evidence shows that the consensus among experts regarding the drug, device, Healthcare Service or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with the standard means of treatment or diagnosis.

Notwithstanding the above, the Plan may determine that a drug, device, Healthcare Service or procedure is not Investigative if it shows sufficient promise. In order to show sufficient promise, the Plan must find, on a case-by-case basis, that the drug, device, Healthcare Service or procedure meets the following criteria:

- Reliable evidence preliminarily suggests a high probability of improved outcomes compared to standard treatment (e.g., significantly increased life expectancy or significantly improved function); and
- Reliable evidence suggests conclusively that beneficial effects outweigh any harmful effects; and
- If applicable, the FDA has indicated that the approval of the drug, device, Healthcare Service or procedure for other proposed use is pending and likely to occur in the near future.

Reliable evidence will include only published reports and articles in the authorized medical and scientific literature that delineates the written protocol or protocols used by the treating facility or by another facility studying substantially the same drug, device, Healthcare Service, or procedure, and that describes among its objectives determinations of safety, efficacy, or efficacy in comparison to conventional alternatives, or toxicity.

~~1.24~~1.23**Family** – a Subscriber and his/her properly enrolled Dependents.

~~1.25~~1.24**Formulary** - a list of Prescription Drugs approved by the Plan for use by Members, as amended from time to time.

~~1.26~~1.25**FMLA** - the Family and Medical Leave Act of 1993, as amended from time to time.

~~1.27~~1.26**Healthcare Provider** - Institutional Healthcare Providers or Professional Healthcare Providers providing Healthcare Services to Members. Each must be licensed, registered or certified by the appropriate state agency where the Healthcare Services are performed. Where there is no appropriate state agency, registration or certification by the appropriate professional body is required. Healthcare Provider Includes those listed below:

(a) **Advanced Practice Registered Nurse** - Including a Clinical Nurse Specialist, Certified Registered Nurse Anesthetist (CRNA), Certified Nurse Midwife and Nurse Practitioner.

(b) **Ambulatory Surgical Facility -** a facility with an organized staff of Physicians that:

- has permanent facilities and equipment for the primary purpose of performing surgical procedures on an outpatient basis; and
- provides treatment by or under the direct supervision of a Physician or other Healthcare Provider; and
- does not provide inpatient accommodations; and
- is not, other than incidentally, a facility used as an office or clinic for the private practice of a Physician or Dentist.

(c) **Chiropractor** - a Doctor of Chiropractic (D.C.).

(d) **Dentist** – a Doctor of Dental Surgery (D.D.S.), Oral Pathologist, Oral Surgeon or Doctor of Dental Medicine (D.M.D.).

(e) **Durable Medical Equipment Provider.**

(f) **Home Health Agency** - an agency that provides Home Health Care and that is Medicare certified and licensed or approved under state or local law.

(g) **Hospice** - an organization that provides medical, social and psychological services as palliative treatment for Members with a terminal illness and life expectancy of less than six months.

(h) **Hospital** - a licensed institution operated pursuant to law that is engaged in providing inpatient and outpatient diagnostic and therapeutic services for the diagnosis, treatment and care of sick and injured persons by or under the direct supervision of Physicians or other Healthcare Providers.

(i) **Licensed Practical Nurse (L.P.N.)** - A graduate of a school of practical nursing who has passed the practical nursing state board examination and is licensed to administer care, usually working under direction of a licensed physician or a registered nurse.

(j) **Licensed Registered Dietitian** – A specialist in dietetics who has met the requirements for certification stipulated by the American Dietetic Association.

(k) **Occupational Therapist** - An individual who has met the requirements to practice in states with licensure laws governing occupational therapy and typically certified by the National Board for Certification in Occupational therapy as a registered occupational therapist (OTR). Some state governments, as part of their licensure statutes, permit use of the OTR/L or LOTR designations.

(l) **Optometrist** – a Doctor of Optometry (O.D.).

(m) **Physical Therapist -** A licensed practitioner of physical therapy who has graduated from an accredited physical therapy education program.

(n) **Physician** - a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.).

(o) **Physician Assistant** - an individual licensed by the medical examining board to provide medical care with Physician supervision and direction.

(p) **Podiatrist** - a Doctor of Podiatry (D.P.), Doctor of Surgical Chiropody (D.S.C.), Doctor of Podiatric Medicine (D.P.M.) or Doctor of Surgical Podiatry (D.S.P.).

(q) **Psychologist –** one who is trained in methods of psychological analysis, therapy, and research.

(r) **Radiation Therapist** – radiation therapy technologist.

(s) **Registered Nurse (R.N.)** –a nurse who has graduated from a state-approved school of nursing, has passed the professional nursing state board examination, and has been granted a license to practice within a given state.

(t) **Rehabilitation Facility -** an institution, or a distinct part of an institution providing rehabilitation services and related services to persons on an inpatient basis.

(u) **Respiratory Therapist**.

(v) **Skilled Nursing Facility** - an institution, or a distinct part of an institution providing Skilled Care and related services to persons on an inpatient basis.

(w) **Social Worker -** an individual who is qualified through education, training and experience to provide services in relation to the treatment of emotional disorders, psychiatric conditions or substance abuse when employed by, or under the supervision of, an M.D., D.O., or Ph.D.

(x) **Speech Therapist**.

(y) **Urgent Care Facility** - a clinic, acute care facility or walk-in clinic with Urgent Care hours or walk-in clinic hours providing treatment for Urgent Care.

~~1.28~~1.27**Health Care Reform** - Patient Protection and Affordable Health Care Act ("PPACA") as amended by the Health Care and Education Reconciliation Act ("Reconciliation Act"), collectively referred to herein as Health Care Reform.

~~1.29~~1.28**Healthcare Services** - the provision of all medical treatment, Disposable Supplies, Durable Medical Equipment, Orthotics or Prosthetics as defined in the Plan.

~~1.30~~1.29**HIPAA** - Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

~~1.31~~1.30**Home Health Care** - Skilled Care for the treatment of a homebound Member's Illness or Injury requiring only Intermittent Care.

~~1.32~~1.31**Illness** - a non-occupational sickness or disorder, Including pregnancy and related conditions. The term "Illness" does not include an illness with respect to which benefits are payable under any workers' compensation, occupational disease, or similar law.

~~1.33~~1.32**Including or Includes** - including, but not limited to.

~~1.34~~1.33**Injectable Prescription Drug** – a product which meets the definition of a Prescription Drug but is administered by injection. For purposes of this Plan, insulin and sumatriptan (lmitrex) are considered to be Prescription Drugs and not Injectable Drugs.

~~1.35~~1.34**Inherited Metabolic Disorders** - an inherited disorder: (1) specified in the newborn screening program prescribed by Arizona law, Including phenylketonuria (PKU), maple sugar urine disease, homocystinuria, and galactosemia; (2) involving amino acid, carbohydrate, or fat metabolism; (3) having medically standard methods of diagnosis, treatment, and monitoring Including quantification of metabolites in blood, urine, or spinal fluid or enzyme or DNA confirmation in tissues; and (4) requiring specially processed or treated medical foods: (i) that are generally available only under the supervision and direction of a Physician, (ii) that must be consumed throughout life, and (iii) without which the Member may suffer serious mental or physical impairment.

Any condition not included in the newborn screening program is not an Inherited Metabolic Disorder.

~~1.36~~1.35**Injury** - a non-occupational accidental physical damage caused directly and exclusively by external, violent, and purely accidental means. The term "Injury" does not include an injury with respect to which benefits are payable under any workers' compensation, occupational disease, or similar law.

~~1.37~~1.36**In-Network** – the network of Healthcare Providers. For the Prescription Drug benefit, In-Network shall mean the pharmacy network (as indicated on the Membership Card). For medical, behavioral health, and chiropractic services, In-Network shall mean the Blue Cross Blue Shield Arizona network and Mayo Clinic providers in the state of Arizona. By election of the Subscriber during initial enrollment, open enrollment, or within 30 days of an eligible qualifying event as listed in Section II, the Subscriber and covered dependents (if applicable) may participate in a national network option available under the Plan. In-Network shall also mean the First Health Network for providers outside of the state of Arizona for members enrolled in the national network option under the Plan.

Blue Cross® Blue Shield® of Arizona, an independent licensee of the Blue Cross and Blue Shield Association, provides network access only and provides no administrative or claims payment services and does not assume any financial risk or obligation with respect to claims. No network access is available from Blue Cross and Blue Shield Plans outside of Arizona.

~~1.38~~1.37**Institutional Healthcare Provider** - Healthcare Providers Including an Ambulatory Surgical Facility, Home Health Agency, Hospice, Hospital, Skilled Nursing Facility or Urgent Care Facility.

~~1.39~~1.38**Intermittent Care** - a medically predictable need for Skilled Care at least once every sixty (60) days.

~~1.40~~1.39**Medical Support Order (MSO)** – a medical support order as described in AZ Statute 20-1692.03.

~~1.41~~1.40**Medically Necessary / Medical Necessity** - Healthcare Services appropriate, in terms of type, frequency, level, setting, and duration, to the Member's diagnosis or condition, and diagnostic testing and preventive services that are not otherwise excluded under the Plan. Such care must:

a) be consistent with generally accepted parameters as determined by Healthcare Providers in the same or similar general specialty as typically manage the condition, procedure or treatment at issue; and

b) help restore or maintain the Member's health; or

c) prevent deterioration of the Member's condition; or

d) prevent the reasonably likely onset of a health problem or detect an incipient problem.

~~1.42~~1.41**Medicare** - Title XVIII of the Social Security Act, as amended from time to time.

~~1.43~~1.42**Member** - a Subscriber or Dependent who is participating under the Plan in accordance with the *Eligibility and Participation* section and whose coverage has not terminated. Member also includes former Subscribers and former Dependents who are otherwise entitled to coverage and properly enrolled under the Plan.

~~1.44~~1.43**Membership Card** - an identification card issued in the Subscriber's name identifying the membership number of the Subscriber.

~~1.45~~1.44**Orthotic** - a custom made brace or external device made for a weak, diseased or injured body part that can increase, decrease or eliminate motion or support the weak, diseased or injured body part.

~~1.46~~1.45**Out-of-Network** - Healthcare Providers that are not In-Network. When Members seek Covered Services from Healthcare Providers who are not In-Network, they are not covered unless specifically listed in this Plan.

~~1.47~~1.46**Part-Time Care** - care that is required less than eight (8) hours a day or forty (40) hours a week.

~~1.48~~1.47**Plan** - the Town of Gilbert Medical Benefit Plan for the provision of healthcare benefits to Members, as amended from time to time.

~~1.49~~1.48**Prescription Drug** - medications and drugs that bear the legend "Federal law prohibits dispensing without a prescription." This term also includes medicines and drugs that contain a legend drug that requires compounding by a pharmacist to the order of a Physician or other authorized Healthcare Provider and are approved by the U.S. Food and Drug Administration (FDA). Insulin and diabetic supplies (e.g., syringes, lancets and testing strips) are generally covered under this definition. Medications and drugs included under this definition are categorized as:

(a) **Brand Name Drug** –Typically, an original patent-protected medication or drug. Designation of Brand Name status is made by MediSpan, an independent third party provider, based on the number of manufacturers of a given product and price differential between the original product

and subsequent manufacturers. While not typical, it is possible for a drug to have more than one manufacturer designated as "Brand Name".

(b) **Generic Drug** – Typically, a medication or drug on which patent has expired and that is manufactured by multiple pharmaceutical companies. FDA A-rated generics (which are the only type covered under the Plan) contain the same active ingredient as the Brand Name Drug, are manufactured under the same FDA standards and are considered equivalent in all respects to the Brand Name Drug. Designation of Generic status is made by MediSpan, an independent, third party provider, based on the number of manufacturers of a given product and the price differential between the original product and subsequent manufacturers.

~~1.50~~1.49**Preventive Care** - Healthcare Services rendered solely for the purpose of health maintenance and not for the treatment of an Illness or Injury.

~~1.51~~1.50**Primary Care Provider (PCP)** – the In-Network Healthcare Provider chosen by each Member to provide and/or coordinate the Covered Services rendered to the Member.

~~1.52~~1.51**Prior Authorization** - authorization from the Plan for specific Covered Services before they are rendered, in accordance with the *Utilization Management* section.

~~1.53~~1.52**Professional Healthcare Provider** - Healthcare Providers Including an Advanced Practice Registered Nurse, Chiropractor, Dentist, Licensed Registered Dietitian, Nurse Practitioner, Occupational Therapist, Physician, Physician Assistant, Podiatrist, Radiation Therapist, Respiratory Therapist and Speech Therapist.

~~1.54~~1.53**Prosthetic** - a fixed or removable device that replaces all or part of an extremity or body part, Including such devices as an artificial limb, intraocular lens or breast prosthesis.

~~1.55~~1.54**Rescission or Rescind** - A cancellation of coverage or discontinuance of coverage under the Plan that has retroactive effect. Such action is prohibited under Health Care Reform unless attributable to (a) a failure to timely pay the cost of coverage, or (b) fraud or intentional misrepresentation of material fact, as those circumstances are described under Health Care Reform and regulatory guidance.

~~1.56~~1.55**Respite Care** – care provided to a Member receiving Covered Services for Hospice care, for the purpose of giving the Member's uncompensated primary caregivers relief when necessary in order to maintain the Member at home.

~~1.57~~1.56**Short-Term** – no longer than three (3) weeks.

~~1.58~~1.57**Skilled Care** - nursing or rehabilitative services requiring the skills of technical or professional medical personnel to develop, provide and evaluate the care and assess the Member's changing condition.

~~1.59~~1.58**Spouse** – an individual who is in a current valid marriage with the Subscriber as recognized under federal tax laws, including the Code, and who is a resident of the same country in which the Subscriber resides. Such individual must have met all the requirements of a valid marriage contract of the state or country in which the marriage of such parties was performed. An individual who is legally separated or divorced from the Subscriber is specifically excluded from the definition of Spouse.

~~1.60~~1.59**Standard Medical Reference Compendia** – Includes the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, Drug Information for the Health Care Provider, and other medical literature meeting the uniform requirements for manuscripts submitted to biomedical journals established by the International Committee of Medical Journal Editors

or is published in a journal specified by the United States Department of Health and Human Services as acceptable peer reviewed medical literature pursuant to section 186(t)(2)(B) of the Social Security Act.

~~1.61~~1.60 **Subscriber** - an Eligible Employee, former Employee, or COBRA continuee who is entitled to coverage and properly enrolled under the Plan.

~~1.62~~1.61 **Summary Benefit Description (SBD)** – This document, which provides a written summary of the benefits under the Plan. This document is the SBD for The Town of Gilbert Medical Benefit Plan.

1.63 **Urgent Care** - a condition requiring Medically Necessary care to treat an unforeseen Illness or Injury which is necessary to prevent serious deterioration of a Member's health, and which cannot be reasonably delayed until the next available appointment.

SECTION II

ELIGIBILITY AND PARTICIPATION

2.1 **Eligibility for Employee Coverage**. Eligibility and participation are as follows:

(a) **Eligible Employees**. An Employee is an Eligible Employee as long as he/she is regularly scheduled to work at least 60 hours per pay period for the Employer or serving as a Town Council member and properly enrolled as described below.

(b) **FMLA Members**. FMLA leaves of absence will be administered according to applicable law and policies established by the Employer. Copies of FMLA policies are available from the Employer.

(c) **Military Leave Members**. Military leaves of absence will be administered according to applicable law and policies established by the Employer. Copies of military leave policies are available from the Employer.

(d) **Leave of Absence.** Employees who would normally be working as a regular Employee for the Employer for at least the required number of hours per pay period to qualify as an Eligible Employee, but who are on an Employer approved leave of absence, Including FMLA absences, remain Eligible Employees.

2.2 **Eligibility for Dependent Coverage**.

(a) **General Rule.** Dependents are eligible for coverage under the Plan at the same time Eligible Employees are eligible for coverage under the Plan or at the time the Eligible Employee first gains a Dependent, whichever occurs first, except in the case of a qualified medical support order under Arizona law.

(b) **Medical Support Orders.** A Dependent whose coverage is required under a medical support order will be eligible to participate in the Plan as of the date specified in the order, provided the medical support order satisfies the requirements of Arizona law. The Employer will review a medical support order and determine whether it is qualified under Arizona law. Upon request to the Employer, Members may obtain a copy of the procedures governing medical support order determinations, which is available at no charge.

(c) **Adoption or Placement for Adoption**. In general, Dependents who are adopted or placed for adoption are eligible for coverage under the Plan at the time the Eligible Employee first gains the Dependent. However, in certain situations, coverage may be available for the Healthcare Services provided in connection with the birth of such a Dependent. In order to receive such coverage, special requirements must be satisfied, Including special notice requirements. Those requirements are described in the *Maternity* subsection of the *Schedule of Benefits* section.

2.3 **Enrollment**. The following paragraphs describe enrollment. Please note that in order for an Eligible Employee's Dependents to be enrolled, the Eligible Employee must be enrolled or enrolling.

(a) **Initial Enrollment.**

(1) Eligible Employees. An Eligible Employee has thirty (30) days from the date he/she first satisfies the definition of Eligible Employee to enroll for coverage in the Plan. This is

called the initial enrollment period. Enrollment materials are available from the designated person of the Employer. Enrollment materials must be completed and returned to the Employer, or its designee, within the thirty (30) day period. If enrollment does not occur within this initial period, the Eligible Employee may enroll in the Plan only if a "special enrollment" situation occurs or during the annual open enrollment. Subscribers and Dependents covered by the subscriber may elect to participate in the national network option under the Plan, but must remain enrolled in that option until the end of the Coverage Year or until coverage termination.

(2) Dependents. Except as otherwise provided under a medical support order qualified under Arizona law, a Dependent must be enrolled within thirty (30) days from the date he/she first satisfies the definition of Dependent under the Plan. If enrollment does not occur within this initial period, the Dependent may enroll in the Plan only if a "special enrollment" situation occurs or during the annual open enrollment.

(b) **Open Enrollment**. Prior to the start of a Coverage Year, the Plan has an open enrollment period. "Open enrollment period" means the period of time occurring toward the end of the Coverage Year during which (1) Eligible Employees who are not covered under the Plan may elect to begin coverage effective the first day of the upcoming Coverage Year and (2) Subscribers will be given an opportunity to change their coverage effective the first day of the upcoming Coverage Year. The terms of the open enrollment period, Including duration of the election period, shall be determined by the Employer and communicated prior to the start of an open enrollment period. Subscribers and Dependents covered by the Subscriber who elect to participate in the national network option under the Plan must remain enrolled in that option until the end of the Coverage Year or until coverage termination.

(c) **Special Enrollment Due to Loss of Other Health Coverage**. Under certain circumstances, an Eligible Employee or his/her Dependent(s) who did not enroll during the initial enrollment period, during open enrollment, or when a change in status event occurred may enroll before the next open enrollment period. These circumstances warrant "special enrollment" and also provide an opportunity for the Eligible Employee to elect the national network option under the Plan, with a requirement to remain enrolled in that option until the end of the Coverage Year or until coverage termination. Special enrollment shall be allowed for either of the following:

(1) The Eligible Employee or the Dependent satisfies all of the following criteria:

a) Was covered under a group health plan or health insurance coverage (this prior coverage does not include continuation coverage required under federal law, but does include other coverage options that may be available from your Employer) at the time the Eligible Employee or Dependent was eligible to enroll under this Plan;

b) Declined coverage in writing for that reason;

c) Presents to the Employer, or its designee, evidence of a loss of the prior coverage due to a loss of eligibility for that coverage, or evidence of the termination of employer contributions toward that coverage. "Loss of eligibility" does not include a loss due to the failure of the Eligible Employee or eligible Dependent to pay premiums on a timely basis or termination of the prior coverage for cause, but may Include:

(1) loss of eligibility as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment;

(2) Cessation of Dependent status under the other plan's eligibility criteria;

(3) incurring a claim that causes the Eligible Employee or Dependent to meet or exceed the lifetime limit on all benefits;

(4) Discontinuance of a benefit plan for a class of similarly situated individuals that includes the Eligible Employee or Dependent;

(5) Eligible Employee or Dependent no longer resides, or is employed within the service area for prior coverage under a group HMO plan, provided no other coverage option is available.

Loss of eligibility occurs regardless of whether the Eligible Employee or Dependent is eligible for or elects continuation of coverage required under federal law;

and

d) Submits a written request for enrollment to Employer, or its designee, within thirty (30) days of the date of the loss of coverage, the date the employer's contribution toward that coverage terminated or the date on which the claim is denied due to the operation of a lifetime limit.

(2) The Eligible Employee or Dependent satisfies all of the following criteria:

a) Was covered under a group health plan or health insurance coverage under COBRA;

b) Declined coverage in writing for that reason;

c) Presents to the Employer, or its designee, evidence that the Eligible Employee has exhausted such COBRA coverage and has not lost such coverage due to the failure of the Eligible Employee or Dependent to pay premiums on a timely basis or termination of coverage for cause (the Eligible Employee of Dependent will be deemed to have exhausted COBRA coverage if such coverage ceases as a result of the Employer's failure to remit premiums on a timely basis or as a result of the Eligible Employee or Dependent incurring a claim that meets or exceeds the lifetime limit on all benefits and no other COBRA continuation is available); and

d) Submits a written request for enrollment to the Employer, or its designee, within thirty (30) days of the date of the loss of coverage.

(3) The Eligible Employee or Dependent satisfies all of the following criteria:

a) Effective April 1, 2009, an Eligible Employee or Dependent with coverage under a State Medicaid plan or Children's Health Insurance Program (SCHIP) loses such eligibility;

b) Loss of eligibility under such plan is not due to the Eligible Employee's or Dependent's failure to pay required premiums on a timely basis or termination for cause;

c) Submits a written request for enrollment to Employer, or its designee, within sixty (60) days of the date of the loss of coverage.

(d) **Special Enrollment Due to Addition of Dependent**. An Eligible Employee's marriage or the birth, adoption, placement for adoption, or legal guardianship of an Eligible Employee's child triggers special enrollment rights and also provides an opportunity for the Eligible Employee to elect participation under the national network option under the Plan, with a requirement to remain enrolled in that option until the end of the Coverage Year or until coverage termination.

i. **Non-Participating Employees May Also Enroll**. The addition of a new dependent triggers enrollment rights for an Eligible Employee even if he/she does not participate in this Plan at the time of the event. For example, upon the birth of an Eligible Employee's child, the Eligible Employee (assuming that he/she did not previously enroll), his/her Spouse, and his/her newborn child may all enroll because of the child's birth. The same rule applies to the Eligible Employee's marriage or adoption of a child if the Eligible Employee had not previously enrolled in this Plan.

ii. **Deadline for Special Enrollment Period**. The Eligible Employee must request special enrollment in this Plan within thirty (30) days of marriage or birth, adoption or placement for adoption of his/her child. If the Employer, or its designee, does not receive the Eligible Employee's completed request for enrollment within this deadline, the Eligible Employee and his/her Dependents lose special enrollment rights for that event. Notwithstanding the foregoing, with respect to a Subscriber who acquires a new Dependent via birth, adoption, or placement for adoption, coverage for the new Dependent shall begin immediately upon birth, adoption, or placement for adoption and shall not be conditioned upon the enrollment of the new Dependent. However, if an additional premium is charged for the new Dependent and if the new Dependent fails to enroll with-in the thirty (30) day time period referenced above, the coverage shall cease upon expiration of such time period. Even if no additional premium is charged, the Subscriber should notify the Employer of the birth, adoption, or placement for adoption.

(e) **Special Enrollment Due to Premium Assistance Under State Medicaid Plan or State Children's Health Insurance Program (SCHIP).** If an Eligible Employee or Dependent(s) did not enroll during the initial enrollment period, during open enrollment, or when a change in status event occurred, and becomes eligible for premium assistance under a State Medicaid or State Children's Health Program (SCHIP), then the Eligible Employee or Dependent(s) may enroll before the next open enrollment period as long as they notify the Employer in writing within sixty (60) days of the date they became eligible for the premium assistance.

(f) **Additional Events to allow election in the Plan's national network option:** Within 30 days of a Subscriber or eligible Dependent's relocation out of state, the Subscriber may elect to participate in the national network option. The effective date of In Network coverage under the Plan's national network option shall be the later of the date of relocation or the date the election is received by Town of Gilbert Human Resources. Documentation of relocation may be required, as determined by the Town of Gilbert. In no case shall the national network option be made retroactive. If the national network option is elected, coverage under the option shall continue until the end of the Coverage Year or coverage termination.

(g) **Opt Out**. An Eligible Employee may decline coverage ("opt out") under this Plan. Such an Eligible Employee shall be provided with the appropriate notice required under HIPAA regarding opting out of coverage.

2.4 **Effective Date of Coverage**. The date on which coverage becomes effective depends upon when enrollment occurs.

(a) **Enrollment Within Initial Enrollment Period**.

(1) Eligible Employees. An Employee is an Eligible Employee on the first day of employment or on the first day of change to an eligible status with the Employer.

(2) Dependents. The effective date of coverage for Dependents is at the time of the Eligible Employee's enrollment. Except as provided in Section 2.3(c)(2), if Dependent status is acquired after the Subscriber's initial eligibility, the effective date of coverage shall be the date on which the new Dependent becomes eligible for coverage under the Plan, provided the Subscriber completes a change form and submits it to the Employer within thirty (30) days after the attainment of Dependent status.

(b) **Enrollment Not Within Initial Enrollment Period**. If an Eligible Employee or Dependent does not enroll within the initial enrollment period, he or she must wait until the next open enrollment period unless a "special enrollment" situation occurs. If a "special enrollment" situation occurs, the Eligible Employee or Dependent must enroll within thirty (30) days of the "special enrollment" situation's occurrence.

(1) Special Enrollment. When enrollment occurs as the result of a special enrollment due to loss of other health coverage as described above, the effective date of coverage shall be no later than the first day of the month following the date on which the request for enrollment was received by the Employer or its designee. When enrollment occurs as the result of a special enrollment due to addition of a Dependent as described above, the effective date of coverage is the date of the event.

2.5 **Retiree Coverage**.

(a) **Requirements**. Employees who retire from the Town of Gilbert through the Arizona State Retirement System or Arizona Public Safety Personnel Retirement System with 10 or more years of service with Gilbert are eligible to continue coverage under the Plan for the retiree and eligible Dependents. Eligibility under the Plan will end effective the last day of the month in which the earliest of the following events occurs:

(a) The retiree reaches age 65

(b) The retiree opts out of such coverage

(c) The retiree fails to pay necessary premiums to the Employer within established payment schedule as communicated directly to the retiree

During the retiree's continuation period, the retiree has the same rights to add dependents as outlined for active employees in 2.3 b, d, and e.

(b) **Election**. The retiree must elect to continue health coverage under the Plan under the provisions of this section for him/herself and any Dependents within sixty (60) days after the end of the month of the retirement. If a retiree's election of retiree health coverage is not made within sixty (60) days after the month of the retirement, the retiree's coverage under the Plan and coverage for any Dependents will cease unless continuation coverage is timely elected under the provisions of COBRA. If coverage under this section is elected, the retiree is responsible for paying the full cost of coverage as determined by the Employer.

2.6 **USERRA**. Special rules apply to those Eligible Employees whose coverage is reinstated following a leave of absence governed by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Under USERRA, an Eligible Employee entitled to have coverage reinstated upon returning to work following a military leave of absence shall be treated as if no break in coverage occurred during the leave.

2.7 **Membership Card**. The Membership Card issued by the Claims Administrator to a Member pursuant to the Plan is for identification purposes only. Possession of a Membership Card confers no right to services or benefits under the Plan, and misuse of such Membership Card may be grounds for termination of a Member's coverage under the Plan. To be eligible for services or benefits under the Plan, the holder of the Membership Card must be a Member. Any person receiving services or benefits which he/she is not entitled to receive pursuant to the provisions of the Plan will be charged for such services or benefits at prevailing rates. If any Member permits the use of his/her Membership Card by any other person, such card may be retained by the Plan, and all rights of such Member pursuant to the Plan may be terminated.

2.8 **Subscriber Termination of Coverage**. Except as provided in the *Retiree Coverage* subsection above and the *Continuation of Healthcare Coverage* section, a Subscriber's participation under the Plan will terminate at midnight on the last day of the calendar month in which the earliest of the following events occurs:

(a) The date the Subscriber terminates employment with the Employer.

(b) The date the Subscriber's employment position or status changes such that he/she is no longer an Eligible Employee.

(c) The date ending the period for which the last contribution is made if the Subscriber fails to make any required contributions when due.

(d) The date the Employer terminates the Plan or its participation in the Plan.

(e) The date of the Subscriber's death.

2.9 **Dependent Termination of Coverage**. Except as provided in the *Retiree Coverage* subsection above and the *Continuation of Healthcare Coverage* section, a Dependent's participation under the Plan will terminate immediately upon termination of the Plan or will terminate at midnight on the last day of the calendar month in which the earliest of the following events occurs:

(a) the dependent ceases to be an eligible Dependent as defined in the Plan.

(b) termination of the Subscriber's coverage under the Plan (see above).

(c) the dependent becomes covered under the Plan as a Subscriber.

(d) Dependent coverage is discontinued under the Plan.

(e) the Subscriber ceases to make the required contributions for the Dependent.

(f) Dependents whose coverage is required pursuant to a Medical Support Order, coverage is no longer required under the terms of the order or the Plan.

(g) Dependents whose coverage became effective upon their birth, adoption, or placement for adoption under Section 2.3(c), the date thirty-one (31) days from the effective date of coverage if an additional premium is charged for the new Dependent and the new Dependent fails to enroll with-in thirty-one (31) days following the birth, adoption, or placement for adoption.

2.10 **Member Termination of Coverage**. Except as provided in the *Retiree Coverage* subsection above, the *Continuation of Healthcare Coverage* section, and the *Rescission* subsection below any Member's participation under the Plan will terminate immediately upon termination of the Plan or will terminate at midnight upon the occurrence of the earliest of:

(a) The date on which a Member allows persons not covered under the Plan to obtain medical benefits for themselves. See *Membership Card* subsection above.

(b) The date on which a Member provides fraudulent information to obtain Plan benefits or coverage, Including falsifying information on his/her applications for coverage and/or submitting fraudulent, altered or duplicate billings for his/her personal gain. Claims paid under the Plan for expenses attributable to such fraudulent information will be treated as erroneously paid claims under Section 10.8.

2.11 **Rescission**. Coverage under this Plan may be Rescinded under certain circumstances. A Member whose coverage is being Rescinded will be provided a 30 day notice period as described under Health Care Reform and regulatory guidance. At the conclusion of the 30 day notice period, coverage shall be terminated retroactive to the date identified in the notification. Claims incurred after the retroactive date of termination shall not be further processed and/or paid under the Plan. Claims incurred after the retroactive date of termination that were paid under the Plan will be treated as erroneously paid claims under Section 10.8. Notwithstanding the foregoing, the 30 day notice period requirement shall not apply in the case of retroactive termination of coverage due to nonpayment.

2.12 ~~**Certification of Creditable Coverage**. A Member may request a certification of Creditable Coverage from the Employer while the Member is covered under the Plan. Requests for a certification of Creditable Coverage may be submitted in writing to:~~

~~Town of Gilbert~~

~~50 E. Civic Center Drive~~

~~Gilbert, AZ 85296~~

~~Attn: Employee Benefit Plan Administrator~~

~~When coverage terminates, or upon request by a Member within two (2) years of termination of coverage under the Plan, Members will be provided with a certification of Creditable Coverage by the Employer or its designee. Certificates of Creditable Coverage will be provided as soon as reasonably possible following the termination of coverage or receipt of the request, but no later than thirty-one (31) days after the termination of coverage or receipt of the request.~~

SECTION III

CONTINUATION OF HEALTHCARE COVERAGE

3.1 **Continuation of Healthcare Coverage**. Continued coverage shall be provided only if and as required under COBRA. The Plan Administrator shall, within the parameters of the law, establish uniform policies for the purpose of providing such continuation of coverage. Please see the *COBRA Notice of Rights Section* for more information.

3.2 **Conversion**. There is no conversion coverage under the Plan offered by the Employer.

SECTION IV

UTILIZATION MANAGEMENT

4.1 **Introduction**. This section describes utilization management programs under the Plan and the Member's responsibilities under these programs. Utilization management programs assist Members to ensure maximum benefit coverage while optimizing clinical outcomes across a continuum of care.

(a) The utilization management programs are designed to assist the Plan in:

(1) evaluating Members' Healthcare Services for Medical Necessity and appropriateness

(2) evaluating alternate level of care opportunities

(3) coordinating care needs

(4) identifying benefit limitations

(b) The Plan uses the methods described in this *Utilization Management* section to coordinate and review care, and to determine whether services are Covered Services under the Plan

4.2 **Utilization Management Criteria**. Members will receive benefits under the Plan only for Covered Services that are determined to be Medically Necessary and not Experimental or Investigative. The fact that a Member's Healthcare Provider has prescribed, ordered, recommended, or approved a Healthcare Service, or has informed the Member of its availability does not in itself make it Medically Necessary. The Plan will make the final determination of whether any service (a) constitutes Medically Necessary care, or (b) is considered Experimental or Investigative.

4.3 **Medical Care Decisions**. The Member's medical care is between the Member and the Member's Healthcare Provider. The ultimate decision on the Member's medical care must be made by the Member and the Member's Healthcare Provider. The Plan only has authority to determine whether provided services are Covered Services under the Plan.

4.4 **Out-of-Network.** The member is entitled to coverage from Out-of-Network Healthcare Providers if such Medically Necessary Covered Services receive Prior Authorization by the Plan, except that Emergency Services and Urgent Care services do not require Prior Authorization. The Plan will grant Prior Authorization to Out-of-Network Healthcare Providers for services that would be Covered Services only when:

(1) The Plan determines the Healthcare Services are not available from In-Network Healthcare Providers; and

(2) The Healthcare Services are recommended in writing by an In-Network Physician and receive Prior Authorization from the Plan.

Covered Services rendered by an Out-of-Network Healthcare Provider are not eligible for coverage (i.e. payment) under the Plan unless the Member obtains Prior Authorization from the Plan (except for Emergency services and Urgent Care services).

- Coverage of such Healthcare Services is subject to all conditions and limits of this Plan Including any applicable Copayment(s).
- A referral by an In-Network Healthcare Provider to an Out-of-Network Healthcare Provider does not satisfy the requirement for Prior Authorization from the Plan.
- The Member or an In-Network Physician must contact the Plan by faxing a request including an explanation of the need for Out-of-Network services with supporting documentation to the Plan at:

1-800-632-9885

or by calling:

1-866-465-5148
TDD for the deaf is 1-800-407-2442

4.5 **Prior Authorization**. Prior Authorization is authorization from the Plan for specific Covered Services before they are rendered, in accordance with this *Prior Authorization* subsection. Requesting Prior Authorization is a Pre-Service Claim as described in the *Claim and Appeal Procedures* section.

(a) Limitations.

(1) Prior Authorization does not guarantee that proposed Healthcare Services are covered under the Plan. Coverage for authorized services is subject to the definitions, conditions, limitations and exclusions of the Plan. Services provided after Prior Authorization is received may be subject to further review by the Plan to ensure the services are Medically Necessary. Benefits will be denied if the Member is not eligible for coverage under the Plan on the date services are incurred, if services received are not Medically Necessary, or if the Plan terminates.

(2) Prior Authorization does not determine the level at which benefits will be available.

(b) Certain Covered Services Require Prior Authorization. Certain Covered Services require Prior Authorization under the Plan Including:

(1) **Durable Medical Equipment, Orthotics or Prosthetics over $750 or any rental to exceed four (4) months**.

Please note: Prior Authorization is not required for oxygen and oxygen supplies

(2) **Apnea testing**

(3) **Infant apnea monitors**

(4) **Dental Services and Oral Services**

(5) **Implantable Hearing Devices**

(6) **Certain elective surgeries**, Including:

a) **Breast surgery**

b) **Cosmetic or reconstructive procedures and surgery**, Including:

(1) Reconstructive surgery for congenital deformities which do not impose a functional impairment, but result in absence of a body part, Including cleft lip, nasal deformities, breast reconstruction for Poland's Syndrome, and microtia repair

(2) Treatment of keloid scars

(3) Breast reconstruction after a mastectomy

(4) Breast reduction surgery

c) **Oral surgery, maxillofacial surgery or uvulopalatopharyngoplasty (UPPP)**

d) **Varicose vein treatment**

e) **Weight reduction surgery**

(7) **Home Health Care**

(8) **Hospice care**

(9) **Infertility services**

(10) **Non-Emergency Ambulance**

(11) **Non-Emergency Hospital Admissions**, Including admissions for mental health, chemical dependency or medical procedures.

Please note: Prior Authorization is not required for emergency admissions to the Hospital; however, the Member should notify the Claims Administrator within 48 hours after the admission or as soon as reasonably possible.

(12) **Out-of-Network services that are not available from an In-Network Healthcare Provider and the Member is requesting the In-Network level of benefits or an In-Network Healthcare Provider has recommended the Healthcare Services in writing.**

(13) **Respite Care**

(14) **Skilled Nursing Facility and Rehabilitation Facility**

(15) **Therapy (Physical Therapy, Speech Therapy, Occupational Therapy, and Respiratory Therapy) for services exceeding the 30 visit combination maximum per Coverage Year.**

(16) **Specified Prescription Drugs** as listed in the *Outpatient Prescription Drugs* subsection of the *Schedule of Benefits* section, Including self-administered Injectable Prescription Drugs, with the exception of insulin and sumatriptan (Imitrex)

(16) **Temporomandibular joint disorder (TMJ/TMD) treatment**

(17) **Transplants and transplant related services**, Including organ transplants, bone marrow transplants and stem cell transplants.

(18) **Excluded or restricted services as detailed in this SBD:** Where this SBD expressly excludes or restricts benefits for services, a member may request Prior Authorization for such services. If prior authorization is denied, the member may initiate a Pre-Service Appeal.

(c) How to Obtain Prior Authorization. See the *Claim and Appeal Procedures* section for information on how to file a Pre-Service Claim.

(d) Review. In cases where Prior Authorization is required but not obtained, such services will be subject to review to determine whether the services are Covered Services under the Plan.

4.6 **Utilization Review**. Utilization review is the process of reviewing certain services that have been requested or provided to evaluate:

(a) Medical Necessity.

(b) Verification that services are Covered Services under the Plan.

(c) Verification the Member obtained Prior Authorization if required.

(d) Identification of case management or coordination of care needs.

4.7 **Discharge Planning**. Discharge planning assists Members with the transition to an appropriate level of care following acute inpatient and/or outpatient Healthcare Services. If the Member is not able to return home, the Plan may coordinate or assist in the coordination of the Member's care to identify the most appropriate alternative setting and services.

4.8 **Case Management**. Case management is collaborative, systematic, and ongoing management of Members with complex diagnoses, catastrophic Injuries or Illnesses, chronic health problems, and/or poor histories of self-management or compliance. Case management involves coordination of the Member's healthcare needs and a treatment plan across the healthcare continuum.

4.9 **Questions Regarding Utilization Management Procedures**. If the Member has any questions regarding these procedures, the Member or the Member's Healthcare Provider should contact the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section.

SECTION V

SELECTING A HEALTHCARE PROVIDER

Under the Plan, benefits are only payable for Covered Services received from In-Network Healthcare Providers, except for Emergency and Urgent Care services. Non-Emergency Medically Necessary services from Out-of-Network Healthcare Providers are payable under the Plan only when certain conditions are met and Prior Authorization is obtained.

5.1 **Provider Directories**. Members may receive a list of In-Network Healthcare Providers online, which also allows individual Members to print their own copy if desired. The Provider Directory is continually updated – for information regarding specific Healthcare Providers, go to www.mayoclinichealthsolutions.com or call the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section.

5.2 **Healthcare Provider Status**. Enrolling in this Plan does not guarantee that a particular Healthcare Provider will remain an In-Network Healthcare Provider or that a particular Healthcare Provider will provide Members with Healthcare Services. Members should verify a Healthcare Provider's status as an In-Network Healthcare Provider each time Healthcare Services are received from the Healthcare Provider.

5.3 **Choice of Healthcare Provider**. The Member will have free choice of any legally qualified Healthcare Provider, and the Healthcare Provider-patient relationship will be maintained. If the Member chooses to receive services from an Out-of-Network Healthcare Provider, he or she may not receive benefits under the Plan.

5.4 **Continuity of Care.** Notwithstanding anything in this Plan to the contrary, in the event a Member joins the Plan or a Healthcare Provider ceases to be an In-Network Healthcare Provider, a Member shall have the opportunity to continue receiving treatment from his/her Healthcare Provider even though that Healthcare Provider is not an In-Network Healthcare Provider as provided herein.

(a) A new Member may continue an active course of treatment for a life threatening disease or condition with a Healthcare Provider who is not an In-Network Healthcare Provider for a transitional period of thirty (30) days from the effective date of the new Member's coverage under the Plan.

(b) In the event a new Member has entered the third trimester of pregnancy, such new Member may continue to receive care from a Healthcare Provider who is not an In-Network Healthcare Provider for a transitional period beginning on the effective date of the new Member's coverage under the Plan and ending upon the earlier of: (i) the cessation of care related to the delivery of the child, or (ii) six (6) weeks after the delivery.

(c) A Member may continue an active course of treatment for a life threatening disease or condition with a Healthcare Provider who was terminated from the provider network for a transitional period of thirty (30) days from the date the Healthcare Provider ceases to be an In-Network Healthcare Provider. In the event the Healthcare Provider was terminated for reasons of medical incompetence or unprofessional conduct, this provision shall not apply.

In order for this continuity of care provision to apply, the Healthcare Provider must agree in writing to accept, as payment in full, reimbursement at the rates established by the Plan, comply with the Plan's quality assurance and utilization review requirements, and comply with the Plan's policies and procedures relating to obtaining Prior Authorization. For a Healthcare Provider who was terminated

from the provider network, the rates shall be the rates applicable before the termination. For all other Healthcare Providers, the rates shall not exceed the level of reimbursement applicable to similar services of Healthcare Providers within the provider network. The Plan will not provide coverage for benefits not otherwise covered under this Plan.

SECTION VI

SCHEDULE OF BENEFITS

6.1 Cost Sharing and Benefits.

This *Schedule of Benefits* section details the Covered Services, and related costs to the Member under the Plan. The Member will generally pay a Cost Sharing Amount for Covered Services.

This *Schedule of Benefits* section is limited by the express exclusions and limitations set out in the *Exclusions* section.

Some Covered Services under the Plan are subject to Prior Authorization requirements, as indicated in the *Utilization Management* section. Please refer to the *Utilization Management* section for information regarding Prior Authorization.

(a) Level of Benefits.

(1) A Member may receive coverage for non-Emergency Medically Necessary services from Out-of-Network Healthcare Providers only when certain conditions are met. Please see the *Utilization Management* section.

(2) Covered Services under the Plan not available In-Network will be paid at the In-Network benefit level if Prior Authorization is obtained.

(3) Covered Services under the Plan provided by an Out-of-Network Professional Healthcare Provider at an In-Network Institutional Healthcare Provider will be paid at the In-Network level of benefits.

(4) Diagnostic tests sent to an Out-of-Network Healthcare Provider by an In-Network Healthcare Provider and anesthesiology services performed by an Out-of-Network Healthcare Provider at an In-Network facility will be paid at the In-Network level of benefits.

(b) Maximum Benefits Paid by the Plan for Certain Covered Services. The Plan has established limits on the amount of benefits it will pay for certain Covered Services. These specific services and their applicable limits are identified in this *Schedule of Benefits* section.

(c) Maximum Annual Benefit Paid by the Plan.

Maximum Annual Benefit	In-Network
Chiropractic Services	12 visits
<u>Durable Medical Equipment</u> - Jobst sleeves, stockings and gloves - Contact lenses for keratoconus (fitting and purchase) Prosthetics - Medically Necessary Bras for breast prosthesis (incidental to a covered mastectomy) - Breast prosthesis (incidental to a covered mastectomy) - Removable dental splints for the treatment TMJ Orthotics Disposable Supplies <u>Rehabilitation Services</u> - Physical, occupational, speech and respiratory therapy services <u>Skilled Nursing Facility and Rehabilitation Facility</u> - Skilled Nursing Facility - Rehabilitation Facility	1 item per affected body part* 1 set 2 bras 2 breast prosthesis 1 splint 1 pair 1 oral splint (interocclusal appliance) 30 combined visits, unless prior authorization is received for additional visits based on Medical Necessity 60 days 60 days * Unless the item has outlived its useful life or must be replaced to accommodate bodily growth.

Maximum Lifetime Benefit	In-Network
Durable Medical Equipment - Contact Lenses following surgery for aphakia (fitting and purchase)	1 set
Hospice Care	30 days* (Continued Care and Respite Care combined)
- Respite Care	5 days**
	* 30-day limit is conditional upon the Member being enrolled in a Plan approved home Hospice program. ** 5-day limit during which twelve (12) or more hours of respite services are provided in an In-Network Institutional Healthcare Provider.

6.2 **Covered Services**. This section describes the Covered Services for which benefits are available under the Plan. This Section is subject to the definitions, exclusions, conditions and limitations of the Plan. This section is also subject to Cost Sharing Amounts and Maximum Annual Benefits of the Plan.

(a) AMBULANCE

Service	In-Network cost to Member
Ambulance	$0 Copayment

Non-Emergency Ambulance services are covered subject to Prior Authorization. Prior Authorization is required for coverage of certain Covered Services under this Plan. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Benefits may not be available for some services. See the *Exclusions* section for a list of these services not covered by this Plan.

Covered Services under the Plan include:

- licensed Ambulance transportation for an Emergency to the nearest Healthcare Provider qualified to provide care
- air Ambulance charges when it is the only Medically Necessary means of transporting the Member as determined by the Plan
- Ambulance services for an Emergency even if the Member is not transported

(b) CHIROPRACTIC SERVICES

Service	In-Network cost to Member
Chiropractic Services	$20 Copayment per Visit

Benefits may not be available for some services. See the *Exclusions* section for a list of these services not covered by this Plan.

Covered Services under the Plan Include:

- chiropractic treatment (Including nonsurgical and noninvasive treatment of neck and back pain through physical therapy, musculoskeletal manipulation and other physical corrections of musculoskeletal conditions within the scope of the chiropractic practice, such as modalities, diathermy, heat or cold therapy and electrical stimulation for spinal skeletal system and/or surrounding tissue)

For chiropractic services, In-Network shall mean the Blue Cross Blue Shield Arizona Network.

The maximum annual benefit for chiropractic services is 12 visits per Member per Coverage Year.

(c) DENTAL SERVICES

Service	In-Network cost to Member
Dental Services Office Visits	$20 Copayment per visit if service provided by Primary Care Physician $35 Copayment per visit if service provided by specialist

Prior Authorization is required for coverage of all dental services, TMJ treatment, and oral services. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

This is not a comprehensive dental plan. Covered Services under the Plan include only the following dental services or oral maxillofacial services that relate to a Member's medical condition:

1. Immediate (within one year of the Injury or within one year of first becoming covered under the Plan, unless there is a medical reason for delay) treatment of acute, accidental, traumatic Injuries to sound, natural teeth (including replacement of avulsed teeth due to traumatic complications) or jaws. Coverage is for an Injury that results from external trauma to face and mouth only, not for cracked or broken teeth which result from biting or chewing.

   The following are Covered Services under the Plan only if they are a direct result of the Injury:
   (a) dental implants
   (b) orthodontia
   (c) fixed or removable dental prosthetic devices, Including crowns, bridges, and dentures
   (d) corrections of malocclusions

2. Coverage for oral surgery is limited and includes the following Covered Services under the Plan:

   a. Oral surgical treatment of the management of cleft lip or cleft palate for Dependents up to age eighteen (18). Dental services which are not required for the treatment of cleft lip or cleft palate are not covered.

   b. Oral surgery for tumors or cysts of the jawbone or mouth (excluding restorative or orthodontic treatment that may or may not relate to the tumor or cyst).

   c. Oral surgery for partial or complete bony impaction of teeth, but not repair, restoration, or extraction of erupted teeth or teeth impacted under soft tissue only.

3. Hospital and general anesthesiology services only for:
   - Dependents under the age of five (5) years; or
   - a Member who has a medical condition and requires hospitalization or general anesthesia for dental services; or
   - Medically Necessary hospitalization for dental care.

4. Medically Necessary treatment of temporomandibular disorder (TMJ/TMD), Including:

a. Non-surgical treatment:
   i. interocclusal appliance (oral splint) therapy; however, payment is covered under the Durable Medical Equipment and is limited to one (1) splint per Coverage Year.

b. Surgical treatment to correct functional problems of the jaw:

The following are not Covered Services under the Plan:

- removal of teeth (except as specifically listed above as a Covered Service)
- dental implants (except as specifically listed above as a Covered Service)
- prosthetic rehabilitation (temporary or permanent crowns, bridges, implants or dentures) (except as specifically listed above as a Covered Service)
- orthodontic therapy (braces) (except as specifically listed above as a Covered Service)
- restorative or periodontal dental procedures
- "trigger point" injections (except as specifically listed above as a Covered Service)
- physical therapy for mouth and jaw (Including myofunctional and iontophoresis therapy) (except as specifically listed above as a Covered Service)
- diagnostic use of electromyography and other electrical instrumentation
- oral maxillofacial surgical intervention, Including occlusal equilibration, Le Forte procedures and orthognathic surgery (except as specifically listed above as a Covered Service)
- treatment for injury from biting or chewing, Including oral splints
- replacement of teeth missing prior to the occurrence of an Injury or Illness
- defective fillings
- correction of malocclusions (except as specifically listed above as a Covered Service)
- services provided for cosmetic or dental reasons, Including orthodontic treatment, dental restorations, or fixed or removable prostheses (except as specifically listed above as a Covered Service)
- routine dental services

(d) DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS, DISPOSABLE AND CONSUMABLE SUPPLIES

Service	In-Network cost to Member
Durable Medical Equipment, Prosthetics, Orthotics and Disposable Supplies	$0 Copayment
Medical foods	50% Coinsurance
Amino acid-based formula	25% Coinsurance

Prior Authorization is required for coverage of certain Covered Services under the Plan, Including Durable Medical Equipment, Orthotics, or Prosthetics over $750 or any rental to exceed four (4) months, infant apnea monitors, and implantable hearing devices. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Covered Services under the Plan Include the following types of Medically Necessary Durable Medical Equipment, Prosthetics, Orthotics and Disposable Supplies, but only if prescribed by a Healthcare Provider for use outside of a Hospital or Skilled Nursing Facility.

Durable Medical Equipment:

- home renal dialysis equipment and supplies
- equipment necessary to treat respiratory failure
- for insulin-treated diabetic Members:
  - drawing up devices for the visually impaired
  - injection aids
  - podiatric appliances for prevention of complications associated with diabetes, if coverage is required under Medicare
  - any other device, equipment, or supply for which coverage is required under Medicare after January 1, 1999 (effective six months after the coverage is required under Medicare)
- inhalation devices
- apnea monitoring devices for infants
- oxygen and equipment for a supplemental oxygen delivery system
- a wheelchair or a hospital-type bed with no features over and above that which best meets the Medical Necessity of the Member
- Jobst sleeves, stockings and gloves are covered only for post-phlebitic conditions or post-surgical edema, and coverage is limited to one item per affected body part per Coverage Year unless the item has outlived its useful life or must be replaced to accommodate bodily growth
- bronchial drainage systems that employ a chest percussion vest and vest compressor
- the fitting and purchase of one (1) set of contact lenses following surgery for aphakia, one (1) per Member lifetime
- the fitting and purchase of one (1) set of contact lenses for keratoconus per Coverage Year
- TENS units
- Holter monitoring devices

- Implantable hearing devices if Prior Authorized and approved by the Plan

Prosthetics:

- removable, non-dental Prosthetic devices that are durable and custom made for the Member, but do not require surgical connection to nerves, muscles or other tissue
- trusses or orthopedic appliances that are durable and custom made for the Member
- incidental to a covered mastectomy, up to two (2) Medically Necessary bras for breast prosthesis and up to two (2) breast prosthesis per Coverage Year.
- a semi-rigid penile prosthesis or external pump is covered for the correction of sexual dysfunction resulting from organic (i.e., not psychogenic) factors. When considered a Covered Service, coverage is limited to the least expensive option.

Orthotics:

- Orthotics that are durable and custom-made for the Member, are limited to one (1) pair per Coverage Year
- Orthopedic footwear and orthopedic shoes associated with diabetes

Disposable Supplies:

- dressings
- silicone sheeting for treatment of recurring Keloid scars
- splints (limited per one (1) splint per Coverage Year)
- oral splint for obstructive sleep apnea
- braces
- ostomy and colostomy supplies
- slings

Consumable Supplies

Enteral Tube Feedings

The Plan covers tube feeding when the Member has a permanent* impairment involving the gastrointestinal tract that prevents adequate oral nutritional intake to maintain weight and strength.

*NOTE: If the judgment of the attending Physician, substantiated in the medical record, is that the impairment can reasonably be expected to exceed three (3) months (ninety (90) days), the test of permanence is considered met.

If the claim involves a pump, it must be supported by sufficient medical documentation, i.e., gravity feeding is not satisfactory due to aspiration, diarrhea, and dumping syndrome.

Infant Formula

Standard infant formulas are covered if administered via the tube-feeding route and the criteria for coverage of tube feedings are met.

Calorically dense formulas are also covered for tube feedings if they are indicated.

To be eligible for coverage for medical foods, ALL of the following criteria must be met:

a. the Member must be diagnosed with one of the inherited metabolic disorders as defined above;
b. the inherited metabolic disorder must involve amino acid, carbohydrate or fat metabolism and have medically standard methods of diagnosis, treatment and monitoring, including qualification of metabolites in blood, urine, or spinal fluid, or enzyme or DNA confirmation in tissues;
c. the Member must require specially processed or treated medical foods generally available only under the supervision of an In-Network Physician;
d. the medical foods must be prescribed or ordered under the supervision of an In-Network Physician for the therapeutic treatment of one of the inherited metabolic disorders identified above; and
e. the prescribed/ordered specially processed or treated medical foods must be consumed throughout life, without which, the Member may suffer serious mental or physical impairment.

It may be necessary for the Plan to obtain medical record documentation to determine the above criteria are met.

For this section only the following terms are defined as:

"Medical foods" - modified low protein foods and metabolic formulas. Each of these terms are defined as follows:

"Modified low protein foods" - foods that are ALL of the following:

- formulated to be consumed or administered through the gastrointestinal tract under the supervision of a Physician;
- processed or formulated to contain less than one (1) gram of protein per unit of serving;
- administered for the medical and nutritional management of a Member with limited capacity to metabolize foodstuffs or certain nutrients contained in the foodstuffs or who has other specific nutrient requirements as established by medical evaluation; and
- essential to the Member's optimal growth, health and metabolic homeostasis.

"Metabolic formula" - foods that are ALL of the following:

- formulated to be consumed or administered through the gastrointestinal tract under the supervision of an In-Network Physician;
- processed or formulated to be deficient in one or more of the nutrients present in typical foodstuffs;
- administered for the medical and nutritional management of a Member with limited capacity to metabolize foodstuffs or certain nutrients contained in the foodstuffs or who has other specific nutrient requirements as established by medical evaluation; and
- essential to the Member's optimal growth, health and metabolic homeostasis.

To receive coverage the Member must purchase medical foods (as defined above) from an In-Network Healthcare Provider.

Rental of Durable Medical Equipment will be the general practice. However, if there is evidence the Durable Medical Equipment will be required long enough to justify purchase, reimbursement will be limited to the purchase price. The Plan reserves the right to determine if an item will be approved for rental versus purchase.

Replacement or repair of Durable Medical Equipment, Prosthetics or Orthotics is covered due to normal wear and tear, if they have outlived their useful life, or to accommodate bodily growth.

The following are not Covered Services under the Plan:

- adult apnea monitors
- charges incurred for the rental or purchase of any type of air conditioner, humidifiers, dehumidifiers, air purifier, therapeutic mattress or any such similar device or appliance
- ordinary over-the-counter items such as cotton balls/swabs, alcohol wipes, bandages and ace wraps
- batteries
- breast pumps
- ~~catheters~~

(e) EMERGENCY SERVICES AND URGENT CARE SERVICES

Service	In-Network cost to Member	Out-of-Network cost to Member
Emergency Room (Physician services and facility charges)	$150 Copayment (Waived if Admitted)	$150 Copayment (Waived if Admitted)
Inpatient Emergency Hospital and Physician Services	$150 Copayment	$150 Copayment
MRI/CT/PET Scans	$100 Copayment	$100 Copayment
Urgent Care Services	$35 Copayment	$35 Copayment

In the case of an Emergency, the Member should go to the nearest Emergency care Healthcare Provider.

Emergency and Urgent Care Covered Services under the Plan include:
- Institutional Healthcare Provider charges
- Professional Healthcare Provider charges
- MRI, CT and PET scans
- other diagnostic tests (excluding MRI, CT and PET scans)

Notification of Emergency hospitalization is required within 48 hours or as soon as reasonably possible. The responsibility for notification belongs to the Healthcare Provider when care is received In-Network. When care is received Out-of-Network, notification is the responsibility of the Member and is accomplished by contacting the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section.

If the Member is admitted directly to inpatient status from the Emergency room, the Copayment for the Emergency room services will be waived, and the Hospital inpatient Copayment applies. Follow-up services in the Emergency room are not Covered Services unless Medically Necessary.

Coverage is provided at In-Network Healthcare Providers, without Prior Authorization or utilization review, for the following Covered Services:
- an initial medical screening examination upon the Member's presentation to an Emergency In-Network Healthcare Provider and
- any immediately necessary stabilization treatment

If the Member is in an Out-of-Network Hospital, the Member must cooperate in being transferred to an In-Network Hospital upon the request of an In-Network Physician or the Plan as soon as medically appropriate. Such determination will Include consideration of the opinion of the Member' Out-of-Network attending Physician.

(f) HOME HEALTH CARE

Service	In-Network cost to Member
Home Health Care	$0 Copayment

Prior Authorization is required for coverage of home health care. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

All services, except therapy as described in (o) of this section, that are provided in the member's home are considered home health care. Only certain services as described in this section are covered under the Home Health Care benefit.

Covered Services under the Plan Include the following Part-Time Care or Intermittent Care and therapeutic services, for conditions that would otherwise require Confinement in a Hospital or Skilled Nursing Facility, when rendered in the Member's home:

- Skilled Care by a Registered Nurse or Licensed Practical Nurse
- Home Health Care aide services
- Laboratory services
- Physical, occupational, and speech therapy are covered under (o) of this section and are subject to limits on therapy services
- Inhalation therapy
- Home intravenous (IV) antibiotic therapy; parenteral and enteral nutrition, chemotherapy and anticoagulant therapy
- Necessary training for the primary caregiver(s) in the home

Home Health Care is covered only when rendered as rehabilitative, and not as maintenance, Custodial Care, or Respite Care. Home Health Care is not provided as a substitute for a primary caregiver in the home or as relief (respite) for a primary caregiver in the home.

The Plan will not provide benefits for services listed above, performed by a person who ordinarily resides in the Member's household or is related (by blood or law) to the Member. Benefits also are not available for the above services provided at a school or any site other than the Member's home

For purposes of Home Health Care under the Plan, a service shall not be considered Skilled Care merely because it is performed by, or under the direct supervision of, a licensed nurse. Where a service such as tracheotomy suctioning or ventilator monitoring, or like services, can be safely and effectively performed by a non-medical person or self-administered, without the direct supervision of a licensed nurse, the service shall not be regarded as Skilled Care, whether or not a skilled nurse actually provides the service. The unavailability of a competent person to provide a non-skilled service shall not make it a skilled service when a skilled nurse provides it. Only the Skilled Care component of so-called "blended" services (i.e., services which include skilled and non-skilled components) are covered under the Plan.

The following are <u>not</u> Covered Services under the Plan:

- nursing services to administer home infusion therapy the Member or another caregiver can be successfully trained to administer
- home infusion services that do not involve direct Member contact, such as delivery charges and record-keeping

(g) HOSPICE CARE

Service	In-Network cost to Member
Hospice Care	$0 Copayment

Prior Authorization is required for coverage of hospice and respite care. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Covered Services under the Plan are described below for Members who are terminally ill and accepted as Hospice program participants. Members must meet the eligibility requirements of the program, and elect to receive services through the Hospice program. Services will be provided in the Member's home, with inpatient care available when Medically Necessary. Members who elect to receive Hospice services do so in lieu of curative treatment for their terminal Illness for the period they are enrolled in the Hospice program.

The maximum number of Hospice Care days covered by the Plan is 180 days per Member lifetime.

Covered Services under the Plan Include:

- Part-Time Care provided in the Member's home by an interdisciplinary Hospice team, which may Include a Physician, Registered Nurse, Social Worker, home health aide, and spiritual counselor.
- Continued Care in the Member's home or in a setting which provides day care for pain or symptom management. The period or periods of Continued Care and respite Care combined are limited to thirty (30) days per Member lifetime and conditional upon the Member being enrolled in a Plan approved home Hospice program
- Inpatient care when Medically Necessary
- Limited Respite Care. Benefits for Respite Care are limited to five (5) days during which twelve or more hours of respite services are provided.

The following are <u>not</u> Covered Services under the Plan:

- financial or legal counseling services
- housekeeping or meal services in the Member's home
- maintenance or Custodial Care related to Hospice services, whether provided in the home or in a nursing home
- any services provided by a person who ordinarily resides in the Member's household or is related (by blood, marriage or applicable law) to the Member

(h) INFERTILITY SERVICES

Service	In-Network cost to Member
Infertility Services	$20 Copayment per visit if service provided by Primary Care Physician $35 Copayment per visit if services provided by specialist

Prior Authorization is required for coverage of infertility services. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Infertility Covered Services under the Plan Include:

- an infertility diagnostic evaluation and diagnostic services limited to consultation by an In-Network Physician, laboratory tests, and certain procedures limited to sperm count, hysterosalpingography, and endometrial biopsy.

The following are not Covered Services under the Plan:

- services related to the treatment of infertility
- charges related to or in connection with the reversal of a sterilization procedure
- charges for donor ova or sperm, and sperm storage charges
- charges for assisted reproduction Including but not limited to:
    - in vitro and in vivo fertilization
    - gamete intrafallopian transfer (GIFT)
    - zygote intrafallopian transfer (ZIFT)
    - intracytoplasmic sperm injection (ICSI),
    - use of donor egg, and experimental procedures
- charges related to or in connection with adoption
- charges incurred by or for a non-Member surrogate's pregnancy (other than in the case of an adoption where all the requirements of A.R.S. § 20-1057.K. and L. are met); and any related charges incurred for these excluded procedures.
- Therapeutic infertility services
- Diagnostic services related to infertility treatment once treatment for infertility has been initiated

(i) INPATIENT AND OUTPATIENT HOSPITAL AND PHYSICIAN SERVICES

Service	In-Network cost to Member
Physician Visit and Related Services (except Preventive Care)	$20 Copayment per visit – Primary Care Physician $35 Copayment per visit - Specialist
Inpatient Hospital Services (Non-Emergency)	$300 Copayment
Outpatient Hospital, Ambulatory Care or Surgical Facility Services	$150 Copayment if operating room facility is required or $0 Copayment if no operating room
Allergy Shots or other treatment injections with no associated office visit	$0 Copayment

Prior Authorization is required for coverage of certain Covered Services under the Plan, Including apnea testing, non-emergency hospital admissions, and certain elective surgeries such as breast surgery, cosmetic or reconstructive procedures, oral surgery, maxillofacial surgery or uvulopalatopharyngoplasty, varicose vein treatment, and weight reduction surgery. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Physician And Related Services (Except Preventive Care)

Covered Services under the Plan Include the following when provided, requested, or directed by In-Network Healthcare Providers:

- diagnosis, surgery and office treatment
- professional administration of medications
- diagnostic tests
- initial examination and tests required to diagnose infertility
- medication management
- Disposable Supplies
- services of In-Network Professional Healthcare Providers at an Institutional Healthcare Provider Including surgery, anesthesiology, radiology, pathology, and consultation with and treatment by consulting Professional Healthcare Providers

Inpatient Hospital Services (Non-Emergency)

Covered Services for inpatient Hospital services Include room, board, and general nursing service in semi-private accommodations. Charges for private room are covered only when Medically Necessary. Covered Services under the Plan also include Hospital ancillary services Including: operating room and related facilities; intensive care; cardiac care (Including Phase I cardiac rehabilitation while the Member is an inpatient); diagnostic imaging; laboratory and other diagnostic tests; physical therapy; inhalation therapy; speech therapy; chemotherapy; occupational therapy; anesthesia; oxygen; inpatient medications; Prescription Drugs dispensed at the time of dismissal for outpatient use (unless the Hospital uses an In-Network pharmacy, then such Prescription Drugs are subject to the *Outpatient Prescription Drugs* subsection of this *Schedule of Benefits* section); biological and Disposable Supplies for in-Hospital use; in-Hospital use of medical equipment; renal dialysis; electro-convulsive therapy; and patient education.

The following are not Covered Services under the Plan:

- extended Hospital stays for reasons other than Medical Necessity
- a continued Hospital stay if the attending Physician has documented that care could be provided in a less acute care setting
- any admission for diagnostic tests that can be performed on an outpatient basis
- All Physician services provided in the home are described under the Home Health section of this *Schedule of Benefits*

Emergency inpatient services, inpatient maternity services, transplant services, and dental services are described elsewhere in this *Schedule of Benefits* section.

Outpatient Hospital, Ambulatory Care or Surgical Facility Services

Covered Services under the Plan for outpatient Hospital, ambulatory care or surgical facility services Include: inhalation therapy, radiation therapy, chemotherapy, use of special medical equipment, renal dialysis, and pathology.

If a Member is admitted directly to inpatient status from outpatient surgery at an In-Network Institutional Healthcare Provider, the outpatient surgery Copayment will be waived and the Hospital Inpatient Copayment applies.

The Following Are Covered Services under the Plan, Whether Performed In or Out of the Hospital:

- charges for mastectomy-related services Including all stages of reconstruction of the breast on which the mastectomy has been performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, prostheses, and treatment of physical complications of mastectomy (Including lymphedemas)
- elective sterilization
- charges for the processing and administration of blood or blood components
- blood transfusion services, Including the cost of blood, blood plasma and other blood products not donated or replaced by a blood bank or otherwise
- charges for oxygen and other gases and their administration
- charges for the cost and administration of local or general anesthetic in conjunction with a covered surgical or medical procedure
- charges for dialysis as an inpatient or at an outpatient dialysis center
- inhalation therapy
- radiation therapy and chemotherapy
- charges in relation to corneal grafts, and, for aphakic patients, sclera shells intended for use as corneal bandages
- charges for blepharoplasty and other procedures to correct Lid Ptosis unless taped visual field testing demonstrates at least a twenty degree improvement in vision compared to untapped visual field testing
- charges for apnea testing if Prior Authorized
- charges for surgical correction of sleep apnea if the Member has failed the use of CPAP or BiPAP therapy
- charges for fitting and purchase of one (1) set of contact lenses following surgery for aphakia, one (1) per Member lifetime
- charges for fitting and purchase of one (1) set of contact lenses for keratoconus per Coverage Year

- charges for treatment for the following foot conditions:
  - Metatarsalgia or bunions when an open cutting operation is performed
  - Corns and calluses or toenails when at least part of the nail root is removed or due to peripheralvascular disease
- Reconstructive surgery (other than reconstructive breast surgery, mastectomy and other breast procedures) is limited to surgery to improve or repair a body part only if it impairs function *and* (1) is the result of, or incidental to, an initial surgery/Injury/Illness on that body part or (2) if that initial surgery/Injury/Illness was for the diagnosis or treatment of an Injury or disease which would have qualified for Covered Services under this Plan had the Member been enrolled at the time of the initial surgery/Injury/Illness.
- Reconstructive surgery for the treatment of a medically diagnosed congenital disease or anomaly which requires Medically Necessary treatment (other than an oral or dental defect).
- Reconstructive surgery for the treatment of a congenital disease or anomaly that does not impose a functional impairment, but results in the absence of a body part is a Covered Service. A functional defect is one that interferes with a Member's ability to perform activities of daily living, as determined by the Plan. Examples Include coverage for cleft lip, nasal deformities, breast reconstruction for Poland's Syndrome (congenital absence of the breast), and microtia repair (congenital absence of the ear).
- Surgical correction of scars causing a functional deformity is covered. Examples Include ectropion, joint contracture, and reconstruction of severe burn scars of the face and hands. Treatment of keloid scars is covered. The Plan does not cover otoplasty (correction for prominent ears), removal of non-malignant birth marks (port wine stains, café-au-lait) or other non-malignant skin lesions (except when on the face, neck, or upper extremities of children), scar revisions, bifid ear lobes from pierced ears, or treatment of acne scarring.
- Breast reconstructive surgery is limited to the following: 1) for Poland's Syndrome (congenital absence of the breast and chest wall muscle), (2) in conjunction with surgical correction of the chest deformity, or (3) in repair of breast asymmetry due to a mastectomy.
- Coverage for reduction mammoplasty surgery (breast reduction) is limited. Breast reduction surgery is not covered to correct macromastia unless both signs and symptoms of macromastia are present. Conditions that may contribute to symptomatic macromastia should be corrected prior to surgery, Including a body mass index in excess of thirty-five (35).

  Additional criteria:

  a. Proposed surgery must remove a minimum of 500 gms of actual breast tissue per breast (does not include tumescent fluid).

  b. Those Members proposed for breast reduction surgery age forty (40) and over must have had a negative mammogram within six (6) months of the surgical procedure
- A Member receiving coverage for a mastectomy who elects breast reconstruction after the mastectomy, will receive coverage for:

  a. Reconstruction of the breast on which the mastectomy has been performed;

  b. Surgery and reconstruction of the other breast to produce a symmetrical appearance;

  c. Breast prostheses; and,

  d. Treatment of physical complications of all stages of the mastectomy, including lymphedemas.

  Coverage will be provided in consultation with the attending Physician and the Member, and will be subject to the same Cost-Sharing Amounts requirements that apply for the mastectomy.

- Medical treatment or surgery, for excess weight or obesity that results in the dysfunction of a body organ and causes life threatening health problems as defined below which cannot be treated effectively by another modality.
- An initial consultation to determine a medical care program for weight reduction.
- In order to be considered for weight reduction surgery, a Member must be twenty-one (21) years old, have a Body Mass Index (BMI) of at least thirty-five (35), and have stabilized their weight within ten (10) pounds during the six (6) months prior to the procedure. In addition, the Member must have at least one of the following:

    1. Diabetes mellitus type one or two
    2. Documented uncontrolled hypertension with medication
    3. Documented uncontrolled hyperlipidemia with medication
    4. Steatohepatitis
    5. Documented coronary heart disease
    6. Sleep apnea

    OR

    The Member must be twenty-one (21) years old, have a Body Mass Index (BMI) of at least forty (40), and have stabilized their weight within ten (10) pounds during the twelve (12) months prior to the procedure. In addition, the Member must be at high risk for obesity-associated morbidity and mortality.

- Resection of redundant tissue of skin (abdomen and thighs) following massive weight loss is considered reconstructive when performed to relieve specific clinical signs and symptoms. These services are covered when ALL of the following criteria are met:

    A. Member has a minimum Body Mass Index (BMI) of twenty-seven (27) after massive weight loss (BMI greater than [40]) and has maintained a steady weight for one (1) year, AND

    B. Documentation by the Member's surgeon demonstrating the following signs or symptoms listed for each procedure:

    <u>Abdominal Panniculectomy:</u>

    Severe skin ulcers, stage III -IV
    Symptoms and signs present of a minimum of one year
    Documentation of failure to respond to conservative therapy
    (Belt lipectomy or total body lift is non-covered)

    <u>Mastopexy</u>
    Non-covered (see Section VII)

    <u>Braichioplasty</u>
    Non-covered (see Section VII)

    <u>Medial thigh lift (lateral thigh lift is non-covered)</u>

    Severe skin ulceration, stage III-IV
    Symptoms and signs present for one (1) year
    Documentation of failure to respond to conservative therapy

AND

C. Documentation and photographs must be provided to substantiate the resection of skin and fat redundancy following massive weight loss.

D. Documentation provided by the surgeon from the history or physical exam confirms the probability of significant relief of the clinical signs and symptoms. Photographs to document pre-operative conditions.

- charges for the treatment of autism to the extent required by applicable law within the State of Arizona

Genetic Testing.

The Plan covers genetic testing to establish a molecular diagnosis of an inheritable disease when all of the following are met:

A. The Member displays clinical features, or is at direct risk of inheriting the mutation in question (presymptomatic)*; AND

B. The result of the test will directly impact the treatment being delivered to the Member; AND

C. After history, physical examination, pedigree analysis, genetic counseling, and completion of conventional diagnostic studies, a definitive diagnosis remains uncertain, and one of the following diagnoses is suspected (this list is not all-inclusive):*

Fragile X Syndrome, Huntington's Disease, Cystic Fibrosis, Friedreich's ataxia, Familial Adenomatous Polyposis Coli, Spinal Muscular Atrophy, Duchenne Muscular Dystrophy, Myotonic Dystrophy, Prader-Willi Syndrome, Angelman Syndrome, Neurofibromatosis Type 1, Canavan disease, Hemochromatosis, Hemoglobin S and/or C **, Kennedy disease (SBMA), Charcot-Marie-Tooth, Medullary Thyroid Carcinoma, Classical Lissencephaly, Dentatorubral-pallidoluysian atrophy, Gaucher Disease, Neimann-Pick disease, Tay-Sachs, Von Hippel-Lindau syndrome, Retinoblastoma, Hemoglobin E thalassemia, Beta thalassemia**, Alpha thalassemia,** Albinism, Factor V Leiden mutation, Prothrombin 20210A mutation, Hereditary Neuropathy with Liability to Pressure Palsies (HNPP)

*When genetic tests are used to screen patients without signs or symptoms of disease, genetic tests are considered high-risk screening tests and are covered only for Members with preventive services benefits. By contrast, when genetic tests are used to diagnose patients displaying signs or symptoms of disease, they are considered diagnostic tests and are covered.

** Electrophoresis is the appropriate initial laboratory test for individuals judged to be at-risk for a hemoglobin disorder.

In the absence of specific information regarding advances in the knowledge of mutation characteristics for a particular disorder, the current literature indicates that genetic tests for inherited disease need only be conducted once per lifetime of the Member.

Note: Genetic testing Members is excluded from coverage if the testing performed is primarily for the medical management of other family members who are not covered under the Plan. In these circumstances, the insurance carrier for the family members who are not covered under this Plan should be contacted regarding coverage of genetic testing. Occasionally, genetic testing of tissue samples from other family members who are not covered may be required to provide the medical information necessary for the proper medical care of a Plan Member. The Plan covers genetic testing for heritable disorders in non-Members when ALL of the following conditions are met:

D. The information is needed to adequately assess risk in the Member; and

E. The information will be used in the immediate care plan of the Member; and

F. The non-Member's benefit plan, if any, will not cover the test (a copy of the denial letter* from the non-Member's benefit plan must be provided). *The Plan may also request a copy of the certificate of coverage from the non-Member's health insurance plan if:

(i) the denial letter from the non-Member's insurance carrier fails to specify the basis for noncoverage or

(ii) the denial is based on a specific plan exclusion; or

(iii) the genetic test is denied by the non-Member's insurance carrier as not Medically Necessary and the medical information provided to the Plan does not make clear why testing would not be of significant medical benefit to the non-Member.

Cancer Clinical Trials

The "patient costs" directly associated with a Cancer Clinical Trial that is offered within the State of Arizona and in which the Member voluntarily participates are Covered Services under the Plan, whether performed in or out of the hospital. Benefits will be provided only at the same level as would have paid if the Covered Services received during the Cancer Clinical Trial were provided by an In-Network Healthcare Provider. Covered Services include only "patient costs" that are otherwise considered Covered Services and shall not include any portion of the Cancer Clinical Trial, the cost of which is customarily paid for by government, biotechnical, pharmaceutical or medical device industry sources. "Patient cost" means any fee or expense that is a Covered Service and that is for a service or treatment that would be required if the Member were receiving usual and customary care.

"Patient cost" does not include:

- the cost of any drug or device provided in a phase I Cancer Clinical Trial;
- the cost of any Investigative drug or device;
- the cost of non-health related services that might be required for a person to receive treatment or intervention;
- the cost of managing the research of the clinical trial;
- the cost of services or supplies that are not Covered Services; and
- the cost of treatment or services provided outside the State of Arizona.

Botulinum Toxin

Botulinum toxin type A (Botox®) is covered and Prior Authorization is not required for treatment of Members with any of the following conditions:

a. Strabismus, Including neuromyelitis optic and Schilder's disease. Strabismus repair is not covered in adult patients with uncorrected congenital strabismus and no binocular fusion, as this is considered cosmetic.
b. Blepharoplasty and brow lift surgery
c. Hemifacial spasm/post-facial nerve palsy synkinesis
d. Laryngeal spasm
e. Focal dystonias, Including cervical dystonia (spasmodic torticollis), lingual dystonia, laryngeal dystonia, jaw-closing oromandibular dystonia, hand dystonia (organic writers cramp), symptomatic torsion dystonia
f. Limb spasticity, Including spastic paraplegia, limb spasticity due to multiple sclerosis, spastic hemiplegia, and infantile cerebral palsy
g. Esophageal achalasia, for patients who have at least one of the following:
   - Have failed conventional therapy;

- Are at high risk of complications of pneumatic dilation or surgical myotomy;
- Have failed a prior myotomy or dilatation;
- Have had a previous dilation-inducted perforation; OR
- Have a epiphrenic diverticulum or hiatal hernia, both of which increase the risk of dilation-inducted perforation.

h. Chronic anal fissure unresponsive to conservative therapeutic measures

i. Focal hyperhydrosis, when all of the following criteria are met:
   - Topical aluminum chloride or other extra-strength antiperspirants are ineffective or result in a severe rash; AND
   - Member is unresponsive or unable to tolerate pharmacotherapy prescribed for excessive sweating; AND
   - Significant disruption of professional and/or social life has occurred because of excessive sweating.

j. Ptyalism (excessive secretion of saliva) that is refractory to pharmacotherapy

k. Facial myokymia and trismus associated with postradiation myokymia

l. Non-relaxing pubococygeal syndrome (inability to defecate) unresponsive to biofeedback

Botulinum toxin type B (Myobloc®) is covered and Prior Authorization is not required for symptomatic treatment of Members with cervical dystonia (spasmodic torticollis).

Prior Authorization is required for coverage of botulinum toxin (type A or B) for any condition not listed above.

Limitations:

- Treatment for reconstructive or cosmetic surgery to restore bodily function or correct deformity resulting from Illness or Injury must be performed within a reasonable period of time, but no later than three (3) years after the Injury or Illness or within three (3) years of becoming covered under the Plan, whichever is later, unless there is a medical reason for delay of repair.

(j) MATERNITY

Service	In-Network cost to Member
Prenatal Care Services	$0 Copayment (Except for initial office visit when pregnancy is determined – then $20 Copayment)
Maternity	$300 Copayment per admission (inpatient hospitalization)

Maternity Covered Services under the Plan Include:

- routine prenatal and postnatal visits
- inpatient maternity services Including delivery
- services provided in connection with the birth of a child who is legally adopted by a Member if all of the following are true:
  - the Dependent was adopted within one year of his/her birth
  - the Member is legally obligated to pay the costs of the adopted Dependent's birth
  - the Member has notified the Employer of the Member's acceptability to adopt children under Arizona law within sixty (60) days of the later of: (i) receipt of approval from the State, or (ii) becoming covered under the Plan

See the *Coordination of Benefits* section for additional information regarding the coordination of coverage of services provided in connection with the birth of a child who is legally adopted by a Member.

Federal law requires the following notice be included in the SBD, verbatim:

> Under federal law, group health plans and health insurance issuers offering group health insurance generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, the plan or issuer may pay for a shorter stay if the attending physician (e.g., your physician, nurse, or midwife, or a physician assistant), after consultation with the mother, discharges the mother or newborn earlier.
>
> Also, under federal law, plans and issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay.
>
> In addition, a plan or issuer may not, under federal law, require that a physician or other health care provider obtain authorization for prescribing a length of stay of up 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification. For information on pre-certification, contact your Employer.

Notification for inpatient Hospital maternity services that exceed the minimum coverage stated above is required within 48 hours. The responsibility for notification belongs to the Healthcare Provider when care is received In-Network. Except in the case of an Emergency, inpatient maternity services are only covered if provided in an In-Network Hospital and authorized or arranged by the Member's Primary Care Physician or Plan obstetrician before or during Confinement. When care is received Out-of-Network, notification is the responsibility of the Member and is accomplished by contacting the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section .

(k) MENTAL HEALTH AND CHEMICAL DEPENDENCY SERVICES

Service	In-Network cost to Member
Mental Health – Outpatient	$20 Copayment
Mental Health – Inpatient	$300 Copayment
Chemical Dependency – Outpatient	$20 Copayment
Chemical Dependency - Inpatient	$300 Copayment

Prior Authorization is required for coverage of certain Covered Services under the Plan. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Covered Services under the Plan Include:

- Outpatient Treatment Coverage: individual or group visits to a mental health or chemical dependency Healthcare Provider's office.
- Non-residential Structured Treatment Coverage: day or evening treatment programs that provide a planned therapeutic program for Members who do not require hospitalization, but who need broader programs that are not possible from single outpatient visits.
- Residential Structured Treatment Coverage: a licensed sub-acute program in a facility or distinct part of a facility for children and adult psychiatric and chemical dependency care that provides a total 24-hour therapeutically planned and professionally staffed group living and learning environment.
- Inpatient Treatment Coverage: Acute inpatient treatment services for mental health and chemical dependency provide psychiatric diagnosis and treatment of mental illness requiring medical management and Skilled Care.
- All services and treatment for attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD), Including the initial evaluation, must be done by the Member's Primary Care Physician or mental health provider.

Inpatient services covered under this Section include semi-private care in an In-Network Institutional Healthcare Provider. Any cost difference between a semi-private and a private room is covered by the Plan only if a private room is Medically Necessary.

The following are <u>not</u> Covered Services under the Plan:

- anonymous support groups.
- developmental and neuroeducational testing or treatment
- halfway houses
- wilderness programs
- group homes
- summer camps
- mental health and chemical dependency Educational programs and social skills training
- therapy for learning disability, communication delay, perceptual disorders or sensory deficit
- biofeedback
- family counseling, unless Medically Necessary or the family counseling is part of Medically Necessary treatment for a minor child Member that has been recommended by a Healthcare Provider treating the minor child

- Certain Mental Health Services and Supplies. Mental health services, supplies, and Prescription Drugs are not covered for a mental illness not listed in the Diagnostic and Statistical Manual IV of the American Psychiatric Association.

(l) OUTPATIENT DIAGNOSTIC TESTS

Service	In-Network cost to Member
MRI, CT & PET Scans	$100 Copayment
Other Diagnostic X-ray	$0 Copayment

Prior Authorization is required for coverage of certain Covered Services under the Plan. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Covered Services under the Plan Include the following tests provided, requested, or directed by Physicians or other Healthcare Providers in their offices, clinics, mobile units, at Urgent Care facilities or Hospital outpatient settings (Including an emergency room):

- diagnostic lab services
- diagnostic imaging (MRIs, CT & PET scans, and x-rays)

Outpatient diagnostic tests performed in conjunction with a routine periodic preventive exam, an office visit, Emergency room visit or Urgent Care visit are covered in the other subsections of this *Schedule of Benefits* section.

The following are not Covered Services under the Plan:

- admissions for the purpose of performing diagnostic tests that can be performed on an outpatient basis
- dental x-rays

(m) OUTPATIENT PRESCRIPTION DRUGS

Service	In-Network cost to Member
Prescription Drugs, insulin and diabetic supplies*	
Retail pharmacy (up to 34 day supply)**	
Generic Drugs	$10 Copayment per prescription or refill
Brand Name Drugs (no generic equivalent)	$~~25~~ 30 Copayment per prescription or refill
Non-Formulary Prescription Drugs	$~~50~~ 60 Copayment per prescription or refill
Prescription Drugs, insulin and diabetic supplies*	
Mayo Mail Pharmacy (up to 102 day supply)	
Generic Drugs	$20 Copayment
Brand Name Drugs (no generic equivalent)	$~~50~~ 60 Copayment
Non-Formulary Prescription Drugs	$~~150~~ 180 Copayment

*If diabetic supplies are filled on the same day as an insulin prescription, there is no Copayment for the diabetic supplies. With no insulin fill, the applicable Copayment is charged.
**Up to a 34-day supply for one Copayment; up to a 68-day supply for two Copayments; up to a 102-day supply for three Copayments.

The Membership Card also functions as a Prescription Drug card. The Membership Card and associated benefits will only be recognized at In-Network pharmacies.

When a Member has a prescription from a Healthcare Provider for a Prescription Drug, the Member should take the prescription to an In-Network pharmacy and present the prescription and his/her Membership Card to the pharmacy. Generally, the In-Network pharmacy will fill the prescription and collect a Cost Sharing Amount from the Claimant. Prescription Drugs dispensed by Out-of-Network pharmacies are not covered, except in an Emergency. In-Network benefits will apply in an Emergency situation. If a Claimant needs a Prescription Drug in an Emergency and an In-Network pharmacy is not available, the Claimant should take the prescription to an Out-of-Network pharmacy and pay the amount requested by the Out-of-Network pharmacy. In addition to Cost Sharing Amounts, the Member will also be responsible for any charges above the In-Network rate when receiving Prescription Drugs Out-of-Network in an Emergency. *This is not considered a claim for benefits under the* Plan. See the *Claim and Appeal Procedures* section for information regarding how to file a Prescription Drug claim under the Plan.

The *Coordination of Benefits* section does not apply to Prescription Drugs.

Prescription Drugs are covered according to Formulary. Prescription Drugs listed in the Formulary will be covered at a higher level of benefits as shown above. A Member may obtain a covered non-Formulary Prescription Drug and pay a higher cost sharing amount. A Member may call the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section with questions regarding a particular Prescription Drug, or may request a Prescription Drugs Formulary which is available at no charge. Formulary Generic Drugs, when available, will be dispensed in place of the more costly Formulary Brand Name Drug by an In-Network pharmacy. *If a Brand Name Drug is dispensed when a Generic Drug is available, the Member pays the Generic Drug Copayment plus the difference in price between the Generic Drug and Brand Name Drug.*

Prescription Drugs covered by the Plan Include:

- FDA approved contraceptive drugs and devices, Including oral, and injectable contraceptive drugs, and prescription barrier methods
- a Prescription Drug prescribed for the treatment of cancer that has not been approved by the FDA for the treatment of the specific type of cancer for which the Prescription Drug has been prescribed, provided: (1) the Prescription Drug has been recognized as safe and effective for treatment of that specific type of cancer in one or more of the Standard Medical Reference Compendia, (2) the United States Food and Drug Administration has not determined that the Prescription Drug is contraindicated for that type of cancer, , and (3) if the Prescription Drug has been recognized as safe and effective in a Standard Medical Reference Compendia other than one of the specifically named publications listed in *Definitions* section, at least two articles from major peer reviewed professional medical journals have recognized, based on scientific or medical criteria, the Prescription Drug's safety and effectiveness for treatment of the indication for which the Prescription Drug has been prescribed; and (ii) no article from a major peer reviewed professional medical journal has concluded, based on scientific or medical criteria, that the Prescription Drug is unsafe or ineffective or that the Prescription Drug's safety and effectiveness cannot be determined for the treatment of the indication for which the Prescription Drug has been prescribed
- prescribed oral agents for controlling blood sugar that are included in the Formulary to the extent coverage is required under Medicare
- any other diabetes medication for which coverage is required under Medicare (Coverage for such medications shall be effective six months after the coverage is required under Medicare)
- human growth hormone may be approved only for the treatment of short stature in growth hormone deficient children. The Member must to obtain Prior Authorization through the Plan non-Formulary exception process

Prior Authorization under the Plan is required for the following Prescription Drugs:
- acne medications for Members over age twenty-five (25)
- biological anti-rheumatic medications (e.g., Cimzia®, Enbrel®, Humira®, Kineret®)
- certain cardiac medications (e.g., Adcirca®, Crestor®)
- COX-2 inhibitors (e.g., Celebrex®)
- erectile dysfunction medications prescribed for Pulmonary Artery Hypertension or post-surgical rehabilitation
- growth hormones (e.g., Genotropin®, Humatrope®)
- linezolid (Zyvox®)
- memantine (Namenda®)
- omalizumab (Xolair®)

At any time, the Plan may implement electronic approval criteria or Prior Authorization on additional Prescription Drugs. A Member may call the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section with questions regarding whether a particular Prescription Drug requires Prior Authorization, or may request a listing of the Prescription Drugs that require Prior Authorization which is available at no charge.

The Plan may impose dispensing limitations on the quantity covered per Copayment for specific drug products because of the manufacturer's packaging systems or as dictated by medically appropriate clinical use.

See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

The following are <u>not</u> Covered Services under the Plan:
- anabolic steroids
- anti-obesity medications

- appetite suppressants
- cosmetic medications, Including the following
  - anti-wrinkle agents (e.g., Renova®)
  - minoxidil (e.g., Rogaine®) for alopecia
  - tretinoin (e.g., Retin-A®) for Members over age 25 for cosmetic purposes
  - hair removal products (e.g., Vaniqa®)
- drug efficacy study indicator (DESI) drugs (Prescription Drugs determined by the FDA as lacking substantial evidence of effectiveness)
- duplicate, lost, stolen, or damaged Prescription Drugs
- infertility medications
- mineral and nutrient supplements
- needles and syringes (except as diabetic supplies)
- nutritional supplements
- outpatient non-legend (over-the-counter) drugs or any Prescription Drug with an over-the-counter equivalent -- regardless of whether there is a prescription, except insulin and non-sedating antihistamines
- over-the-counter vitamins
- pigmenting/depigmenting agents (e.g., Solaquin Forte®, Hydroquinone®)
- Prescription Drugs dispensed by a Healthcare Provider at his/her office or clinic facility for use outside the office or clinic facility unless the Healthcare Provider is part of the pharmacy network
- Prescription Drugs labeled “investigational” or “experimental”
- vitamins singly or in combination except prescription vitamins including pediatric and prenatal vitamins

(n) PREVENTIVE AND ROUTINE CARE

Service	In-Network cost to Member
Adult "Well-Person" Exam by Primary Care Physician & General Physician Office Visit	$20 Copayment per visit
Gynecological Screening Exam & General Gynecological Services	$20 Copayment per visit
Mammography Screening Exam	No Copayment for Mammogram Screening Exam procedure
Vision Screening (annual eye exam, refraction, contact lens fitting)	$10 Copayment per visit. Member must seek treatment In-Network.
Children from Birth to Age 14 Primary Care Physician Visit	$10 Copayment per visit
Specialist Visit (other than Vision Screening or OB/GYN)	$35 Copayment
Immunizations and vaccinations (Including influenza vaccine) with no associated office visit	$0 Copayment

Preventive Care and Routine Services are Covered Services under the Plan and Include:

- well-baby/child exams and routine periodic physical exams on at least the following frequency schedule, or as determined to be medically appropriate by the member's Primary Care Provider based on relevant factors such as sex, health status, and risk factors: within 12 months of enrollment, a medical history and health examination
    - age 0 - 1: One exam every four months
    - age 2 - 5: One exam per Member per Coverage Year
    - age 6 - 40: One exam per Member per five consecutive Coverage Year periods
    - age 41 - 50: One exam per Member per three consecutive Coverage Year periods
    - age 51 - 60: One exam per Member per two consecutive Coverage Year periods
    - age 61 and over: One exam per Member per Coverage Year

- routine diagnostic tests performed in conjunction with a routine periodic preventive exam
- one annual routine gynecological examination
- mammogram screenings on at least the following frequency schedule, or as determined to be medically appropriate by the member's Primary Care Provider based on relevant factors such as health status and risk factors:
    - under age 35 upon the clinical discretion of the Member's Physician
    - age 35 through age 39, one baseline mammogram upon self-referral to an In-Network Healthcare Provider
    - from age 40 and over, one mammogram per Coverage Year
- routine immunizations (Including immunizations for foreign travel)

- routine hearing exams on at least the following frequency schedule, or as determined to be medically appropriate by the member's Primary Care Provider based on relevant factors such as health status and risk factors:

- 0-1 year	1 exam every 4 months
- 2-5 years	1 exam every Coverage Year
- 6-40 years	1 exam every 5 Coverage Years
- 41-50 years	1 exam every 3 Coverage Years
- 51-60 years	1 exam every 2 Coverage Years
- 61 years and over	1 exam every Coverage Year

- routine vision exams, including contact lens fitting, according to the following schedule:

- 0-2 years	1 exam every 4 months
- 2 years and older	1 exam per Coverage Year*

  * The Plan covers one (1) routine vision screening exam to find the refractive error of the eye
- health education directly related to the Member's medical condition as prescribed by the Member's Physician, Including courses offered by the Plan and its personnel

If a diagnosis is indicated after a routine Preventive Care exam, the exam will be payable under the routine Preventive Care benefit; however, all Healthcare Services related to the diagnosis will be payable as any other Illness. Coverage for Members exhibiting an Illness or symptoms is included in the *Inpatient and Outpatient Hospital and Physician Services* subsection of this *Schedule of Benefits* section.

The following are not Covered Services under the Plan:

- Physicals for purposes of research, licensure, employment, or insurance
- The fitting, purchase, adjustment or repair of hearing aids
- Certain allergy testing: skin titration (Rinkle method), Cytotoxity testing (Bryan's test), RAST testing, urine auto-injections, Provocative and Neutralization testing.
- Purchase or fitting of eyeglasses or other fabricated optical devices and purchase of contact lenses are not covered, except as specified in this section
- Radial keratotomy (RK)
- LASIK
- Photo refractive keratotomy (PRK)
- Other vision correction surgical procedures
- Orthoptics
- Orthoptic training
- Eye exercises, eye training and vision training
- Preventive Care services provided Out-of-Network
- Required school, athletic, and camp physicals
- Preventive Care services provided Out-of-Network, except well-baby/child exams as listed above

(o) THERAPY SERVICES

Service	In-Network cost to Member
Therapy Services	$10 Copayment

Prior Authorization is required for coverage of certain Covered Services under the Plan. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Covered Services under the Plan Include physical, occupational, speech, respiratory therapy provided the services can be expected to bring significant improvement in the Member's condition within a reasonable period of time. Physical and occupational therapy on an inpatient basis is covered. Outpatient coverage for physical, occupational, speech and respiratory therapy services is limited to 30 combined visits per Member per Coverage Year. Services which exceed the 30 combined visit limit may be covered if Prior Authorization requirements are met to determine Medical Necessity. See the *Utilization Management* section of this document.

The following limitations will apply:

- There is no coverage for Physical therapy once a maintenance level is achieved or for therapy that is primarily Educational in nature.
- Cardiac rehabilitation is limited to Phase I and Phase II. Phase I cardiac rehabilitation is a medically supervised multidisciplinary program covered under the inpatient Hospital benefit. Phase II cardiac rehabilitation usually begins upon dismissal from the Hospital. It is Physician directed and closely supervised by paramedical personnel. The program components include carefully prescribed exercise, education, counseling and risk-factor modification. Phase II cardiac rehabilitation is covered only for those Members who have the following conditions:

  a. A documented arrhythmia of clinical significance during Phase I cardiac rehabilitation or during an exercise treadmill after Phase I cardiac rehabilitation; or

  b. Evidence of ongoing significant ischemia as documented during Phase I cardiac rehabilitation or during an exercise treadmill after Phase I cardiac rehabilitation.

  Those Members ineligible for Phase II cardiac rehabilitation are covered for up to five (5) rehabilitation visits per Member by referral for the development of a home exercise program and follow-up.

The following are <u>not</u> Covered Services under the Plan:

- treatment for tongue thrust
- vocational rehabilitation, testing or training (Including work hardening)
- recreational therapy

(p) SKILLED NURSING FACILITY AND REHABILITATION FACILITY

Service	In-Network cost to Member
Rehabilitation Facility	$0 Copayment
Skilled Nursing Facility	$0 Copayment

Prior Authorization is required for coverage of skilled nursing facility and rehabilitation facility services. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

There is a 60 day maximum per Member per Coverage Year for Skilled Nursing Facility.

There is a 60 day maximum per Member per Coverage Year for Rehabilitation Facility.

Confinement in a Skilled Nursing Facility in semi-private accommodations is a Covered Service. Coverage Includes skilled nursing and therapeutic services, but only as Medically Necessary for short-term convalescence. Physical, occupational, and speech therapy are covered subject to the limits for Rehabilitation Services in the *Schedule of Benefits* section. Any difference between semi-private and private room costs will not be covered unless a private room is Medically Necessary.

Rehabilitation Facility coverage Includes rehabilitation, Skilled Care and therapeutic services; but only for Short-Term convalescence. Physical, occupational, respiratory and speech therapy are covered subject to certain limitations, see the *Rehabilitation Services* subsection of this *Schedule of Benefits* section.

(q) TRANSPLANTS

Service	In-Network cost to Member
Transplants - hospitalization	$300 Copayment
Transplants – associated office visits	$0 Copayment

Prior Authorization is required for coverage of transplants under the Plan. See the *Utilization Management* section for a list of these services. See the *Pre-Service Claims* subsection of the *Claim and Appeal Procedures* section for details on how to obtain Prior Authorization.

Definitions

- **Autologous**. When the source of cells is from an individual's own marrow or stem cells.
- **Allogeneic**. When the source of cells is from a related or unrelated donor's marrow or stem cells.
- **Autologous Bone Marrow Transplant**. When bone marrow is harvested from the individual and stored. The patient undergoes treatment which includes tumor ablation with high-dose chemotherapy and/or radiation. The bone marrow is then re-infused (transplanted).
- **Allogeneic Bone Marrow Transplant**. When bone marrow is harvested from a donor and stored. The patient undergoes treatment which includes tumor ablation with high-dose chemotherapy and/or radiation. The bone marrow is re-infused (transplanted).
- **Autologous/Allogeneic Stem Cell Support**. A treatment process that includes stem cell harvest from either bone marrow or peripheral blood, tumor ablation with high-dose chemotherapy and/or radiation, stem cell re-infusion, and related care. Autologous/allogeneic bone marrow transplantation and high dose chemotherapy with peripheral stem cell rescue/support are considered to be autologous/allogeneic stem cell support.
- **Transplant Services**. This is transplantation including re-transplants of the human organs or tissue listed below including all related post-surgical treatment and drugs and multiple transplants for a related cause. Transplant services do not include other organ or tissue transplants or surgical implantation of mechanical devices that function as a human organ, except surgical implantation of FDA approved Ventricular Assist Devices (VAD), functioning as a temporary bridge to heart transplantation.

Covered Services include services, supplies, inpatient medications, and related aftercare (Including procedures to determine rejection or success of transplant) for only the following human organ and bone marrow transplants and stem cell support procedures expressly listed below:

- Autologous Bone Marrow Transplant.
- Allogeneic Bone Marrow Transplant.
- Autologous/Allogeneic Stem Cell Support.
- heart, heart-lung, liver, lung (single or double), for end-stage kidney disease, and cornea transplants for end stage disease;
- partial organ transplants, including partial liver or partial pancreas;
- pancreas transplant for a diabetic with end-stage renal disease who has received a kidney transplant or will receive a kidney transplant during the same operative sessions or a medically uncontrollable, labile diabetic with one or more secondary complications, but whose kidneys are not seriously impaired.

When the donor is a Member, eligible medical charges incurred by the donor will be considered Covered Services under the Plan.

When the recipient is a Member, eligible medical charges incurred by the recipient will be considered Covered Services under the Plan.

If both the donor and the recipient are Members, eligible medical charges incurred by each person will be treated separately for each person.

- the Usual and Customary Rate of securing an organ from a cadaver or tissue bank, Including the surgeon's fee for removal of the organ and the Hospital's fee for the storage and transportation of the organ
- organ or tissue procurement and acquisition fees, Including surgery, storage, and organ or tissue transport costs directly related to a living or non-living donor
- testing to determine transplant feasibility and donor compatibility
- anti-rejection drugs
- FDA approved drugs
- medically necessary equipment and supplies
- two round trip "coach" air transportation charges for the Member and one (1) family member or companion, to and from the approved transplant facility for each required visit approved by the Plan. The Plan benefit payable for air transportation, lodging and meals combined is $10,000 per transplant;
- lodging and meals, outside the Service Area, for two (2) people as Prior Authorized by the Plan. Maximum reimbursement for lodging is $150 per day for one (1) room. Maximum reimbursement for meals is $25 per person per day for up to two (2) people. Receipts are required when submitting meals, lodging and transportation expenses for payment consideration. The Plan benefit payable for air transportation, lodging and meals combined is $10,000 per transplant;
- reasonable and necessary healthcare expenses incurred by a donor who is covered by the Plan, without any Copayments applicable to those expenses; or
- reasonable and necessary healthcare expenses incurred by a donor who is not covered by the Plan, without any Copayments applicable to those expenses, but only to the extent the expenses of the donor are not covered by the donor's own insurance or healthcare plan.

The following are <u>not</u> Covered Services under the Plan:

- services, supplies, drugs and aftercare for or related to organ and bone marrow transplant and stem cell support procedures not specifically listed above as Covered Services
- charges associated with the purchase of any organ
- artificial organs, devices, or systems, whose purpose is to assist or replace a natural body organ, and any charges for the implantation, attachment or use of such organ, device or system, including follow-up care. This exclusion does not apply to kidney dialysis or pacemakers or cochlear implants. This exclusion does not apply to Healthcare Services or surgery for immediate life-threatening health problems as determined by the Plan or to charges in relation to artificial organs that may be necessary on a temporary short-term basis until a suitable donor organ is available.
- high dose chemotherapy with Autologous bone marrow transplantation to treat breast cancer

- charges in connection with non-human organ or tissue transplants
- services or supplies furnished in connection with the transportation of a living donor

SECTION VII
EXCLUSIONS

7.1 **Exclusions**. Notwithstanding any provision in the Plan to the contrary, the Plan will not provide benefits for the following services, medical procedures or supplies, regardless of Medical Necessity or recommendation by a Healthcare Provider. The Member is responsible for 100% of the charges associated with the listed exclusions. These charges are not Covered Services under the Plan and, therefore, will not count toward the Annual Out-of-Pocket Maximum. In addition to those exclusions listed below, the *Schedule of Benefits* section contains additional exclusions.

The Plan will not provide benefits for the following services or expenses:

(1) Services or supplies provided before the Member's coverage is effective, or services or supplies provided after the Member's coverage terminates, even though the Member's Illness or Injury started while coverage was in force.

(2) Charges in excess of the Maximum Annual Benefit, Maximum Lifetime Benefit and maximum allowances as detailed in the *Schedule of Benefits* section.

(3) Out-of-Network services, unless due to an Emergency or Urgent Care or non-Emergency Medically Necessary services when certain conditions are met. See the *Utilization Management* section for details.

(4) Services or supplies that are not Medically Necessary, except if specifically listed in the *Schedule of Benefits* section as Covered Services.

(5) Experimental or Investigative Healthcare Services, procedures, drugs, devices, services or supplies.

(6) Services or supplies that do not meet generally accepted standards of practice in the medical community.

(7) Services that are prohibited by law or regulation.

(8) Services provided by non-licensed, non-registered, or non-certified providers.

(9) Services performed for a Member by the Member or by a person who ordinarily resides in the Member's household or is related (by blood or law) to the Member.

(10) Services or supplies for which the Member has no legal obligation to pay, which are free or which would not be provided except for the availability of benefits under the Plan, unless payment is required by applicable law.

(11) Services of the clergy.

(12) Services or supplies that are paid or payable under workers' compensation, occupational disease law or similar law.

(13) Services or supplies furnished by any level of government, unless payment is required by applicable law.

(14) Services or supplies (Including hospitalization) ordered by a court or other third party, unless otherwise covered under the Plan.

(15) Charges actually incurred by other persons.

(16) Charges for preparing medical reports, bills or claim forms, mailing/shipping/handling charges, broken appointments, telephone calls (including treatment or consultations provided via telephone), late fees, credit card interest, or photocopying fees.

(17) Illness, Injury or charges due to declared or undeclared war (including resistance to armed aggression), riot, insurrection, rebellion, invasion or military aggression or caused during service in the armed forces of any country, if benefits are available for such Illness, Injury or charges under the laws of the United States or any political subdivision thereof, unless payment is required by applicable law.

(18) Charges incurred due to an Illness or Injury resulting from the Member's voluntary participation in a criminal act (Including burglary, robbery, assault, criminal trespass, participation in a riot or civil disturbance), or while the Member is engaged in an illegal occupation, unless it results from an act of domestic violence or a medical condition (including both physical and mental health conditions).

(19) Any services needed from intentionally self-inflicted injuries or self-induced illnesses unless they result from an act of domestic violence or a medical condition (including both physical and mental health conditions).

(20) Charges for a private room, unless Medically Necessary.

(21) Extended Hospital stays for reasons other than Medical Necessity.

(22) A continued Hospital stay if, as determined by the Plan, care could be provided in a less acute care setting.

(23) Any admission for the purpose of performing diagnostic tests that can be performed on an outpatient basis.

(24) Hospitalization when such Confinement occurs primarily for physiotherapy, hydrotherapy, convalescent or rest care or any routine physical examinations or tests not connected with an actual Illness or Injury.

(25) Educational materials and supplies.

(26) Physical examinations for research or obtaining licensure, employment or insurance.

(27) Charges for professional certification, licensure or the like.

(28) Religious counseling or training services.

(29) Halfway houses, wilderness programs, group homes, summer camps.

(30) Mental health and chemical dependency educational programs and social skills training, except to the extent such programs and training are a Covered Service under the *Preventive* subsection of the *Schedule of Benefits* section.

(31) Biofeedback, unless it is the standard of care for treatment of an Illness or Injury and is provided by a qualified Healthcare Provider.

(32) Family counseling, unless Medically Necessary or the family counseling is part of Medically Necessary treatment for a minor child Member that has been recommended by a Healthcare Provider treating the minor child.

(33) Developmental and neuroeducational testing or treatment.

(34) Services, treatment, or supplies associated with smoking cessation, except Prescription Drugs for smoking cessation.

(35) Treatment of compulsive gambling.

(36) Anonymous support groups.

(37) Infirmary and other healthcare charges from a school or other educational facility.

(38) Personal comfort and convenience items for the Member or the Member's caregiver.

(39) Health club memberships and all services provided by a health club facility, air conditioners, room humidifiers, room dehumidifiers, air purifiers, food blenders, exercise equipment, orthopedic or therapeutic mattresses, home or automobile modification, environmental change, pools, whirlpools, and similar items, even if recommended, ordered or prescribed by a Healthcare Provider.

(40) Charges for personal growth/development, holistic medicine or other programs with an objective to provide complete personal fulfillment.

(41) Vocational rehabilitation, testing or training (Including work hardening).

(42) Self-care and self-help training (non-medical).

(43) Services or supplies related to academic or vocational education, Including computers and computer software programs.

(44) Recreational therapy.

(45) Chelation therapy, except in the treatment of heavy metal poisoning.

(46) Homeopathy or herbal therapy.

(47) Massage therapy, rolfing and related services, except as allowable under the chiropractic care benefit.

(48) Physical/occupational/speech therapy when it cannot reasonably be expected to significantly improve functionality, or after maintenance level is achieved.

(49) Phase III and Phase IV outpatient cardiac rehabilitation programs. Phase III cardiac rehabilitation begins at the completion of Phase II and may continue for six months or more. The program consists of group education at a community exercise facility, Hospital or clinic, or may be a home exercise program. Phase IV cardiac rehabilitation is a non-medically supervised maintenance program.

(50) Coma stimulation programs.

(51) Penile prosthesis/implants except as specifically listed in the Schedule of Benefits section.

(52) Genetic testing/procedures or genetic counseling except as specifically listed in the Schedule of Benefits section.

(53) Acquisition or storage of cord blood for stem cell or other uses.

(54) Reversal of a sterilization procedure.

(55) Abortion, unless an abortion is necessary to either save the life of the woman having the abortion or to avert substantial and irreversible impairment of a major bodily function of the woman having the abortion. If complications arise after the performance of any abortion, charges incurred to treat those complications will be eligible, whether the abortion was eligible or not.

(56) Natural foods that are naturally low in protein and/or galactose.

(57) Spices and flavorings.

(58) Foods and formulas available to any person, even a person with an Inherited Metabolic Disorder as defined in the Outpatient Prescription Drugs subsection in the Schedule of Benefits, that may be purchased without an In-Network Physician prescription/order and/or do not require supervision by an In-Network Physician.

(59) Charges related to correction of gynecomastia (mastectomy or liposuction), either unilateral or bilateral except as specifically listed as Covered Services in the *Schedule of Benefits* section.

(60) Services, drugs, or supplies for the purpose of, or related to, the diagnosis and testing of infertility, Including drugs and procedures for the promotion of conception (e.g., assisted reproductive technology (ART) procedures, sperm banking, artificial insemination, in vitro fertilization (IVGF), gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (AIFT) with or without cryopreservation, frozen embryo transfer, and charges for donor ova or sperm).

(61) Charges related to or in connection with adoption, except to the extent coverage is specifically provided in the *Maternity* subsection in the *Schedule of Benefits* section.

(62) Lamaze or other childbirth classes.

(63) Services of a doula.

(64) Delivery services of a Certified Nurse Midwife when performed at an unlicensed, unaccredited facility.

(65) Charges related to services to change lifestyle or alter sexual characteristics, Including transsexual (sex change) procedures, preparation for such procedures, Including counseling, any related services or complications thereof.

(66) Charges for sex transformation surgery and any related charges.

(67) Routine treatment of obesity, or weight control counseling (including fees, vitamins, nutrients, supplements, or exercise therapy) and any related diagnostic testing unless necessitated as the result of a specifically identifiable condition of disease etiology.

(68) All services and medication for the purpose of weight reduction Including the surgical treatment of obesity (e.g., gastric restrictive, intestinal bypass and repeat and reversal procedures), except as specifically listed in the Schedule of Benefits section.

(69) Reconstructive or cosmetic surgery/services/drugs that restore or improve bodily appearance without affecting body function necessary for life except as specifically listed as Covered Services in the *Schedule of Benefits* section.

(70) Breast reduction, unless Medically Necessary or following a Medically Necessary mastectomy. Reconstruction of the other breast to produce symmetrical appearance will be covered in the case of a unilateral mastectomy.

(71) Breast augmentation, except following a Medically Necessary mastectomy. Reconstruction of the other breast to produce symmetrical appearance will be covered in the case of a unilateral mastectomy.

(72) Charges related to surgical removal or other treatment of axillary fat or axillary fat roll, which is not part of the breast.

(73) Charges related to removal, replacement, revision or treatment of complications of silicone or saline breast implants placed for cosmetic reasons. This Includes treatment of capsule formation, capsulectomy (removal of the firm scar tissue surrounding the breast implant), capsulotomy (incision of firm scar tissue surrounding the breast implant), capulorraphy (correction or improvement of implant position), mastopexy (breast lift), and treatment/removal of ruptured breast implants.

(74) Breast reconstruction to correct breast asymmetry except as specified under the *Inpatient and Outpatient Hospital and Physician Services* subsection of the *Schedule of Benefits* section.

(75) Cosmetic surgeries and associated services or supplies to improve or change appearance except as specifically listed as Covered Services in the Schedule of Benefits section.

(76) Surgical treatment of disfigurement from rosacea (e.g., telangiectasias, rhinophyma, and scarring).

(77) Surgical treatment of disfigurement from HIV and related treatment, Including facial wasting and fat deposits on the back of the neck (cervical hump).

(78) All dental care, except services specifically listed as Covered Services in the *Dental Services* subsection of the *Schedule of Benefits* section.

(79) Routine vision care, except routine vision exams are Covered Services as specified under the *Preventive Care* subsection of the *Schedule of Benefits* section.

(80) Blepharoplasty and other procedures to correct Lid Ptosis except as specifically listed in the Schedule of Benefits.

(81) Vision therapy or eye exercises.

(82) Sunglasses (Including any colored or tinted lenses) or safety glasses.

(83) Repair of lenses or frames.

(84) Drugs or medications of any kind related to routine vision services.

(85) Eyeglasses, lenses or contact lenses, except as specifically listed in the *Schedule of Benefits* section.

(86) Surgical correction of refractive error and refractive keratoplasty Including radial keratotomy (RK), automated lamella keratoplasty (ALK), Lasik surgery or any similar procedure.

(87) Routine hearing care, except routine hearing exams are Covered Services as specified under the *Preventive Care* subsection of the *Schedule of Benefits* section.

(88) The purchase or fitting of external hearing aids. This exclusion does not apply to implantable hearing devices.

(89) Routine foot care for hygienic reasons or for paring/removing corns, calluses, or toenails (except removing nail roots and/or the treatment of metabolic or peripheral vascular disease).

(90) Treatment of weak, strained, flat, unstable or unbalanced feet.

(91) Orthopedic shoes, orthotics, arch supports or any such similar device which is not custom made.

(92) Splints, braces, or mouth guards used for non-medical purposes (i.e., support worn primarily during participation in sports or similar physical activities).

(93) Breast pumps.

~~(94) Catheters.~~

~~(95)~~(94)Adult apnea monitoring devices.

~~(96)~~(95)Charges for laser assisted uvuloplasty (LAUP) and similar procedures for the treatment of snoring and/or sleep apnea.

~~(97)~~(96)Surgical correction of sleep apnea except as specifically listed in the Schedule of Benefits.

~~(98)~~(97)Blood pressure monitoring devices.

~~(99)~~(98) Wigs and artificial hair pieces.

~~(100)~~(99)Replacement or repair of Durable Medical Equipment, Prosthetics or Orthotics which are stolen; lost; or damaged or destroyed by Member misuse, abuse, or carelessness.

~~(101)~~(100)Charges for equipment, models, or devices having features over and above that which best meets the Medical Necessity of the Member.

~~(102)~~(101)Motor vehicles, lifts for wheelchairs, or scooters.

~~(103)~~(102)Batteries.

~~(104)~~(103)Duplicate services or supplies.

~~(105)~~(104)Private duty nursing services, except to the extent coverage is specifically provided in the *Home Health Care* subsection of the *Schedule of Benefits* section.

~~(106)~~(105)Outpatient nutritional supplements Including home meals, food, food supplements, diets, vitamins, minerals, naturopathic or homeopathic services/substances, other nutritional supplies and over the counter electrolyte supplements, except (a) as required for treatment of phenylketonuria (PKU) and enteral and parenteral nutrition, or (b) to the extent coverage for such items is specifically provided in the *Outpatient Prescription Drugs* subsection of the *Schedule of Benefits* section.

~~(107)~~(106)Custodial and domiciliary care. Services which are primarily custodial or domiciliary are not covered. This Includes homemaker, home health aide, routine nursing home services, rest cures, and days in a Skilled Nursing Facility which are not covered under the *Skilled Nursing Facility and Rehabilitation Facility* and *Rehabilitation Services* subsection of the *Schedule of Benefits section*.

~~(108)~~(107)Respite Care, except as specifically listed in the *Hospice Care* subsection of the *Schedule of Benefit* section.

~~(109)~~(108)Nursing services to administer home infusion therapy that the Member or another care giver can be successfully trained to administer; and home infusion services that do not involve direct Member contact, Including delivery charges and record-keeping.

~~(110)~~(109)Financial or legal counseling services.

~~(111)~~(110)Housekeeping or meal services in the Member's home.

~~(112)~~(111)Charges for services, supplies, drugs and aftercare for or related to transplants not specifically listed in the *Transplant* subsection of the *Schedule of Benefits* section.

~~(113)~~(112)Artificial organs, devices, or systems, whose purpose is to assist or replace a natural body organ, and any charges for the implantation, attachment or use of such organ, device or system, including follow-up care. This exclusion does not apply to kidney dialysis, pacemakers or cochlear implants. This exclusion does not apply to Healthcare Services or surgery for immediate life-threatening health problems as determined by the Plan or to charges in relation to artificial organs that may be necessary on a temporary short-term basis until a suitable donor organ is available.

~~(114)~~(113)High dose chemotherapy with autologous bone marrow transplantation to treat breast cancer.

~~(115)~~(114)Charges in connection with non-human organ or tissue transplants.

~~(116)~~(115)Charges associated with the purchase of any organ.

~~(117)~~(116)Services or supplies furnished in connection with the transportation of a living donor.

~~(118)~~(117)Processing, storage and administration charges related to self-donated blood for potential transfusion to the Member unless incurred after the Member is scheduled for surgery.

~~(119)~~(118)Services of a blood donor.

~~(120)~~(119)Those Prescription Drugs and other items specifically excluded in the *Outpatient Prescription Drugs* subsection of the *Schedule of Benefits* section.

~~(121)~~(120)The cost of administering Prescription Drugs that are designed for self-administration.

~~(122)~~(121)Over the counter home testing and monitoring supplies and devices unless used in connection with the treatment of diabetes.

~~(123)~~(122)Charges for or related to travel, except immunizations for foreign travel as specifically listed in the *Schedule of Benefits* section and travel charges related to transplants as specifically listed in the *Schedule of Benefits* section.

~~(124)~~(123)Charges related to transportation to or between healthcare facilities, except as specifically provided under the *Ambulance* subsection of the *Schedule of Benefits* section.

~~(125)~~(124)Non-Emergency Ambulance services.

~~(126)~~(125)If a Member receives Healthcare Services outside of the United States, its territories or Canada, benefits shall be provided for those charges to the extent the services rendered are included as Covered Services in the Plan, and provided the Member did not travel to such a location for the sole purpose of obtaining Healthcare Services.

~~(127)~~(126)Physician fees for any treatment or service which is not rendered by and in the physical presence of a Physician.

~~(128)~~(127)Mayo Clinic Scottsdale Executive Health Exam Services. The Mayo Clinic Scottsdale Executive health exam and all other executive health programs/exams are not covered under the physical exam benefit. Any charges for services related to the Mayo Clinic Scottsdale Executive health exam and all other executive health programs/exams will be the responsibility of the Member.

~~(129)~~(128)Autopsies and related charges.

~~(130)~~(129)Car seats.

~~(131)~~(130)Charges incurred if a Member fails to honor an appointment with a Healthcare Provider.

SECTION VIII

CLAIM AND APPEAL PROCEDURES

8.1 **Introduction**. All claims must be submitted to the Plan and all claims review will comply with the rules and procedures set forth in this *Claim and Appeal Procedures* section.

8.2 **Definitions**. The following definitions shall apply for purposes of this *Claim and Appeal Procedures section* only:

(a) Adverse Benefit Determination - a denial, reduction, or termination of a benefit, or a failure to provide or make payment (in whole or in part) for a benefit.

(b) Authorized Representative - a person designated by a Claimant or the Plan to act on behalf of a Claimant.

(c) Claimant - a person who believes he/she is entitled to benefits under the Plan. In this *Claim and Appeal Procedures* section, the term Claimant shall also include a Claimant's Authorized Representative, if applicable

(d) Concurrent Care Claim - a claim that requires Prior Authorization under the Plan that is reconsidered after a course of treatment has been initially approved. There are two types of Concurrent Care Claim, (1) where a reconsideration by the Plan results in a reduction or termination of coverage for a previously approved benefit, and (2) where an extension is requested by the Claimant for coverage beyond the initially approved benefit.

(e) Post-Service Claim - any claim for a benefit under the Plan that is submitted for payment or reimbursement after the services have been rendered.

(f) Pre-Service Claim - any claim for a benefit under the Plan where receipt of the benefit is specifically conditioned, in whole or in part, on receiving approval in advance of obtaining the medical care. Benefits under the Plan that are Pre-Service Claims (i.e., subject to approval in advance) are listed in the *Utilization Management* section as services that require Prior Authorization.

(g) Urgent Pre-Service Claim - an Urgent Pre-Service Claim is a type of Pre-Service Claim under the Plan. An Urgent Pre-Service Claim is any claim for medical care or treatment with respect to which the application of the timeframes for making non-urgent determinations could seriously jeopardize the life or health of the Claimant or the Claimant's ability to regain maximum function, or – in the opinion of a Physician with knowledge of the Claimant's medical condition – would subject the Claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

If a Physician with knowledge of the Claimant's medical condition determines that a claim is an Urgent Pre-Service Claim, the claim will be treated as an Urgent Pre-Service Claim. A Physician may be required to complete an "Urgent Pre-Service Claim Determination by Physician" form, if requested, in such cases.

8.3 **Types of Claims**.

(a) The Plan has four categories of claims as defined above.

(1) Concurrent Care Claim

(2) Post-Service Claim

(3) Pre-Service Claim

(4) Urgent Pre-Service Claim

(a) Each category of claim has its own set of claim and appeal requirements. The primary difference between the categories of claims is the timeframes within which claims will be determined.

(b) For the purpose of determining which claim and appeal procedures to follow, the claim type is determined initially. However, if the nature of the claim changes as it proceeds through the claim and appeal process, the claim can be re-characterized. For example, a claim may initially be an Urgent Pre-Service Claim. If the urgency subsides, it may be re-characterized as a Pre-Service Claim. Once the services are rendered and submitted to the Plan for payment, it becomes a Post-Service Claim.

8.4 **Authorized Representative**. For the purpose of the claims and appeal procedures, an Authorized Representative may act on a Claimant's behalf with respect to any aspect of a claim or appeal.

For Pre-Service Claims, Urgent Pre-Service Claims, and Concurrent Care Claims, the Plan will recognize a Healthcare Provider with knowledge of the Claimant's medical condition (e.g., the treating Physician) as the Claimant's Authorized Representative for both claims and appeals unless the Claimant provides specific written direction otherwise.

For Post-Service Claims, an "Authorized Representative" form must be received by the Plan in order for a person to be recognized as a Claimant's Authorized Representative for both claims and appeals. Such forms are available by calling or writing the Claims Administrator's customer service department:

Mayo Clinic Health Solutions
PO Box 211698
Eagan, MN 55121
1-866-465-5148
TDD (for hearing impaired) 1-800-407-2442

Once an Authorized Representative is recognized, the Plan will direct all information, notification, etc. regarding the claim to the Authorized Representative, unless the Claimant provides specific written direction otherwise.

8.5 **Information Regarding Prescription Drug Claims**

(a) In-Network Pharmacies. When a Member has a prescription from a Healthcare Provider for a Prescription Drug, the Member should take the prescription to an In-Network pharmacy and present the prescription and his/her Membership Card to the pharmacy. Generally, the In-Network pharmacy will fill the prescription and collect a Cost Sharing Amount from the Member. *This is not considered a claim for benefits under the Plan*.

(1) If the In-Network pharmacy determines the Prescription Drug requested is not a Covered Service under the Plan, or if the Member disputes the Cost Sharing Amount determined by the pharmacy, the Member may do one of the following:

a) Pay the amount determined by the pharmacy and request reimbursement from the Plan or dispute the Cost Sharing Amount by following the procedure described below for filing a Post-Service Claim. The Plan will then determine whether the Prescription Drug is a Covered Service and/or the appropriate Cost Sharing Amount; or

b) Contact the Claims Administrator's Pharmacy Department to request a Pre-Determination. The Plan requires additional information for certain Prescription Drugs to determine whether they are Covered Services under the Plan. The Prescription Drugs that require this additional information are listed in the *Outpatient Prescription Drugs* subsection of the *Schedule of Benefits* section. If a Member would prefer to submit the information before filling the prescription, he/she may do so by having his/her Healthcare Provider contact the Claims Administrator's Pharmacy Department to provide the information requested. The Claims Administrator's Pharmacy Department will notify the Member and the Member's Healthcare Provider in writing whether or not the Prescription Drug requested is a Covered Service. If the Prescription Drug requested is a Covered Service, the Member will pay the appropriate Cost Sharing Amount at the pharmacy when picking up the Prescription Drug.

A Pre-Determination must be in writing and submitted to the Claims Administrator's Pharmacy Department at:

Town of Gilbert Medical Plan

c/o Mayo Clinic Health Solutions
PO Box 211698
Eagan, MN 55121

Attn: Pharmacy Dept.

Fax: 1-800-632-9885

Please note: *A Pre-Determination is not required in order to obtain coverage for any Prescription Drug. The additional information required for certain Prescription Drugs may also be submitted after the prescription is filled by following the procedures described below for filing a Post-Service Claim. The Member will be reimbursed if the Prescription Drug is a Covered Service.*

(b) Out-of-Network Pharmacies. The Plan does not provide coverage for Prescription Drugs obtained at Out-of-Network pharmacies except in the case of an Emergency. To request reimbursement from the Plan, the Claimant must follow the procedure described below for filing a Post-Service Claim.

8.6 How to File a Claim under the Plan.

(a) Post-Service Claims. Healthcare Providers may submit Post-Service Claims under the Plan on a Claimant's behalf. *If a Healthcare Provider submits a Post-Service Claim on a Claimant's behalf, the Healthcare Provider will not be considered an Authorized Representative and will not receive the notification described below in the case of an Adverse Benefit Determination.*

(1) A Post-Service Claim must be submitted electronically or be in writing and submitted to:

Medical Services Claims	Prescription Drug Claims
Mayo Clinic Health Solutions PO Box 211698 Eagan, MN 55121	Mayo Clinic Health Solutions PO Box 211698 Eagan, MN 55121 Attn: Pharmacy Dept.

(2) A Post-Service Claim for medical services or supplies should be filed on a universal billing form and must include the following information:

- the name of the Plan
- the identity of the Claimant, Including name, address, and date of birth
- the date(s) of service
- the name, credentials and tax identification number of the Healthcare Provider
- the place of service
- a specific diagnosis code [current International Classification of Disease, Clinical Modification (ICD, CM) format]
- a specific service code for which payment is requested [current Healthcare Common Procedure Coding System (HCPCS) or Current Procedural Terminology (CPT) format]
- the amount of billed charges
- if a Claimant has already paid for the medical service or supply and is requesting reimbursement, he/she must also submit proof of payment

(3) A Post-Service Claim for Prescription Drugs must be filed on a Prescription Drug claim form (which is available from the Claims Administrator) and must include the following information:

- the name of the Plan, the carrier number and the group number
- the identity of the Claimant, Including name, address, date of birth and Member identification number
- the date(s) of service
- the name and credentials of the Healthcare Provider
- the place of service [e.g., National Association of Boards of Pharmacy (NABP) number]
- a specific product code for which payment is requested [current National Drug Code (NDC) format], the dose and the number of days supply
- the amount of billed charges
- if the item required Prior Authorization, clinical information for the Plan to make a coverage determination
- if a Claimant has already paid for the Prescription Drug and is requesting reimbursement, he/she must also submit proof of payment

(4) A Post-Service Claim must be filed within one (1) year following the date of service.

(b) Pre-Service Claims (Including Urgent Pre-Service Claims). Typically, a Pre-Service Claim is made on the Claimant's behalf by the treating Physician as an Authorized Representative. However, it is the Claimant's responsibility to ensure that a Pre-Service claim has been filed. The Claimant can accomplish this by having his/her Healthcare Provider contact the Claims Administrator to file a Pre-Service Claim on behalf of the Claimant.

(1) A Pre-Service Claim must be submitted to:

Medical Services Claims	Prescription Drug Claims
Mayo Clinic Health Solutions PO Box 211698 Eagan, MN 55121	Mayo Clinic Health Solutions PO Box 211698 Eagan, MN 55121
Attn: Health Services Dept.	Attn: Pharmacy Dept.
Fax: 1-888-889-7822	Fax: 1-507-284-2011
Urgent Pre-Service Claims and inpatient admissions where the underlying services do not require Prior Authorization may be submitted orally at the following phone numbers: Providers: 1-800-645-6296 Members: 1-866 - 465-5148	

(2) A Pre-Service Claim must include the following information:

- the name of the Plan
- the identity of the Claimant, Including name, address, and date of birth
- the proposed date(s) of service
- the name and credentials of the Healthcare Provider
- an order or request from the Healthcare Provider for the requested service
- the proposed place of service
- a specific diagnosis
- a specific proposed service code for which approval or payment is requested [current Healthcare Common Procedure Coding System (HCPCS) or Current Procedural Terminology (CPT) format]
- clinical information for the Plan to make a Medical Necessity determination

(3) A Pre-Service Claim for Prescription Drugs must include the following information:

- the name of the Plan
- the identity of the Claimant, Including name, address, and date of birth
- the name of the Prescription Drug requested
- the name and credentials of the Healthcare Provider prescribing the requested Prescription Drug
- a specific diagnosis
- clinical information for the Plan to make a Medical Necessity determination

(4) Incorrectly Filed Claim. Failure to submit a claim to the proper place and/or in writing, if required, may result in the claim being treated as an incorrectly filed claim. If a Pre-Service Claim has been filed incorrectly, the Plan will notify the Claimant as soon as possible but no later than the timeframes stated below:

a) Pre-Service Claims (not including Urgent Pre-Service Claims). No later than 5 days following receipt of the incorrectly filed claim.

b) Urgent Pre-Service Claims. No later than 24 hours following receipt of the incorrectly filed claim.

(c) Concurrent Care Claims. Where an extension is requested for benefits beyond the initially approved benefit, a Claimant should follow the instructions for how to file a Pre-Service Claim.

8.7 **Timeframes for Claim Decisions Under the Plan**. A Claimant may voluntarily agree to extend the timeframes specified below for the Plan to make a decision.

(a) Timeframes. The following timeframes apply unless the claim is incomplete, as described below.

(1) Post-Service Claims. The Plan will determine the claim within 30 days of receipt of the claim.

If the Plan is not able to determine the claim within this time period due to matters beyond its control, the Plan may take an additional period of up to 15 days to determine the claim. If this additional time will be needed, the Plan will notify the Claimant in writing prior to the expiration of the initial 30 day time period for determining the claim.

(2) Pre-Service Claims. The Plan will determine the claim within 15 days of receipt of the claim.

If the Plan is not able to determine the claim within this time period due to matters beyond its control, the Plan may take an additional period of up to 15 days to determine the claim. If this additional time will be needed, the Plan will notify the Claimant in writing prior to the expiration of the initial 15 day time period for determining the claim.

(5) Urgent Pre-Service Claims. The Plan will determine the claim as soon as possible but no later than 72 hours after receipt of the claim.

(6) Concurrent Care Claims.

a) For a reduction or termination of coverage for a previously approved benefit, the Plan will determine the claim sufficiently in advance to allow the Claimant to appeal and obtain a determination on review before coverage for the previously approved benefit is reduced or terminated.

b) Where an extension is requested by the Claimant for coverage beyond the initially approved benefit,

(1) If the request meets the definition of an Urgent Pre-Service Claim and is filed at least 24 hours prior to the end of the treatment, the Plan will determine the claim within 24 hours.

(2) If the request meets the definition of an Urgent Pre-Service Claim and is filed less than 24 hours prior to the end of the treatment, the Plan will determine the claim within 72 hours.

(3) If the request does not meet the definition of an Urgent Pre-Service Claim, the Plan will determine the claim within 15 days.

If the Plan is not able to determine the claim within this time period due to matters beyond its control, the Plan may take an additional period of up to 15 days to determine the claim. If this additional time will be needed, the Plan will notify the Claimant in writing prior to the expiration of the initial time period for determining the claim.

(b) Incomplete Claims.

(1) Post-Service Claims and Pre-Service Claims (not including Urgent Pre-Service Claims). Incomplete claims can be addressed through the extension of time described above. If the reason for the extension is the failure to provide necessary information and the Claimant is appropriately notified, the Plan's period of time to make a decision is suspended from the date upon which notification of the missing necessary information is sent until the date upon which the Claimant responds or should have responded.

The notification will include a timeframe of at least 45 days in which the necessary information must be provided. Once the necessary information has been provided, the Plan will decide the claim within the extension described above. If the requested information is not provided within the time specified, the claim may be denied.

(2) Urgent Pre-Service Claims. The Plan will notify the Claimant of an incomplete claim as soon as possible, but no later than 24 hours following receipt of the incomplete claim. The notification will describe the information necessary to complete the claim and specify the timeframe of at least 48 hours within which the claim must be complete.

Notification may be made orally to the Claimant or the Healthcare Provider, unless the Claimant requests written notice.

The Plan will make a claim determination as soon as possible but not later than the earlier of (1) 48 hours after receipt of the specified information, or (2) the end of the period of time provided to submit the specified information.

8.8 Notification of Claim and Pre-Determination Decisions Under the Plan.

(a) When the Plan Will Provide Notification of a Claim Determination.

(1) Post-Service Claims and Concurrent Care Claims. Notification will be provided only if the decision is an Adverse Benefit Determination.

(2) Pre-Service Claims (Including Urgent Pre-Service Claims) and Pre-Determination Requests. Notification will be provided whether the claim or request is approved or denied.

(b) Content of Notification.

(1) Adverse Benefit Determination. Notice of an Adverse Benefit Determination will be provided in written or electronic form. For Urgent Pre-Service Claims, notification will be provided orally to the Claimant within the timeframe described above and written or electronic notification will be furnished not later than 3 days after the oral notification.

The notification will include the following:

- the specific reason(s) for the determination;

- reference to the specific Plan provision(s) on which the determination is based;
- a description of any additional material or information necessary to complete the claim and an explanation of why such information is necessary;
- a description of the Plan procedures and time limits for appeal of the Adverse Benefit Determination;
- disclosure of any internal rule, guideline, protocol or similar criterion relied on in making the Adverse Benefit Determination or a statement that such information was relied upon in making the Adverse Benefit Determination and will be provided free of charge upon request; and
- if the decision involves scientific or clinical judgment, an explanation of the scientific or clinical judgment applying the terms of the Plan to the Claimant's medical circumstances or a statement that such explanation will be provided free of charge upon request.

(2) Not Adverse Decision. For Pre-Service Claim and Urgent Pre-Service Claim determinations that are not adverse, notice that the request for Prior Authorization has been approved will be provided.

(3) Denial of Pre-Determination. The notification will include the specific reason(s) for the denial.

(4) Approval of a Pre-Determination. Notice that the Pre-Determination request has been approved will be provided.

8.9 **Complaints**. If a Claimant has a complaint or dispute with the Plan, the Claimant may contact the Claims Administrator's customer service department by calling the number listed below in an attempt to resolve the complaint in an informal manner, rather than following the appeal procedures described below. If a complaint is submitted, the Claims Administrator will try to resolve the complaint through informal discussions within ten (10) days. If the complaint cannot be resolved to the Claimant's satisfaction, the Claimant may submit a written appeal by following the appeal procedures described below. Please note that under the Plan a Claimant has 180 days after receiving an Adverse Benefit Determination to file a formal appeal. This time limit continues to run while the Claimant's complaint is being considered.

1-866-465-5148
TDD (for hearing impaired) 1-800-407-2442

8.10 **Appeals Process**. The following will apply to all types and levels of appeals of Adverse Benefit Determinations:

(a) Submission and Consideration of Comments. The Claimant will have the opportunity to submit documents, written comments, or other information in support of the appeal. The review of the Adverse Benefit Determination will take into account all information, whether or not presented or available for the initial determination. No deference will be given to the prior determination.

(b) Decision. The review will be made by a person different from the person who made the prior determination and such person will not be a subordinate of the prior decision maker.

(c) Consultation with Independent Medical Expert. In the case of a claim denied on the grounds of a medical judgment, a Healthcare Provider with appropriate training and experience will be consulted. The Healthcare Provider who is consulted on appeal will not be the individual who was consulted, if any, during the prior determination or a subordinate of that individual.

8.11 **Filing a First Level Appeal**. If there is an Adverse Benefit Determination or a denial of a Pre-Determination request, the Claimant may request a review by the Claims Administrator by filing a first level appeal.

(a) A first level appeal request must be in writing and submitted to:

Mayo Clinic Health Solutions
4001 41st Street NW
Rochester, MN 55901-8901
Attn: Member Appeals

Special rule for expedited review of Urgent Pre-Service Claims under the Plan. A Claimant may request an expedited review orally or in writing and all necessary information (Including the Plan's benefit determination on review) will be transmitted by telephone, facsimile, or other available expeditious method.

(b) A first level appeal must include the following information:

- the name of the Plan
- the identity of the Claimant, Including name, address, and date of birth
- information regarding the claim or Pre-Determination request being appealed, such as:
  - for Post-Service Claims, a copy of the Explanation of Benefits or the claim number listed on the Explanation of Benefits
  - for other types of claims, a copy of the Adverse Benefit Determination notice the Claimant received or other information to identify the claim
  - for Pre-Determination requests, a copy of the denial letter
- a statement that the Claimant is requesting an appeal
- an explanation of why an appeal is being requested, Including the particular aspect of the Adverse Benefit Determination or denial of a Pre-Determination request the Claimant is disputing
- supporting documentation

(c) A first level appeal of an Adverse Benefit Determination must be submitted to the Plan within 180 days following receipt of a notification of an Adverse Benefit Determination of a claim. *If a first level appeal is not requested within this180 days, the Claimant loses the right to appeal.*

(d) A first level appeal of a denial of a Pre-Determination request must be submitted to the Plan within 60 days following receipt of a denial of a Pre-Determination request. *If a first level appeal is not requested within this 60 days, the Claimant loses the right to appeal.*

8.12 **Timeframes for First Level Appeals**. A Claimant may voluntarily agree to extend the timeframes specified below to make a decision.

(a) Post-Service Claims. The Plan will make a determination no later than 30 days from the date the first level appeal was received.

(b) Pre-Service Claims. The Plan will make a determination no later than 15 days from the date the first level appeal was received.

(c) Urgent Pre-Service Claims. The Plan will make a determination no later than 36 hours from the date the first level appeal was received.

(d) Concurrent Care Claims.

(1) For a reduction or termination of coverage for a previously approved benefit, the Plan will make a determination sufficiently in advance to allow the Claimant to file a second level appeal and obtain a determination before the benefit is reduced or terminated.

(2) Where an extension is requested by the Claimant for coverage beyond the initially approved benefit:

c) If the request meets the definition of an Urgent Pre-Service Claim, the Plan will make a determination no later than 36 hours from the date the first level appeal was received.

d) If the request does not meet the definition of an Urgent Pre-Service Claim, the Plan will make a determination no later than 15 days from the date the first level appeal was received.

(e) Pre-Determination Requests. The Plan will make a determination no later than 60 days from the date the first level appeal was received.

If the Plan is not able to determine the appeal within this time period, the Plan may take an additional period of up to 30 days to determine the appeal. If this additional time will be needed, the Plan will notify the Claimant prior to the expiration of the initial 60 day time period for determining the appeal.

8.13 Notification of Appeal Decisions.

(a) When Notice Will Be Provided. Written or electronic notification of the Plan's determination will be provided to the Claimant for all appeals.

(b) Content of Notification.

(1) Adverse Benefit Determination. The notification will include the following:

- the specific reason(s) for the Adverse Benefit Determination;
- reference to the specific Plan provision(s) on which the determination is based;
- a statement indicating entitlement to receive, upon request, and free of charge, reasonable access to or copies of all documents, records and other information relevant to the Claimant's claim for benefits; and
- a statement regarding additional levels of appeal (if any);
- disclosure of any internal rule, guideline, protocol or similar criterion relied on in making the Adverse Benefit Determination (or a statement that such information will be provided free of charge upon request);
- if the decision involves scientific or clinical judgment, an explanation of the scientific or clinical judgment applying the terms of the Plan to the Claimant's circumstances, or a statement that such explanation will be provided free of charge upon request.

(2) Not Adverse Decision. Notice will be provided that informs the Claimant the decision has been reversed, and the claim has been approved or under the Plan a Pre-Determination request has been approved.

(3) Denial of Pre-Determination. The notification under the Plan will include the specific reason(s) for the denial.

(4) Approval of a Pre-Determination Notice will be provided that informs the Claimant the decision has been reversed, and the Pre-Determination request has been approved under the Plan.

8.14 **Filing a Second Level Appeal**. If there is an Adverse Benefit Determination or under the Plan a denial of a Pre-Determination appeal by the Claims Administrator on the first level of appeal, the Claimant may request a review by the Employer.

(a) A second level appeal request must be in writing and submitted to:

Mayo Clinic Health Solutions
PO Box 211698
Eagan, MN 55121
Attn: Member Appeals

Special rule for expedited review of Urgent Pre-Service Claims under the Plan. A Claimant may request an expedited review orally or in writing and all necessary information (Including the Plan's benefit determination on review) will be transmitted by telephone, facsimile, or other available expeditious method.

(b) A second level appeal must include the following information:

- the name of the Plan
- the identity of the Claimant, Including name, address, and date of birth
- information regarding the appeal being appealed, such as a copy of the appeal denial letter
- a statement that the Claimant is requesting a second appeal
- an explanation of why a second appeal is being requested, Including the particular aspect of the Adverse Benefit Determination or under the Plan denial of a Pre-Determination appeal being disputed
- supporting documentation

(c) A second level appeal of an Adverse Benefit Determination must be submitted to the Plan within 180 days following receipt of a notification of an Adverse Benefit Determination at the first level of appeal. *If a second level appeal is not requested within this 180 days, the Claimant loses the right to appeal.*

(d) A second level appeal of a denial of a Pre-Determination request must be submitted to the Plan within 60 days following receipt of a denial of a Pre-Determination at the first level of appeal. *If a second level appeal is not requested within this 60 days, the Claimant loses the right to appeal.*

8.15 **Timeframes for Second Level Appeals**. A Claimant may voluntarily agree to extend the timeframes specified below for the Plan to make a decision.

(a) Post-Service Claims. The Plan will make a decision no later than 30 days from the date the second level appeal was received.

(b) Pre-Service Claims. The Plan will make a decision no later than 15 days from the date the second level appeal was received.

(c) Urgent Pre-Service Claims. The Plan will make a decision no later than 36 hours from the date the second level appeal was received.

(d) Concurrent Care Claims.

(1) For a reduction or termination of coverage for a previously approved benefit, the Plan will make a determination before the benefit is reduced or terminated.

(2) Where an extension is requested by the Claimant for coverage beyond the initially approved benefit,

a) If the request meets the definition of an Urgent Pre-Service Claim, the Plan will make a determination no later than 36 hours from the date the second level appeal was received.

b) If the request does not meet the definition of an Urgent Pre-Service Claim, the Plan will make a determination no later than 15 days from the date the second level appeal was received.

(e) Pre-Determination Requests. The Plan will make a determination no later than 60 days from the date the second level appeal was received.

(1) If the Plan is not able to determine the appeal within this time period, the Plan may take an additional period of up to 30 days to determine the appeal. If this additional time will be needed, the Plan will notify the Claimant prior to the expiration of the initial time period for determining the appeal.

8.16 **Notification of Second Level Appeal Decisions**. The Employer will provide notification of second level appeal decisions in accordance with the *Notification of Appeal Decisions* subsection above.

8.17 **Plan Interpretation**. The Plan will be administered in accordance with its terms. The Employer, Claims Administrator and/or any other fiduciary acting as a fiduciary with respect to the Plan, to the extent that such individual or entity is acting in its fiduciary capacity, shall have the complete and final authority, responsibility, and control, in its sole discretion, to manage, administer and operate the Plan, to make factual findings, to construe the terms of the Plan, and to determine all questions arising in connection with the administration, interpretation, and application of the Plan, Including the eligibility and coverage of individuals and the authorization or denial of payment or reimbursement of benefits. All determinations and decisions will be binding on the Plan, Members, claimants, and all interested parties.

8.18 **The Right to Take Legal Action**. Unless there are special circumstances, the appeals process outlined above must be completed prior to initiating legal action regarding a claim. If a Claimant intends to initiate legal action, he or she must do so within two (2) years after receipt of a notification of an Adverse Benefit Determination at the second level of appeal. If, due to special circumstances, the Claimant was not required to complete the appeals process outlined above, legal action must be brought within two (2) years of the date the Claimant's claim for benefits was submitted to the Plan. *Claimants may not bring legal action after the expiration of the two-year period.*

8.19 **Questions Regarding Claims and Appeals Procedures**. If a Claimant has any questions regarding these procedures, the Claimant should contact the Claims Administrator's Customer Service Department at the number listed in the *Introduction* section.

SECTION IX

COORDINATION OF BENEFITS

9.1 Coordination of Group Coverage.

This COB provision does not apply to the outpatient Prescription Drug benefit under the Plan with respect to other medical plans.

If any Member is covered by another group or government sponsored medical plan, Members may be entitled to payment from those plans and the Plan.

The benefits paid from the Plan will be coordinated to pay up to 100 percent of the eligible charges. A plan without a coordinating provision similar to the plan the person is enrolled in always pays first. Provided both plans have a coordination of benefits feature, payment will be made as follows:

(a) The plan covering the person directly (i.e., as an employee or retiree) ("Plan A") pays benefits first and the plan covering the person as an eligible dependent ("Plan B") pays second; however if (i) the person covered directly is covered by Medicare, (ii) Medicare is primary to Plan A, and (iii) Plan B is primary to Medicare, then Plan B will pay before Plan A.

(b) If a child is covered under both parents' plans, the plan directly covering the parent whose birthday comes first during the calendar year is the primary plan. If both parents have the same birthday, the plan covering the parent longer pays benefits first. However, if the parents are divorced, the plan pays in this order:

(1) If the terms of a court decree have established one parent as financially responsible for the child's healthcare expenses, the plan of the parent with that responsibility is primary.

(2) The plan of the parent with custody of the child pays next.

(3) The plan of the stepparent married to the parent with custody of the child pays next.

(4) The plan of the parent without custody of the child pays last.

When a determination cannot be made, the plan that has covered the individual longer is primary. Coverage under any Workers' Compensation Act or similar law is primary.[1] Coverage under any No-Fault Act for auto insurance or medical payments or similar law is primary.

Special Rule for Coverage of Adopted Children: Coverage provided with respect to the birth of a child who is legally adopted by a Member as provided in the *Maternity* subsection of the *Schedule of Benefits* section shall be coordinated with any coverage of the birth mother, to pay up to 100 percent of the eligible charges. Notwithstanding the foregoing rules regarding which plan pays first, this Plan shall be secondary to the birth-mother's coverage, unless that coverage was made available pursuant to Arizona Statutes title 36, chapter 29, but not including coverage made available to persons defined as eligible for such coverage under section 36-2901, paragraph 6, subdivisions (b), (c), (d), and (e) of such law.

9.2 Medicare Order of Payment Rules for the Plan.

(a) **Definitions**. For purposes of this section, the following terms will have the meanings given them below:

(1) Age 65 - the age attained at 12:01 a.m. on the first day of the month in which the Member or his/her Dependent reaches age 65.

(2) ESRD - end-stage renal disease.

(3) MSP - the Medicare Secondary Payer requirements under 42 U.S.C. § 1395y(b).

(b) **The Plan Pays First; Medicare Pays Second**. The Plan is primary and pays first in the circumstances listed below. This means that the Allowed Charge will be paid by the Plan, and any remaining expenses not reimbursed by the Plan should be submitted to Medicare for supplemental reimbursement.

(1) Subscribers who continue working at and past age 65. This provision also applies with respect to Dependents who are covered by Medicare and the Plan when the Subscriber is still an Employee, regardless of whether the Subscriber is covered by Medicare.

(2) Members who have Medicare coverage due to a disability and the Subscriber is still an Employee.

(3) Members who have ESRD, provided the Plan shall be primary only for the first thirty (30) months of the Member's eligibility for or entitlement to Medicare due to ESRD.

(c) **Medicare Pays First; The Plan Pays Second**. The Plan is secondary and pays second in the circumstances listed below. This means that any charges for medical care should be submitted to Medicare first, and any remaining expenses not reimbursed by Medicare should be submitted to the Plan for supplemental reimbursement.

(1) Subscribers who are no longer Employees (i.e., Subscribers who have retiree coverage or COBRA coverage) and are covered by Medicare. This provision also applies with respect to Dependents who are covered by Medicare who are receiving coverage through a Subscriber who is no longer an Employee.

(d) **Applicable Law**. This section is intended to comply with, but not provide coverage in excess of, MSP.

9.3 Medicaid Eligible Members.

(a) In enrolling a Member or in determining or making any payments for benefits of a Member, the fact that the individual is eligible for or is provided medical assistance under a state plan for medical assistance approved under Title XIX of the Social Security Act will not be taken into account.

(b) Benefit payments under the Plan will be made in accordance with any assignment of rights made by or on behalf of a Member as required by a state plan for medical assistance approved under Title XIX of the Social Security Act pursuant to Section 1912(a)(1)(A) of such Act (as in effect on August 10, 1993).

(c) To the extent that a payment has been made under a state plan for medical assistance approved under Title XIX of the Social Security Act for a Member's medical treatment for which the Plan would have had a legal liability to pay, benefits under the Plan will be paid in accordance with

any applicable state law which provides that the state has acquired the right to payment for such medical treatment.

9.4 **Subrogation and Reimbursement Under the Plan**. There may be situations in which a Member has a legal right to recover the costs of his/her healthcare or medical expenses as a result of an Injury or Illness caused by or the responsibility of a third party. For example, if a Member is injured in a store, the owner may be responsible for the healthcare or other expenses for that Injury; if a Member is in a motor vehicle accident, another driver may be responsible; if a Member becomes sick or injured in the course and scope of employment, the employer or a workers' compensation insurer may be responsible for healthcare or other expenses from the Illness or Injury. If someone else is legally responsible or agrees to compensate any Member for Injuries or an Illness suffered by a Member, the Plan has the right to recover any and all benefits it has paid in connection with the Injury or Illness pursuant to A.R.S. 12-962. The Plan may enforce its right of recovery as allowed by A.R.S. 12-962 including the right to recover the cost of care if the Member, including dependent, or anyone acting on their behalf, actually receives payment from any source in the form of an award, damages, or settlement as a result of an Injury or Illness caused by, attributable to, or otherwise the responsibility of a third party or entity.

By enrolling and accepting coverage in the Plan, all covered Members agree to the following:

(a) The entire amount collected by a Member from any source will be considered to be a first recovery of benefits paid under either the Plan regardless of the terms of any award, agreement, regulation, statute, etc., to the contrary. The fact that only a part of the payment or even none of the payment is allocated to medical, dental, or disability expenses does not affect the Plan's rights to recover all the benefits paid in connection with the Member's Injury or Illness. The Plan shall have a lien and a security in all such claims.

(b) The Plan is entitled to reimbursement of all past, present and future medical expenses as a result of an Injury or Illness caused by, attributable to, or otherwise the responsibility of a third party or entity.

(c) The Plan will be reimbursed 100 percent from any and all recovery before payment of any other existing claims including any claim made by a Member for general damages.

(d) The Plan may collect the proceeds of any settlement or judgment recovered by a Member or the Member's legal representative regardless of whether the Member has been fully compensated or "made whole."

(e) Every Member has an obligation to cooperate completely with the Plan. The Member must sign all documents that may be required and take any other action necessary to secure these rights under the Plan. In the event that the Member does not receive or accept any type of recovery, compensation, settlement or award and does not pursue legal action, the Member agrees that he or she will cooperate completely with the Plan's efforts to enforce its subrogation rights through legal action against a third party. Each Member also has an obligation to notify the Plan in writing immediately any time the Plan may have rights against another person or entity.

(f) If a Member fails to immediately repay amounts owed to the Plan under this rule, the Plan may withhold any future payments from the Plan to satisfy the Member's obligation.

(g) If a Member voluntarily accepts a lump sum or other settlement from any source without the Plan's consent, which may or may not cause either plan to lose its subrogation rights, the Plan will have no obligation to pay any past, present, or future benefits or expenses relating to the Injury or Illness caused by, attributable to, or otherwise the responsibility of the other party. Past payments may be recovered from the medical provider.

The Plan's subrogation also applies to a Member's coverage under workers' compensation plans, disability, and lost time coverage, other substitute coverage, any other right of recovery, or any claim payment received from any motor vehicle insurance Including no-fault or medical payments insurance and uninsured or underinsured motorist coverage. In addition, it applies in the event a Member fails to obtain any mandated insurance coverage. The Plan reserves the right to recover expenses incurred on a Member's behalf even if the recovery is made by a family member if that recovery is based on a Member's Injuries or Illness. The Plan will represent itself in subrogation, reimbursement and intervention interests. Therefore, no reduction for attorney fees, costs, or expenses will be paid by the Plan or withheld from the Plan recovery.

9.5 **Workers' Compensation**. Coverage under either the Plan is not in lieu of workers' compensation and does not affect any aspect of coverage under workers' compensation.

SECTION X

GENERAL PROVISIONS

10.1 **Applicable Law**. The Plan is intended to be construed, and all rights and duties hereunder are to be governed, in accordance with the laws of the State of Arizona, except to the extent such laws are preempted by the laws of the United States of America.

10.2 **Conformity with Governing Law**. If any provision of the Plan is contrary to any law to which it is subject, such provision is hereby amended to conform thereto.

10.3 **Section Titles**. Section titles are for convenience only and are not to be considered in interpreting the Plan.

10.4 **No Guarantee of Employment**. Participation in the Plan will not be construed as giving a Member any right to continue in the employ of the Employer. Any Employee will remain subject to discharge by the Employer to the same extent had the Plan not been adopted.

10.5 **Plan Provisions Binding**. The provisions of the Plan will be binding upon all Members and their respective heirs and legal representatives, upon the Employer, its successors and assigns, and upon the Claims Administrator and any other provider of services to either the Plan.

10.6 **Construction of Terms**. Words of gender will include persons and entities of any gender. The plural will include the singular, and the singular will include the plural.

10.7 **Non Discrimination Policy**.

(a) The Plan will not discriminate against any Member based on race, color, religion, national origin, disability, gender, or age. The Plan will not establish rules for eligibility based on health status, medical condition, claims experience, receipt of healthcare, medical history, evidence of insurability, genetic information, or disability.

(b) The Plan is intended to be nondiscriminatory and to meet the requirements under applicable sections of the Code. If the Employer determines before or during any Plan year, that the Plan may fail to satisfy any nondiscrimination requirement imposed by the Code or any limitation on benefits provided to highly compensated individuals, the Employer shall take such action as the Employer deems appropriate, under rules uniformly applicable to similarly situated Subscribers, to assure compliance with such requirements or limitation.

10.8 **Erroneous Payments**. If the Plan makes a payment for benefits in excess of the benefits required by the Plan or makes a payment to or on behalf of an individual who is not covered by the Plan, the Plan shall be entitled to recover such erroneous payment from the recipient of such erroneous payment and/or the beneficiary of such erroneous payment.

SECTION XI

PLAN ADMINISTRATION

11.1 **Powers and Duties of Employer**. The Employer will have the powers and duties of the general administration of the Plan Including the following:

(a) The discretion to determine all questions relating to the eligibility of individuals to participate or remain a Member in the Plan and to receive benefits under such plans.

(b) To require any person to furnish such reasonable information as the Employer may request for the proper administration of the Plan as a condition of eligibility to participate as a Member under the Plan and to receive any benefits under such plan.

(c) To delegate to other persons authority to carry out any duty or power which would otherwise be a responsibility of the Employer under the terms of the Plan or applicable law.

(d) To maintain, or to delegate to others the duty of maintaining, all necessary records for the administration of the Plan.

(e) To interpret the provisions of the Plan and to make and publish such rules and procedures for regulation of the Plan and to prescribe such forms as the Employer deems necessary.

11.2. **Records**. The Employer, the Claims Administrator and others to whom the Employer has delegated duties and responsibilities under the Plan shall keep accurate and detailed records of any matters pertaining to administration of the Plan in compliance with applicable law.

11.3 **Release of Medical Information**. The Employer and Claims Administrator are entitled to receive information reasonably necessary to administer the Plan, subject to all applicable confidentiality requirements as defined in the Plan and as required by law, from any Healthcare Provider of services to a Member. By accepting coverage under the Plan, Members agree to sign the necessary authorization directing any Healthcare Provider that has attended or treated them, to release to the Employer and Claims Administrator upon request, any and all information, records or copies of records relating to attendance, examination or treatment rendered to Member. If the Member fails to sign the necessary authorization or otherwise inhibits the Employer and/or Claims Administrator from getting necessary information to pay claims, the Plan has no obligation to pay claims.

11.4 **Assignment of Benefits**. The right to receive benefits hereunder is personal to that Member and may not be assigned, or be subject to anticipation, garnishment, attachment, execution, or levy of any kind, or be liable for the debts or obligations of a Member, except for assignment of the right to receive benefits to a Healthcare Provider of Healthcare Services. With respect to any assignment to a Healthcare Provider, that Healthcare Provider is subject to the same terms and conditions under the Plan as the Member.

SECTION XII

PLAN CONTRIBUTIONS

12.1 **Allocation of Plan Cost**. Prior to the start of each Coverage Year, the Employer will determine the aggregate cost necessary to provide the benefits under the Plan

12.2 **Subscriber Contributions**. For each Coverage Year, the Employer will determine the amount of Subscriber contributions, if any, that Subscribers or any subgroup of Subscribers will be required to pay for coverage under the Plan. The portion of the cost of coverage for which the Subscriber is responsible may be paid on a pre-tax basis through a cafeteria plan of the Employer if such a plan is made available by the Employer and the Subscriber meets the eligibility requirements of the cafeteria plan.

12.3 **Subscriber Contributions for Mid-month Enrollments and Changes.** Subscriber contributions are determined by the Employer based on the effective date of an enrollment or change. For mid-month effective dates, a pro-rated premium shall apply based on the number of days in the month in which the effective date occurs.

12.4 **The Operating Expenses for the Plan**. Operating expenses may be paid either (1) out of Plan assets, if any, or (2) by Employer.

12.5 **Plan Assets**. To the extent the Plan has assets, such assets shall be used for the sole and exclusive purpose of providing benefits under the Plan and defraying reasonable administrative costs of the Plan (Including disposition of Plan assets upon termination of the Plan).

SECTION XIII

AMENDMENT AND TERMINATION

13.1 **Amendment**. The Employer reserves the right to amend or modify all or any portion of the coverage under the Plan at any time on a prospective basis; any such action being within its complete and sole discretion. The Employer must have valid and appropriate action taken by its managing body (e.g., Town Council) to amend the Plan.

13.2 **Termination**. The Employer reserves the right to terminate all or any portion of the Plan at any time; any such action being within its complete and sole discretion. The Employer must have valid and appropriate action taken by its managing body (e.g., Town Council) to terminate the Plan.

13.3 **Payment of Benefits After Plan Termination**. In the event of a termination of the Plan, benefits will be paid only for Covered Services incurred prior to the termination date.

SECTION XIV

HIPAA PRIVACY AND SECURITY

RESPONSIBILITIES OF MAYO CLINIC HEALTH SOLUTIONS AND THE PLAN

Effective April 14, 2004, the Privacy Rules under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") apply to certain portions of the Plan that constitute "covered entities" within the meaning of HIPAA (e.g., employer sponsored group health plans). For purposes of this Section, "Plan Sponsor" refers to the Employer as Plan Sponsor and as the entity capable of acting on behalf of the covered entity, the Plan.

14.1 **Use and Disclosure of PHI**. The Plan will use PHI to the extent of and in accordance with the uses and disclosures permitted by HIPAA. Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations.

(a) *Payment* includes activities undertaken by the Plan to obtain premiums or determine or fulfill its responsibility for coverage and provision of Plan benefits that relate to an individual to whom health care is provided. These activities include, but are not limited to, the following:

(1) Determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and co-payments as determined for an individual's claim);

(2) Coordination of benefits;

(3) Adjudication of health benefits claims (including appeals and other payment disputes);

(4) Subrogation of health benefit claims;

(5) Establishing employee contributions;

(6) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(7) Billing, collection activities and related health care data processing;

(8) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to Participant inquiries about payments;

(9) Obtaining payment under a contract for reinsurance (including stop-loss and excess of loss insurance);

(10) Medical necessity reviews or reviews of appropriateness of care or justification of charges;

(11) Utilization review, including pre-certification, preauthorization, concurrent review and retrospective review;

(12) Disclosure to consumer reporting agencies related to the collection of premiums or reimbursement (the following PHI may be disclosed for payment purposes: name and address, date of birth, Social Security number, payment history, account number and name and address of provider and/or health Plan; and

(13) Reimbursement to the Plan.

(b) *Health care operations* include, but are not limited to, the following activities:

(1) Quality assessment;

(2) Population-based activities relating to improving health or reduction health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;

(3) Rating provider and Plan performance, including accreditation, certification, licensing or credentialing activities;

(4) Underwriting (except as prohibited under 45 C.F.R. Section 164.502(a)(5)(i)), premium rating and other activities relating to the creation , renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance);

(5) Conducting or arranging for medical review, legal services and auditing function, including fraud and abuse detection and compliance programs;

(6) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Plan, including formulary development and administration, development or improvement of payment methods or coverage policies;

(7) Business management and general administration activities of the Plan, including, but not limited to:

a. Management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements;

b. Customer service, including data analyses for policyholders;

(8) Resolution of internal grievances.

(9) Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity under HIPAA or following completion of the sale or transfer, will become a covered entity.

14.2 Employer's Obligations. Under HIPAA, the Plan may not disclose PHI to the Plan Sponsor (as defined in the Privacy Rules under HIPAA) unless the Plan Sponsor agrees to certain conditions. As the Plan Sponsor, the Employer agrees to the following conditions, thereby allowing the Plan to disclose PHI to the Employer. The Employer will:

(a) Not use or further disclose PHI other than as permitted or required by the Plan document or as required by law;

(b) Ensure that any agents, including a subcontractor, to whom the Plan provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such PHI;

(c) Not use or disclose PHI for employment related actions and decision unless authorized by an individual;

(d) Not use or disclose PHI in connection with any other benefit or employee benefit plan of the Plan Sponsor unless authorized by an individual;

(e) Report to the Plan any PHI use or disclosure, that is inconsistent with the uses or disclosures provided for, of which it becomes aware;

(f) Make available to an individual for inspection and copying PHI about the individual as allowed by and in accordance with HIPAA;

(g) Make PHI available for amendment and incorporate any amendments to PHI in accordance with HIPAA;

(h) Make available the information required to provide an accounting of disclosures;

(i) Make internal practices, books and records relating to the use and disclosure of PHI received from Plan available to the HHS Secretary for the purposes of determining the Plan's compliance with HIPAA; and,

(j) If feasible, return or destroy all PHI received for the Plan that the Plan Sponsor still maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made (or if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible).

14.3 Adequate Separation Between the Plan and the Plan Sponsor Must Be Maintained. In accordance with HIPAA, only the following employees or classes of employees may be given access to PHI:

(1) Human Resources Analyst – Benefits

(2) HR Manager

The Plan Sponsor shall identify, by name, these persons in writing to the Claims Administrator.

14.4 Limitation of PHI Access and Disclosure. The persons described in Section 14.3 above may only have access to and use and disclose PHI for Plan administration functions that the Plan Sponsor performs for the Plan.

14.5 Noncompliance Issues. If the person described in Section 14.3 above does not comply with this Article XIV, the Plan Sponsor shall provide a mechanism for resolving issues of noncompliance, including, but not limited to, disciplinary action against such person.

14.6 HIPAA Security. Effective April 20, 2006, the Security Rules under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") apply to this Plan.

(a) **Definitions**. For the purposes of this Article, the following terms shall have the meanings set forth in this Section.

(1) **ePHI** means PHI maintained or transmitted in electronic media, including, but not limited to, electronic storage media (i.e., hard drives, digital memory medium) and transmission media used to exchange information in electronic storage media (i.e., internet, extranet, and other networks). PHI transmitted via facsimile and voice over the telephone is not considered to be transmissions via electronic media.

(2) **Summary Health Information** means "summary health information" as defined in 45 C.F.R. Section 164.504, which generally defines "summary health information" to include information, which may be PHI, that summarizes claims history, claims expenses, or the type of claims experienced by individuals receiving benefits under the Plan from which certain identifiers have been deleted.

(3) **Security Incident** means "security incident" as defined in 45 C.F.R. Section 164.304, which generally defines "security incident" to include attempted or successful unauthorized access, use, disclosure, modification, or destruction of ePHI.

(4) **Security Rule** means the Security Standards published on February 20, 2003 at 68 Fed. Reg. 8334 et seq. (45 C.F.R. Parts 160, 162 and 164) as hereinafter amended.

(b) **Employer's Obligations**. If the Employer creates, receives, maintains, or transmits ePHI (other than enrollment and disenrollment information and Summary Health Information, which are not subject to these restrictions), the Employer will:

(1) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI;

(2) Ensure that any agents, including subcontractors, who create, receive, maintain, or transmit ePHI on behalf of the Plan implement reasonable and appropriate security measures to protect the ePHI;

(3) Report to the Plan any Security Incident of which it becomes aware; and

(4) Implement reasonable and appropriate security measures to ensure that only those persons identified in Section 14.3 have access to ePHI and that such access is limited to the purposes identified in Section 14.4.

IN WITNESS WHEREOF, the _____of the Employer has executed the foregoing Plan on behalf of the Employer on this _____day of _____, _____.

Town of Gilbert

BY:

_____
Signature

John Lewis
Type or Print Name

Mayor
Title

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: Approval of a Street Name Change from East Avenida Del Valle Court to East Bella Vista Street.

STRATEGIC INITIATIVE: Community Livability

Assure and sustain quality service delivery.

RECOMMENDED MOTION

A motion to adopt a Resolution approving the Street Name Change from East Avenida Del Valle Court to East Bella Vista Street.

BACKGROUND/DISCUSSION

The street name of East Avenida Del Valle Court originated under the jurisdiction of Maricopa County. The impacted street segment and five associated lots are not a part of a recorded subdivision. This street was annexed into the Town June 23, 2006. To minimize the impact to the residents, a street name change was not executed upon annexation. On August 2, 2014 the initial resident request for a street name change was received. On January 22, 2015 the final request was received, completing a unanimous approval by all affected residents for the street name change. The proposed new street name of East Bella Vista Street complies with the Town's approved Addressing and Street Naming Guidelines.

The Resolution was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

The residents are financially responsible for all agreed upon conditions stated on the signed address change request documents. There will be minimal financial impact, of staff time only, to the Town.

The financial impact was reviewed by Cris Parisot, in the Office of Management and Budget.

STAFF RECOMMENDATION

Staff recommends that East Avenida Del Valle Court be changed to East Bella Vista Street.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	4/16/2015 6:42 PM
Cris Parisot	4/20/2015 9:30 AM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, DECLARING THAT A CERTAIN STREET NAME CHANGE LOCATED IN A PORTION OF THE NORTHEAST QUARTER OF SECTION 21, 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 East Avenida Del Valle Court, serving five lots West from South Greenfield Road between East Sanoque Court and East Brooks Farm Road, is hereby changed to East Bella Vista Street.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 30th DAY OF APRIL, 2015.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin, Town Attorney

I hereby certify the above foregoing Resolution No. _____ was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on April 30, 2015, 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

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: ST152: Approval of a Map of Dedication for "Higley and Warner", located at the northeast corner of Higley and Warner Roads.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to serve the surrounding area.

RECOMMENDED MOTION

A motion to approve a Map of Dedication for "Higley and Warner", located at the northeast corner of Higley and Warner Roads.

BACKGROUND/DISCUSSION

The Town of Gilbert is ready to improve Higley Road from the Mesquite Road alignment to SR202 and Warner Road from Ranch Street to Wade Drive (CIP Project No. ST152). When completed, the Project will widen Higley Road to accommodate four (4) lanes (2 northbound and 2 southbound) and Warner Road to accommodate five (5) lanes (2 eastbound and 3 westbound) with a raised median on both roads. Other Project features include curb and gutter, sidewalks and driveways, bike lanes, landscaping, street lighting, traffic signals, water lines, sewer lines, reclaimed water lines, and drainage.

The *Map of Dedication for "Higley and Warner"* provides right-of-way dedications for streets, public utility easements, and temporary construction easements. These right-of-way and easement dedications support the infrastructure that is needed for the ST152 project, which includes intersection improvements and widening in this area.

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 completion of the ST152 project, including intersection improvements and road widening in this area. This will have the direct benefit of improving traffic circulation and bringing new / accelerated development activity to the Town in the vicinity of the project.

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	Approval Date
Kenneth Morgan	4/16/2015 6:41 PM

MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

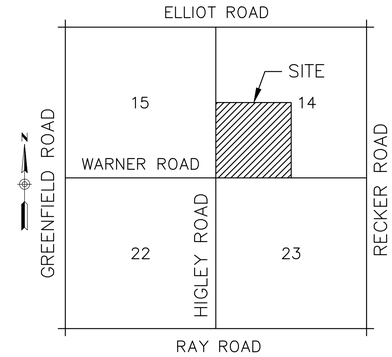
THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 6 EAST,
OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

REGISTERED LAND SURVEYOR 31019 C. STEVE DURYEA, JR. Date Signed 12/23/14 ARIZONA, U.S.A. Expires 3/31/15



VICINITY MAP
SECTIONS 14
T1S, R6E
NTS

REFERENCE DOCUMENTS

BOOK 2 OF ROAD MAPS, PAGE 60, MCR
MCR INSTRUMENT 1980-0060249
MCR INSTRUMENT 2013-0084377
MCR INSTRUMENT 2013-0084378
TOWN CENTER SOUTH LAKE FINAL PLAT

BASIS OF BEARINGS

THE MONUMENT LINE OF WARNER ROAD, HAVING A BEARING OF NORTH 89 DEGREES 28 MINUTES 33 SECONDS EAST, BEING THE SOUTH LINE OF THE SW 1/4 OF SECTION 14, T1S, R6E, G&SRM.

OWNERS

J&M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP
11611 S HIGLEY RD
GILBERT, AZ 85236
PHONE: _____

MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP
3180 E ELLIOT RD
GILBERT, AZ 85234
PHONE: _____

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA, THIS

_____ DAY OF _____, 20____.

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

APPROVED BY: _____ _____
PLANNING MANAGER DATE

APPROVED BY: _____ _____
TOWN ENGINEER DATE

SURVEYOR

C. STEVE DURYEA, JR., RLS
7500 N. DREAMY DRAW DRIVE, SUITE 200
PHOENIX, AZ. 85020
PHONE: 602-957-1155
EMAIL: steve.duryea@dibblecorp.com

CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY SHOWN HEREON FOR THE STATED SECTION 14 AND PLATTED AS A MAP OF DEDICATION WAS MADE DURING THE MONTH OF DECEMBER 2012, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN HEREON, AND THAT THE MONUMENTS AND POSITIONS SHOWN ARE PER CURRENT "ARIZONA BOUNDARY SURVEY MINIMUM STANDARDS" AND SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

C. STEVE DURYEA, JR., RLS 31019

AREAS TO BE DEDICATED

RIGHT OF WAY: 227,926 SQUARE FEET OR 5.232 ACRES, MORE OR LESS

PUBLIC UTILITY EASEMENT: 20,699 SQUARE FEET OR 0.475 ACRES, MORE OR LESS

TEMPORARY DRAINAGE EASEMENT: 36,495 SQUARE FEET OR 0.838 ACRES, MORE OR LESS

FLOOD PLAIN CERTIFICATION

ZONE X AS INDICATED ON FLOOD INSURANCE RATE MAP 04013C2755L, PANEL 2755L OF 4425, REVISED OCTOBER 16, 2013.

DEDICATION

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS: J&M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, AND MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, AS OWNERS, HAVE SUBDIVIDED UNDER THE NAME OF "HIGLEY AND WARNER", A PORTION OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF "HIGLEY AND WARNER", A SUBDIVISION, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS AND EASEMENTS CONSTITUTING SAME, AND THAT THE LOTS AND TRACTS SHALL BE KNOWN BY THE NUMBER OR NAME GIVEN EACH RESPECTIVELY ON SAID PLAT. J&M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, AND MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, AS OWNERS, HEREBY DEDICATE TO THE PUBLIC, FOR USE AS SUCH, THE STREETS AND EASEMENTS AS SHOWN ON SAID PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES.

IN WITNESS WHEREOF, J&M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____ THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____, 20____.

_____ _____
NAME TITLE

IN WITNESS WHEREOF, MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____ THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____, 20____.

_____ _____
NAME TITLE

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA }

BEFORE ME THIS _____ DAY OF _____, 20____, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HIMSELF TO BE THE _____ OF J&M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE/SHE, AS SUCH, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC EXPIRES

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA }

BEFORE ME THIS _____ DAY OF _____, 20____, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HIMSELF TO BE THE _____ OF MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE/SHE, AS SUCH, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC EXPIRES

	REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: --	CK: CSD	DRAWING	SHEET
	DATE: --			
SCALE: N/A			–	1 OF 3

V:\PROJECTS\2012\101235 HIGLEY - WARNER IMP\CAD\APN 304-19-009A_009B_MOD.DWG Dec. 23, 2014 7:48 AM

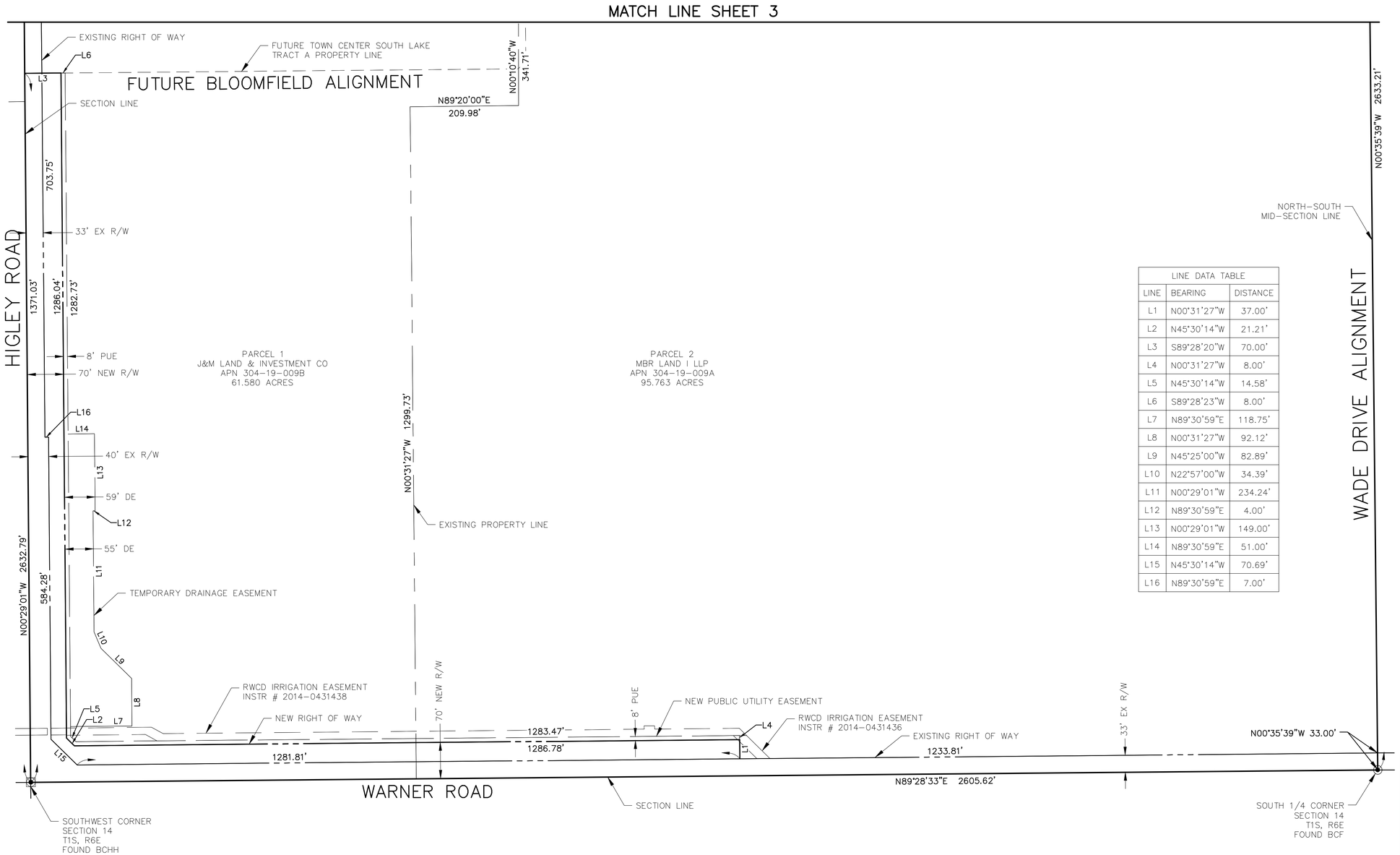
MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

REGISTERED LAND SURVEYOR 31019 C. STEVE DURYEA, JR. Date Signed 12/23/14 ARIZONA, U.S.A. Expires 3/31/15



LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N00°31'27"W	37.00'
L2	N45°30'14"W	21.21'
L3	S89°28'20"W	70.00'
L4	N00°31'27"W	8.00'
L5	N45°30'14"W	14.58'
L6	S89°28'23"W	8.00'
L7	N89°30'59"E	118.75'
L8	N00°31'27"W	92.12'
L9	N45°25'00"W	82.89'
L10	N22°57'00"W	34.39'
L11	N00°29'01"W	234.24'
L12	N89°30'59"E	4.00'
L13	N00°29'01"W	149.00'
L14	N89°30'59"E	51.00'
L15	N45°30'14"W	70.69'
L16	N89°30'59"E	7.00'

SEE SHEET 3 FOR LEGEND

REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: -- DATE: --	CK: CSD	DRAWING	SHEET
SCALE: 1"=100' HORIZONTAL			–	2 OF 3

V:\PROJECTS\2012\101235 HIGLEY - WARNER IMP\CAD\APN 304-19-009A_009B_MOD.DWG Dec. 23, 2014 7:49 AM

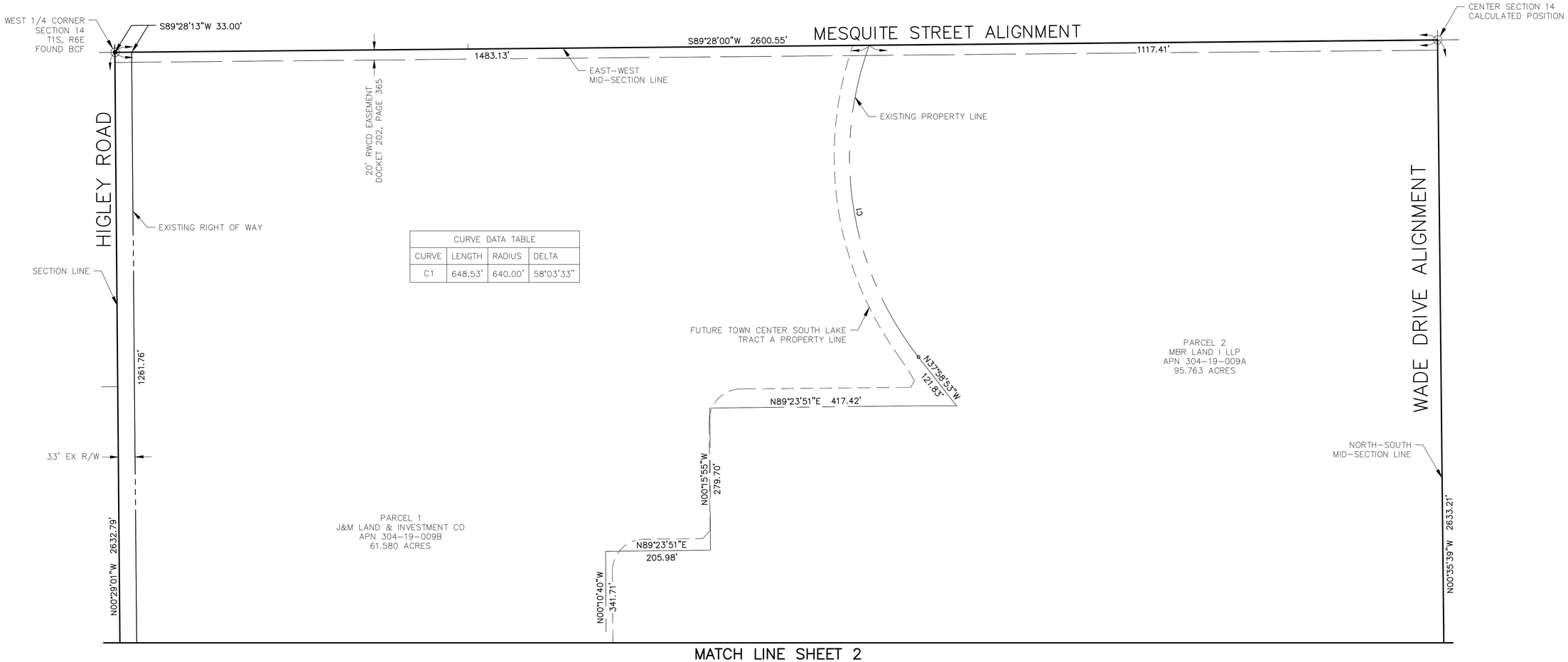
MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

REGISTERED LAND SURVEYOR 31019 C. STEVE DURYEA, JR. Date Signed 12/23/14 ARIZONA, U.S.A. Expires 3/31/15



CURVE DATA TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	648.53'	640.00'	58°03'33"

LEGEND

	FOUND MONUMENT AS NOTED
	CALCULATED POSITION
	SECTION LINE
	MID-SECTION LINE
	EXISTING RIGHT OF WAY
	PROPOSED RIGHT OF WAY
	PROPERTY LINE
	EASEMENT LINE
	FUTURE PROPERTY LINE
BCF	BRASS CAP FLUSH
BCHH	BRASS CAP IN HANDHOLE
DE	TEMPORARY DRAINAGE EASEMENT
PUE	PUBLIC UTILITY EASEMENT
R/W	RIGHT OF WAY

0' 50' 100' 200'

SCALE: 1"=100'

TRACT TABLE			
AREA	SQUARE FEET	ACRES	USE
PARCEL 1	2,682,461	61.580	VACANT
PARCEL 2	4,171,456	95.763	VACANT
RIGHT OF WAY	227,926	5.232	RIGHT OF WAY
BOUNDARY	6,853,917	120.461	–
PUBLIC UTILITY EASEMENT	20,699	0.475	UTILITIES
TEMP DRAINAGE EASEMENT	36,495	0.838	DRAINAGE

REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: --	CK: CSD	DRAWING	SHEET
	DATE: --			
SCALE: 1"=100' HORIZONTAL			–	3 OF 3

V:\PROJECTS\2012\101235 HIGLEY – WARNER IMP\CAD\APN 304-19-009A_009B_MOD.DWG Dec. 23, 2014 7:49 AM

MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 6 EAST,
OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

31019 C. STEVE DURYEA, JR. Date Signed 4/29/15 ARIZONA, U.S.A. Expires 3/31/16

DEDICATION

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS:
THAT J & M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, B & K LAND AND INVESTMENT COMPANY, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP AND MBR LAND I, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP (OWNERS) DO HEREBY PUBLISH THIS MAP OF DEDICATION AS THE PLAT OF "HIGLEY AND WARNER". OWNERS DECLARE THAT SAID MAP OF DEDICATION SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH STREET AND THAT EACH STREET SHALL BE KNOWN BY THE NAME GIVEN TO EACH. OWNERS HEREBY DEDICATES TO THE TOWN OF GILBERT THE STREETS AS SHOWN ON THE MAP OF DEDICATION. EASEMENTS ARE HEREBY DEDICATED FOR THE PURPOSES SHOWN HEREON.

PUBLIC UTILITY EASEMENT IS DEDICATED FOR THE BENEFIT OF PUBLIC UTILITIES AND IS LOCATED WHERE SHOWN, IN, OVER AND UNDER THE AREA 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.

OWNERS WARRANTS AND REPRESENTS TO THE TOWN OF GILBERT TO BE THE SOLE OWNERS OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, 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 MAP OF DEDICATION HAS CONSENTED TO, OR JOINED IN THIS MAP OF DEDICATION, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDER'S OFFICE, OR WHICH OWNERS WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS MAP OF DEDICATION IS RECORDED.

THE UNDERSIGNED OWNERS REPRESENTS AND WARRANTS THAT THE PROPERTY INCLUDED IN THE DEDICATED TRACTS IS FREE AND CLEAR OF MONETARY LIENS AND THE DEDICATED TRACTS ARE NOT BEING USED FOR SECURITY OR OTHER COLLATERAL FOR ANY DEBT OF OWNERS.

IN WITNESS WHEREOF: J & M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____ THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____, 20____.

_____ _____
NAME TITLE

N WITNESS WHEREOF: B & K LAND AND INVESTMENT COMPANY, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____ THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____, 20____.

_____ _____
NAME TITLE

IN WITNESS WHEREOF: MBR LAND I, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, AS OWNER, HAS HEREUNDER CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____ THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____, 20____.

_____ _____
NAME TITLE

ACKNOWLEDGMENT

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

BEFORE ME THIS _____ DAY OF _____, 20____, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HIMSELF TO BE THE _____ OF J & M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE/SHE, AS SUCH, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC EXPIRES

ACKNOWLEDGMENT

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

BEFORE ME THIS _____ DAY OF _____, 20____, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HIMSELF TO BE THE _____ OF B & K LAND AND INVESTMENT COMPANY, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE/SHE, AS SUCH, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC EXPIRES

ACKNOWLEDGMENT

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

BEFORE ME THIS _____ DAY OF _____, 20____, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HIMSELF TO BE THE _____ OF MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE/SHE, AS SUCH, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC EXPIRES

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 20____.

BY: _____ _____
MAYOR TOWN CLERK

APPROVED BY: _____ _____
TOWN ENGINEER DATE

APPROVED BY: _____ _____
PLANNING MANAGER DATE

AREAS TO BE DEDICATED

RIGHT OF WAY: 227,926 SQUARE FEET OR 5.232 ACRES, MORE OR LESS

PUBLIC UTILITY EASEMENT: 20,699 SQUARE FEET OR 0.475 ACRES, MORE OR LESS

TEMPORARY DRAINAGE EASEMENT: 36,495 SQUARE FEET OR 0.838 ACRES, MORE OR LESS

NOTES

1. TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF ANY PRIVATE STREETS, PRIVATE UTILITIES, PRIVATE FACILITIES AND LANDSCAPED AREAS, ETC., WITHIN THE PROJECT, PRIVATE STREETS, PRIVATE UTILITIES, PRIVATE FACILITIES AND LANDSCAPED AREAS SHALL BE OWNED AND MAINTAINED BY THE OWNER(S).
2. CONSTRUCTION WITHIN PUBLIC UTILITY EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES SHALL BE LIMITED TO UTILITIES, AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING UNLESS APPROVED OTHERWISE BY THE TOWN OF GILBERT.
3. THIS PROPERTY, DUE TO ITS PROXIMITY TO WILLIAMS GATEWAY AIRPORT, IS LIKELY TO EXPERIENCE AIRCRAFT OVERFLIGHTS, WHICH COULD GENERATE NOISE LEVELS WHICH MAY BE OF CONCERN TO SOME INDIVIDUALS.
4. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
5. ALL ELECTRICAL LINES AND COMMUNICATION LINES ARE TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION GENERAL ORDER R.(42)33.

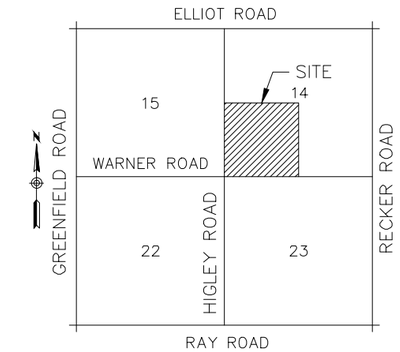
FLOOD PLAIN CERTIFICATION

ZONE X AS INDICATED ON FLOOD INSURANCE RATE MAP 04013C2755L, PANEL 2755L OF 4425, REVISED OCTOBER 16, 2013.

CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY SHOWN HEREON FOR THE STATED SECTION 14 AND PLATTED AS A MAP OF DEDICATION WAS MADE DURING THE MONTH OF DECEMBER 2012, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN HEREON, AND THAT THE MONUMENTS AND POSITIONS SHOWN ARE PER CURRENT "ARIZONA BOUNDARY SURVEY MINIMUM STANDARDS" AND SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

C. STEVE DURYEA, JR., RLS 31019



VICINITY MAP
SECTIONS 14
T1S, R6E
NTS

SURVEYOR

C. STEVE DURYEA, JR., RLS
7500 N. DREAMY DRAW DRIVE, SUITE 200
PHOENIX, AZ. 85020
PHONE: 602-957-1155
EMAIL: steve.duryea@dibblecorp.com

REFERENCE DOCUMENTS

BOOK 2 OF ROAD MAPS, PAGE 60, MCR
MCR INSTRUMENT 1980-0060249
MCR INSTRUMENT 2013-0084377
MCR INSTRUMENT 2013-0084378
TOWN CENTER SOUTH LAKE FINAL PLAT

BASIS OF BEARINGS

THE MONUMENT LINE OF WARNER ROAD, HAVING A BEARING OF NORTH 89 DEGREES 28 MINUTES 33 SECONDS EAST, BEING THE SOUTH LINE OF THE SW 1/4 OF SECTION 14, T1S, R6E, G&SRM.

OWNERS

J & M LAND & INVESTMENT COMPANY, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP
16744 E. ELLIOT RD.
GILBERT, AZ 85234
PHONE: (480) 813-8234

B & K LAND AND INVESTMENT COMPANY, LLP, AN ARIZONA LIMITED LIABILITY PARTNERSHIP
11611 S HIGLEY RD
GILBERT, AZ 85296

MBR LAND I, AN ARIZONA LIMITED LIABILITY PARTNERSHIP
3180 E ELLIOT RD
GILBERT, AZ 85234
PHONE: (480) 813-5434

LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

△	REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: -- DATE: --	CK: CSD	DRAWING	SHEET
SCALE: N/A			–	1 OF 3

V:\PROJECTS\2012\101235 HIGLEY - WARNER IMP\CAD\APN 304-19-009A_0099_MOD.DWG Apr. 28, 2015 8:32 AM

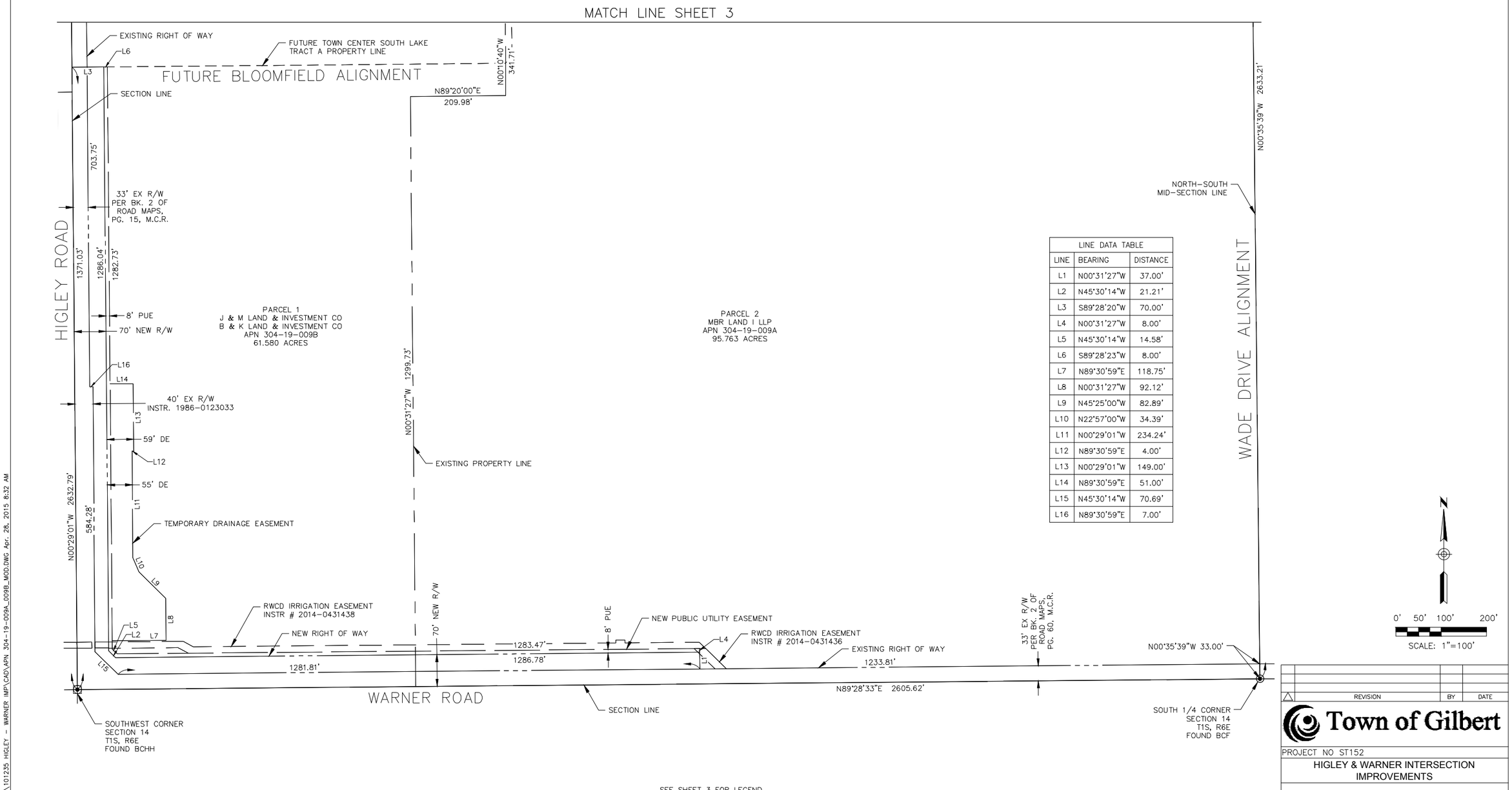
MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

REGISTERED LAND SURVEYOR
31019
C. STEVE DURYEA, JR.
Date Signed 4/28/15
ARIZONA, U.S.A.
Expires 3/31/18



LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N00°31'27"W	37.00'
L2	N45°30'14"W	21.21'
L3	S89°28'20"W	70.00'
L4	N00°31'27"W	8.00'
L5	N45°30'14"W	14.58'
L6	S89°28'23"W	8.00'
L7	N89°30'59"E	118.75'
L8	N00°31'27"W	92.12'
L9	N45°25'00"W	82.89'
L10	N22°57'00"W	34.39'
L11	N00°29'01"W	234.24'
L12	N89°30'59"E	4.00'
L13	N00°29'01"W	149.00'
L14	N89°30'59"E	51.00'
L15	N45°30'14"W	70.69'
L16	N89°30'59"E	7.00'

SEE SHEET 3 FOR LEGEND

REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: --	CK: CSD	DRAWING	SHEET
	DATE: --			
SCALE: 1"=100' HORIZONTAL			–	2 OF 3

V:\PROJECTS\2012\101235 HIGLEY - WARNER IMP\CAD\APN 304-19-009A_009B_MOD.DWG Apr. 28, 2015 8:32 AM

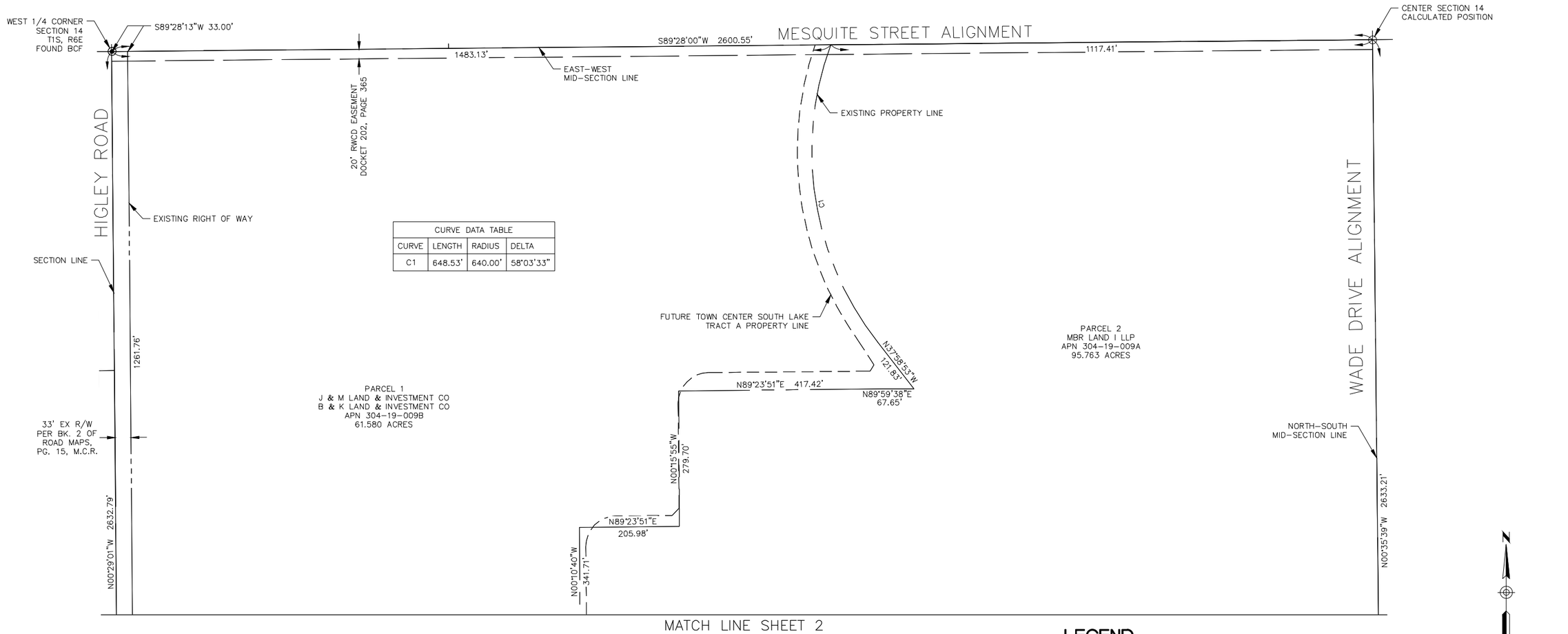
MAP OF DEDICATION
FOR
"HIGLEY AND WARNER"

AS BUILT DATE

Dibble Engineering

DIBBLE PROJECT NO 101235

31019 C. STEVE DURYEA, JR. Date signed 4/28/15 ARIZONA, U.S.A. Expires 3/31/18



CURVE DATA TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	648.53'	640.00'	58°03'33"

TRACT TABLE			
AREA	SQUARE FEET	ACRES	USE
PARCEL 1	2,682,461	61.580	VACANT
PARCEL 2	4,171,456	95.763	VACANT
RIGHT OF WAY	227,926	5.232	RIGHT OF WAY
BOUNDARY	6,853,917	120.461	–
PUBLIC UTILITY EASEMENT	20,699	0.475	UTILITIES
TEMP DRAINAGE EASEMENT	36,495	0.838	DRAINAGE

LEGEND

	FOUND MONUMENT AS NOTED
	CALCULATED POSITION
	SECTION LINE
	MID-SECTION LINE
	EXISTING RIGHT OF WAY
	PROPOSED RIGHT OF WAY
	PROPERTY LINE
	EASEMENT LINE
	FUTURE PROPERTY LINE
BCF	BRASS CAP FLUSH
BCHH	BRASS CAP IN HANDHOLE
DE	TEMPORARY DRAINAGE EASEMENT
PUE	PUBLIC UTILITY EASEMENT
R/W	RIGHT OF WAY
RWCD	ROOSEVELT WATER CONSERVATION DISTRICT

REVISION	BY	DATE

Town of Gilbert

PROJECT NO ST152

HIGLEY & WARNER INTERSECTION IMPROVEMENTS

MAP OF DEDICATION

DRN: DBB	DES: -- DATE: --	CK: CSD	DRAWING	SHEET
SCALE: 1"=100' HORIZONTAL			–	3 OF 3

V:\PROJECTS\2012\101235 HIGLEY - WARNER IMP\CAD\APN 304-19-009A_009B_MOD.DWG Apr. 28, 2015 8:32 AM

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: April 30, 2015

SUBJECT: SP1403: Approval of the "Final Plat of Gateway Church of Christ", located south of the southeast corner of Greenfield Road and Queen Creek Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure services to the subject site.

RECOMMENDED MOTION

A motion to approve the "Final Plat of Gateway Church of Christ", located south of the southeast corner of Greenfield Road and Queen Creek Road.

BACKGROUND/DISCUSSION

The *Final Plat of NWC Gateway Church of Christ* includes Maricopa County Parcels 304-70-083A and 304-70-085A, which become a single lot of approximately 4.56 acres. In addition, the Final Plat dedicates easements for water and other public utilities. On May 15 2014, the developers of the Gateway Church of Christ received approval from the Design Review Board on their proposed project (Case DR13-45).

The following is an abbreviated history of Town actions associated with this property:

May 9, 2006	The Town Council adopted Ordinance No. 1743 (A06-25), annexing an area at the southeast comer of Greenfield and Queen Creek Roads, the subject site is located within this annexation area.
June 20, 2006	The Town Council adopted Ordinance No. 1785, rezoning approximately 77 acres at the southeast comer of Greenfield and

	Queen Creek Roads including the subject site from Maricopa County Rural 43 to Town of Gilbert Single Family 43 (SF-43).
May 15, 2014	Design Review Board approved Case No. DR13-45, the Gateway Church of Christ project, for site plan, landscape plan, grading and drainage, elevations, lighting, colors and materials.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this final plat approval. Approval of this final plat will allow the owner of the land to move forward with the development of the property, including a 10,846 square foot "Phase 1" Church facility on the subject site. This will have the indirect benefit of bringing new construction activity and sales tax revenues to the Town.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

The Engineering Division has reviewed this final plat. All Town requirements have been addressed by the applicant. Staff therefore recommends approval of this final plat by the Town Council.

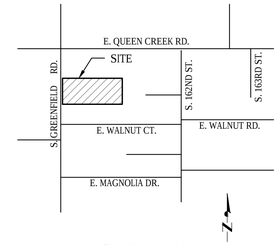
Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	4/16/2015 6:40 PM

FINAL PLAT
OF
GATEWAY CHURCH OF CHRIST

BEING SITUATED IN PORTION OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



VICINITY MAP
N.T.S.

LEGAL DESCRIPTION:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15;

THENCE DUE SOUTH ALONG THE WEST LINE OF SAID SECTION 15, A DISTANCE OF 330.02 FEET;

THENCE NORTH 89 DEGREES 22 MINUTES 24 SECONDS EAST, A DISTANCE OF 65.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 22 MINUTES 24 SECONDS EAST, A DISTANCE OF 599.51 FEET;

THENCE SOUTH 00 DEGREES 02 MINUTES 47 SECONDS EAST, A DISTANCE OF 331.94 FEET;

THENCE SOUTH 89 DEGREES 26 MINUTES 52 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, A DISTANCE OF 599.77 FEET;

THENCE DUE NORTH A DISTANCE OF 331.16 FEET TO THE POINT OF BEGINNING;

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 BY THE TOWN OF GILBERT.
2. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND
3. ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
4. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY 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 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.
8. 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.

FEMA FLOOD ZONE

ACCORDING TO FEMA FLOOD INSURANCE RATE MAP, MAP NUMBER 04013C2765L, DATED OCTOBER 16, 2013, THE SUBJECT PROPERTY IS LOCATED IN ZONE X. ZONE X IS DEFINED AS "AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD."

SUBDIVIDER/OWNER

GATEWAY CHURCH OF CHRIST, INC.
2969 S. MARTINGALE RD.
GILBERT, AZ 85295

ENGINEER/LAND SURVEYOR

O'NEILL ENGINEERING, LLC
2001 W. CAMELBACK ROAD, SUITE 200
PHOENIX, ARIZONA 85015
CONTACT: TIMOTHY M. O'NEILL, PE
PHONE: (602) 242-0020
FAX: (602) 242-5722

BASIS OF BEARING

THE MONUMENT LINE OF GREENFIELD ROAD, ALSO BEING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 15, USING A BEARING OF NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, PER THE RECORD OF SURVEY, RECORDED IN BOOK 664, PAGE 11, M.C.R.

PROJECT INFORMATION

LOT DATA (GROSS)	198,804 S.F. / 4.56 (ACRES)
LOT DATA (NET)	198,804 S.F. / 4.56 (ACRES)

CERTIFICATION

THIS IS TO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AND THE MONUMENTS DESCRIBED HEREIN HAVE EITHER BEEN SET OR LOCATED AS DESCRIBED TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Registered Professional Engineer (CIVIL) CERTIFICATE NO. 10006 TIMOTHY M. O'NEILL Date Signed 3/10/15 ARIZONA, U.S.A.

EXPIRES 12/31/2015

TIMOTHY M. O'NEILL
REGISTERED LAND SURVEYOR NO. 17403
2001 W. CAMELBACK RD. SUITE 200
PHOENIX, AZ 85015

DEDICATION

KNOW ALL MEN BY THESE PRESENTS, THAT GATEWAY CHURCH OF CHRIST INC., AN ARIZONA NON-PROFIT ORGANIZATION, AS OWNER DOES HEREBY PUBLISH THIS PLAT AS THE PLAT OF GATEWAY CHURCH OF CHRIST. OWNER DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOT, STREET AND TRACT, AND THAT EACH LOT, STREET AND TRACT 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 AS SHOWN. EASEMENTS ARE HEREBY DEDICATED FOR THE PURPOSE 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 LOCATED 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 OF TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINTED IN THIS PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDER'S OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF GATEWAY CHURCH OF CHRIST INC., AN ARIZONA NON-PROFIT ORGANIZATION, AS OWNER HAS HEREUNTO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED:

BY:_____ DATE: _____

NAME:_____

TITLE:_____

ACKNOWLEDGMENT:

STATE OF ARIZONA)
) S.S.
COUNTY OF MARICOPA)

ON THIS _____ DAY OF _____, 20_____, BEFORE ME,

THE UNDERSIGNED, _____,

TRUSTOR, BY _____ ITS _____ ,

WHOSE IDENITY WAS PROVEN TO ME ON THE BASIS OF SATIFACTORY EVIDENCE TO BE THE PERSON WHO HE OR SHE CLAIMS TO BE, AND ACKNOWLEDGED THAT HE OR SHE SIGNED THE ABOVE DOCUMENT.

_____ _____
NOTARY PUBLIC DATE

_____, 20_____.
MY COMMISSION EXPIRES

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.

THIS_____DAY OF _____, 20_____.

_____
OWNER

_____
BY

_____
ITS:

"THIS PROJECT IS IN THE SERVICE AREA OF THE TOWN OF GILBERT, A DESIGNATED PROVIDER, WHICH WILL PROVIDE WATER SERVICE IN ACCORDANCE WITH THE TOWN CODE AND OTHER APPLICABLE REGULATIONS."

APPROVALS

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA

THIS _____ DAY OF _____, 2015.

_____ _____
MAYOR DATE

ATTEST: _____ _____
TOWN CLERK DATE

APPROVED BY: _____ _____
PLANNING MANAGER DATE

APPROVED BY: _____ _____
TOWN ENGINEER DATE

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

Engineering Answers

GATEWAY CHURCH OF CHRIST
4875 SOUTH GREENFIELD ROAD
GILBERT, ARIZONA

FINAL PLAT

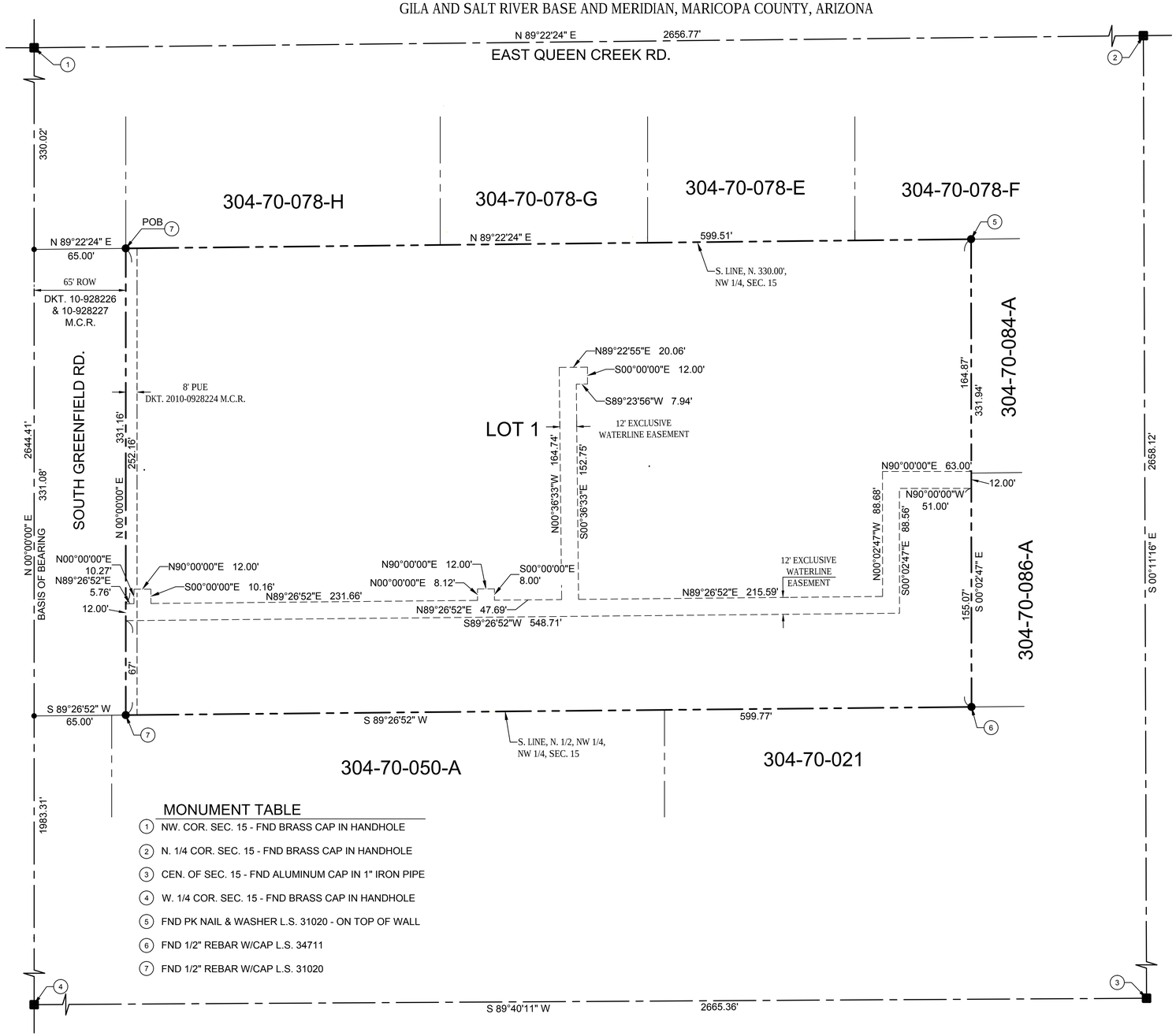
No	Date	Revision Description

Proj No: 2013.477
Date: 3-12-2015
Designed By: CAM
Drawn By: CAM
Scale: NONE
Sheet: 1 of 2

Michael Peck 3/12/2015 10:26 AM K:\Projects\2013-477-pll\Plat\Preliminary Design\13-477-MLD-001.dwg

FINAL PLAT
OF
GATEWAY CHURCH OF CHRIST

SITUATED IN PORTION OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



MONUMENT TABLE

1. NW. COR. SEC. 15 - FND BRASS CAP IN HANDHOLE
2. N. 1/4 COR. SEC. 15 - FND BRASS CAP IN HANDHOLE
3. CEN. OF SEC. 15 - FND ALUMINUM CAP IN 1" IRON PIPE
4. W. 1/4 COR. SEC. 15 - FND BRASS CAP IN HANDHOLE
5. FND PK NAIL & WASHER L.S. 31020 - ON TOP OF WALL
6. FND 1/2" REBAR W/CAP L.S. 34711
7. FND 1/2" REBAR W/CAP L.S. 31020

LEGEND

EXISTING PROPERTY LINE

EXISTING OR PROPOSED EASEMENT (TYPE AS NOTED)

40 0 40

1 inch = 40 ft.

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

Engineering Answers

GATEWAY CHURCH OF CHRIST

4875 SOUTH GREENFIELD ROAD
GILBERT, ARIZONA

FINAL PLAT

Registered Professional Land Surveyor
LS 10006
TIMOTHY M. O'NEILL
Date Signed 3/11/15
ARIZONA, U.S.A.

EXPIRES 12/31/2015

No.	Date	Revision Description

Proj. No:	2013.477
Date:	3-12-2015
Designed By:	CAM
Drawn By:	CAM
Scale:	1"=40'
Sheet:	2 of 2

Michael Peck 3/12/2015 10:30 AM K:\Projects\2013\477\pld\Plat\Preliminary Design\13-477-MLD-002.dwg

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: April 30, 2015

SUBJECT: Temp Extension of Premises - Cantina Laredo

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to recommend approval of a Temporary Extension of Premises for Cantina Laredo for a Cinco de Mayo event on May 4 and 5, 2015.

BACKGROUND/DISCUSSION

Cantina Laredo located at 2150 East Williams Field Road has submitted a request for a Temporary Extension of Premises for a special event for Cinco de Mayo on May 4 and 5, 2015. The estimated attendance at the event is 200 people.

The temporary extension of premises will allow alcohol to be served in a fenced area adjacent to the restaurant. Security personnel will be located at the site.

The Temporary Extension of Premises has been reviewed by Town staff, including Code Compliance and the Police Department and no adverse information has been received. *The Police Department reviewed the security plan and the proposed security measures are adequate for this type of event.*

FINANCIAL IMPACT

The temporary extension of premises license fee is $50.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Cathy Templeton
Town Clerk

Attachments and Enclosures:
Attachment 1 – Application for Extension of Premises/Patio Permit

Approved By	Approval Date
Cathy Templeton	4/16/2015 9:13 AM

RECEIVED

APR 14 2015

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

39D

Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

4-30-15

FOR DLLC USE ONLY

Date payment received: ____/____/____

CSR initials: _____

200

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT
This application must be returned to the Department of Liquor
(Notice: Allow 30-45 days to process permanent change of premises)

☐ Permanent change of area of service. **A NON-REFUNDABLE $50 FEE WILL APPLY.** Specific purpose for change:

_____

■ Temporary change for date(s) of: 05 / 04 / 2015 through 05 / 05 / 2015 List specific purpose for change:
Cinco De Mayo

1. Licensee's Name: Chmurzynski, David
   Last First Middle
2. Mailing Address: 2150 E. Williams Field Rd. Gilbert, AZ 85296
   Street City State Zip
3. Business Name: Cantina Laredo License # 12077718
4. Business Address: 2150 E. Williams Field Rd. Gilbert, AZ 85296
   Street City State Zip
5. Contact phone: (480) 782-6777 Business phone: (____) _____
6. Email: gilbert@cantinalaredo.com
7. Is extension of premises/patio complete?
   ☐N/A ☐Yes ■No If no, what is your estimated completion date? 05 / 04 / 2015
8. Do you understand Arizona Liquor Laws and Regulations?
   ■Yes ☐No
9. Does this extension bring your premises within 300 feet of a church or school?
   ■Yes ☐No
10. Have you received approved Liquor Law Training?
    ■Yes ☐No If yes, when does your Certificate expire? Date: 04 / 23 / 2018
11. What security precautions will be taken to prevent liquor violations in the extended area?
    Manager on duty, security at event, i.d. at door.
12. **IMPORTANT**: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

52175

295778

☐ Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premise. List specific reasons for exemption:

_____

_____

Investigation Recommendation: ☐Approval ☐Disapproval by:_____ Date: ___/___/___

➲OBTAIN APPROVAL FROM LOCAL GOVERNING BODY BEFORE SUBMITTING TO THE DEPARTMENT➲

➲ After completing the application, please take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

(Authorized Signature)	(Title)	(Agency)	Date
	MAYOR	TOWN OF GILBERT	

I, DAVID CHMURZYNSKI, declare that I am the APPLICANT and, under penalty of perjury, making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.

(Print full name)

x (Signature)	Title/ Position	Date	Phone #
	Gen Mgr	4/8/15	480-595-0060

The foregoing instrument was acknowledged before me this 8 (Day) April (Month) 2015 (Year)

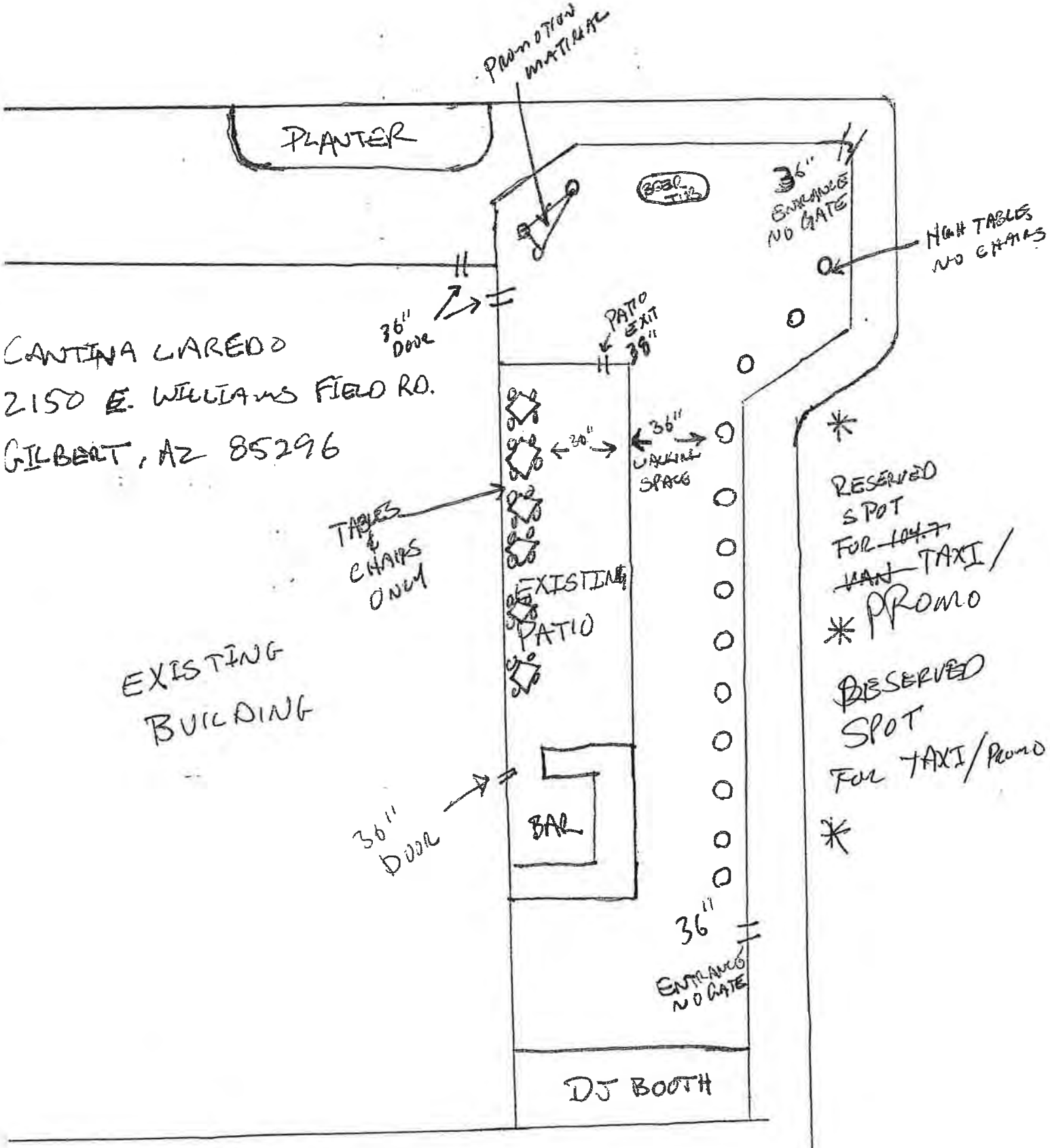
State Arizona County of Maricopa

My Commission Expires on: July 31, 2017 (Date) Rachel Oltjenbruns (Signature of Notary Public)

Rachel Oltjenbruns
Notary Public
Maricopa County, Arizona
My Comm. Expires 07-31-17

Investigation Recommendation: ☐Approval ☐Disapproval by:_____ Date: ___/___/___

Director Signature required for Disapprovals _____ Date: ___/___/___



ANTICIPATED ATTENDIANCE -200

FENCE WILL BE ANCHORED TO BUILDING & WITH SAND BAGS

SANTAN VILLAGE

April 14, 2015

Town of Gilbert
90 East Civic Center Drive
Gilbert, AZ 85295

To Whom It May Concern:

On behalf of Westcor SanTan Village LLC, the restaurant Cantina Laredo has been approved to use its premises and extend their patio into the common area on the North side of their restaurant for a planned Cinco de Mayo celebration on May 5, 2015.

Please feel free to contact us with any questions.

Thank you.

Best regards,

Sheila Hunter
Senior Property Manager
SanTan Village

2218 E Williams Field Rd., Ste. 235
Gilbert, AZ 85295
P: 480.899.1878 | F: 480.726.3517
www.ShopSanTanVillage.com

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: April 30, 2015

SUBJECT: Liquor License - Temari Fine Japanese Cuisine

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to recommend approval of the Acquisition of Control for Temari Fine Japanese Cuisine.

BACKGROUND/DISCUSSION

Liquor licenses are governed by the Arizona Revised Statute, Title 4 Alcoholic Beverages. Once a license has been issued to an establishment certain changes must be reported with the Arizona Department of Liquor Licenses and Control. Those changes include agent change, acquisition of control, and restructuring.

Upon receipt of changes, Arizona Department of Liquor Licenses and Control submits the change to the Local Governing Body of the city or town. The Local Governing Body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control.

An *Acquisition of Control* has been received for Temari Fine Japanese Cuisine. Temari Fine Japanese Cuisine currently has a Series 12 Restaurant Liquor License for919 North Val Vista Drive #101.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control.

FINANCIAL IMPACT

There are no fees associated with this change.

STAFF RECOMMENDATION

Staff recommends approval.

Respectfully submitted,

Cathy Templeton
Town Clerk

Attachments/Enclosures:
Attachment 1 – Application

Approved By	Approval Date
Cathy Templeton	4/14/2015 12:24 PM

RECEIVED

HC

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

'15 MAR 25 Liq. Lic. AM10:11

TC H-30-15

APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL - RESTRUCTURE

Check Appropriate Box

- ☐ Agent Change — Complete Sections 1,2,3,4,6 (See Note 1 on back)
- ☒ Acquisition of Control — Complete Sections 1,2, (3,4 if changing Agent), 6
- ☐ Restructure — Complete Sections 1,2,(3,4 if changing Agent) ,5,6 (See Note 2 on back)

SECTION 1 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

1. Name (INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER)
   CHIN (Last) Matthew (First) Un Sung (Middle) 12075824 (Liquor License #)
2. ☐ Corporation ☑ L.L.C. ☐ N/A: Temari Fine Japane Cuisine LLC (Exactly as it appears on Articles of Inc. or Articles of Org.) Corp. File #: L11205195
3. Business Name: Temari Fine Japanese cuisine maricopa (Exactly as it appears on license)
4. Business Address: 919 N. Val vista Dr. Gilbert #101 AZ 85234 (Do not use P.O. Box Number) City COUNTY Zip
5. Is the business located within the incorporated limits of the above city or town? ☑ Yes ☐ No
6. Mailing Address: 919 N. Val vista Dr. Gilbert #101 AZ 85234 City State Zip
7. Business Phone: (480) 539-0159 Residence Phone: [redacted]
8. Does this transaction involve the sale of any portion of the corporate stock? ☒ YES ☐ NO ☐ N/A If yes, submit a certified copy of minutes.
9. Has there been any change of officers? ☒ YES ☐ NO ☐ N/A If yes, submit a certified copy of minutes.

SECTION 2 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

Each person listed in Section II must submit a personal questionnaire (Form LIC0101) and a Department approved fingerprint card which may be obtained at the Dept. A person appearing in both lists need only submit one questionnaire and fingerprint card.

1. List individual owner or partners or all directors, officers in corp., members in LLC:

Last	First	Middle	Title	Residence Address	City State Zip
Chin	Matthew	Un Sung	Member Owner	[redacted]	

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

2. List stockholders or controlling members owning 10% or more of Corp/LLC:

Last	First	Middle	% Owned	Residence Address	City State Zip
Chin	Matthew	Un Sung	100	[redacted]	

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

Disabled individuals requiring special accommodations please call the Department

12/2/2014

Date Received 3/25/15
CSR DW

49039

006368

'15 MAR 25 Liq. Lic. AM10:11

4-203.F ACQUISITION OF CONTROL

If a person other than those persons originally licensed acquires control over a license or licensee, the person shall file notice of the acquisition with the Director within fifteen business days after such acquisition of control and a list of officers, directors or other controlling persons on a form prescribed by the Director. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed by this title. On request, the director shall conduct a preinvestigation prior to the assignment, sale or transfer of control of a license or licensee, the reasonable costs of which, not to exceed one thousand dollars, shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this title are met. On receipt of notice of an acquisition of control or request of a preinvestigation, the Director shall forward the notice within fifteen days to the local governing body of the city or town, if the licensed premises is in an incorporated area, or the county, if the licensed premises is in an unincorporated area. The Local Governing Body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. If the Director does not receive any protests, the Director may protest the acquisition of control or approve the acquisition of control based on the capability, reliability and qualification of the person acquiring control. Any protest shall be set for a hearing before the Board. Any transfer shall be approved or disapproved within one hundred five days of the filing of the notice of acquisition and control. The person who has acquired control of a license or licensee has the burden of an original application at the hearing, and the board shall make its determination pursuant to section 4-202 and this section with respect to capability, reliability and qualification.

4-203.H RESTRUCTURING

A restructuring of a licensee's business is an acquisition of control pursuant to subsection F of this section and is a transfer of a spirituous liquor license and not the issuance of a new spirituous liquor license if both of the following apply:

1. All of the controlling persons of the licensee and the new business entity are identical.

2. There is no change in control or beneficial ownership.

4-203.I

If subsection H of this section applies, the licensee's history of violations of this title is the history of the new business entity. The Director may prescribe a form and shall require the applicant to provide the necessary information to ensure compliance with this subsection and subsections F and G of this section.

4-202.A AGENT

...A person shall hold a club license, corporation license, limited liability company license, partnership license or out-of-state license through an agent who shall be a natural person and meet the qualifications for licensure. ... For purposes of this subsection, "agent" means a person designated by an applicant or licensee to receive communications from the department and to file documents and sign documents for filing with the department on behalf of the applicant or licensee.

4-209.A FEES; TRANSFER (RESTRUCTURE) and ACQUISITION OF CONTROL

...An application fee for an original license or the transfer of a license shall be one hundred dollars, which shall be retained by this state.

4-209.H FEES; CHANGE OF AGENT

Assignment fees for a change of agent, as provided for in section 4-202, subsection C, shall be one hundred dollars, except that where a licensee holds multiple licenses the assignment fee for the first license shall be one hundred dollars and the assignment fee for all remaining licenses transferred to the same agent shall be fifty dollars each, except the aggregate assignment fees shall in no event exceed one thousand dollars.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Melanie Dykstra, Management Support Analyst, 503-6330

MEETING DATE: April 30, 2015

SUBJECT: Motion to ratify the By-laws of the Parks, Recreation and Library Servcies Advisory Board

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to ratify the bylaws of the Parks, Recreation, and Library Services Advisory Board as presented.

BACKGROUND/DISCUSSION

On April 7, 2015, the Parks, Recreation and Library Services Advisory Board approved that the attached draft bylaws be presented to Town Council for consideration which outline the Board's organization and responsibilities, meetings, retention of records, and rules and amendments.

These bylaws were reviewed for form by Attorney Michael Hamblin.

FINANCIAL IMPACT

There is no financial impact.

STAFF RECOMMENDATION

Staff recommends ratification of the Parks, Recreation, and Library Services Advisory Board Bylaws as presented.

Respectfully submitted,

Melanie Dykstra

Management Support Analyst

Approved By	Approval Date
Rod Buchanan	4/20/2015 9:36 AM

BY-LAWS OF THE PARKS, RECREATION AND LIBRARY ADVISORY BOARD TOWN OF GILBERT

ARTICLE I
ORGANIZATION

SECTION 1: OFFICIAL NAME

The name of the Board shall be known as the Parks, Recreation and Library Services Advisory Board;

SECTION 2: PRINCIPAL OFFICE

The principal office for the transaction of the activities and business affairs of the Board will be located at the Town of Gilbert, Municipal Center, Parks and Recreation Office at 90 E Civic Center Drive, Gilbert 85296.

SECTION 3: MISSION and VISION STATEMENT

The **Mission** of the Gilbert Parks, Recreation and Library Services Advisory Board is to strive to ensure that residents of the Town have opportunities to enjoy broad, satisfying leisure experiences.

The **Vision** of the Gilbert Parks, Recreation and Library Services Advisory Board is to encourage the health and well-being of its residents through diverse recreational opportunities. The Town offers safe, well-maintained facilities, parks and open spaces, including, locally and regionally connected multi-use trails, equestrian paths and bicycle lanes.

ARTICLE II
BOARD

SECTION 1: BOARD

The Board shall be organized as provided in Code of Gilbert, Chapter 1 General Provisions, Article IV Boards, Commissions and Committees, Division 5 Parks, Recreation and Library Services Advisory Board as passed and adopted by the Council of the Town of Gilbert, Arizona (Town Council).

SECTION 2: CHAIR AND VICE CHAIR

The Board shall, at its first meeting every November, elect a Chairperson (Chair) and Vice Chairperson (Vice Chair) from among its members.

The **Chair** shall preside at all meetings and hearings of the Board, decide all points of order or procedures, and perform any duties required by the ordinance or these By-laws. The Chair may make or second motions and shall have a voice and vote in all its proceedings.

The **Vice Chairperson** shall serve in the absence of the Chair.

In the Absence of the Chair and Vice Chair, the Board will select an **Acting Chair** to serve at the meeting by a majority vote of the members present.

SECTION 3: TERM OF SERVICE

The term of the Chair and Vice Chair shall be one (1) year and shall not serve in this capacity for more than two (2) consecutive one-year terms.

SECTION 4: VACANCIES/REMOVAL

Vacancies and removal from office of the Chair and Vice Chair shall be managed in conformance with Town of Gilbert Code, Article VI, Section 1-205.

Any Board member may resign at any time by giving written notice to the Chair or the Town Clerk. Such resignation shall take effect on the date of the receipt of such notice, or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5: POWERS

Subject to any limitations contained within Town ordinances or these By-laws, the activities and affairs of the Board shall be conducted and all powers shall be exercised by or under the direction of the Board.

The Board may delegate the management of the activities of the Board to any person or persons or sub-committees, however composed, provided that the activities and affairs of the Board shall be managed and all powers shall be exercised under the direction of the Board.

SECTION 6: ENDORSEMENT OF DOCUMENTS/CONTRACTS

Neither the Board nor any of its members shall have any power or authority to enter into any contractual agreements or commitments on behalf of the Board or to pledge its credit or to render it liable for any purpose or amount. The Staff Liaison or the Gilbert Director of Parks and Recreation must approve all expenditures. All documents or contracts requiring an endorsement must be signed by the Director of Parks and Recreation.

SECTION 6: LEGAL COUNCIL

The Town Attorney or his/her designated representative shall be legal counsel for the Board and shall provide, upon request, advice or counsel on any question of law or matter requiring legal interpretation of advice, subject to approval of the Town Manager.

ARTICLE III
MEETINGS

SECTION 1: OPEN MEETING LAW

All Board members and the Staff Liaison shall be familiar with the Arizona Open Meeting Law A.R.S. Sec. 38 – 431 to Sec. 431.09. All members are required to attend mandatory training on the Open Meeting Law and Conflict of Interest once per year. Training sessions are scheduled by the Clerk's Office of the Town of Gilbert and presented by one of the Town's attorneys. Any member faced with a situation not specifically addressed within these By-laws shall consult with legal counsel prior to proceeding.

SECTION 2: PUBLIC PARTICIPATION

The public is welcome and invited to attend Board meetings and to speak on any item on the agenda. A person wishing to address the Board must fill out a Request to Speak. Request to Speak forms will be available and should be submitted to the Chairman prior to the start of the meeting. If any written materials are to be provided to the Board, a copy shall also be provided to the Staff Liaison for inclusion in the minutes of the meeting. Speakers shall be allowed a maximum of three minutes to speak, but may take up to six minutes if another individual who signs up to speak yields the time to the speaker. Members of the audience may address the Board on any item not on the agenda. The Board 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. A person who disrupts the meeting may be asked to leave and be removed.

SECTION 3: REGULAR MEETINGS

Regular meetings of the Board shall be held on the second Tuesday of each month beginning at 6:00 PM or at a time agreed to by the members. In the event a future meeting is being cancelled or rescheduled, the Board will be promptly notified. When a public meeting will need to be cancelled for lack of a quorum or other reason, the Board will be notified, the website will note cancelation, and the doors to the facility where the meeting is scheduled will be posted with a cancelation notice. Notice of time and place of any public meeting to be held by the Board shall be given as required by State Law.

SECTION 4: SPECIAL MEETINGS

Special meetings may be held by the Board on the call of the Chair, or upon the call of the clerk at the request of a majority of the members of the board. At least twenty-four (24) hours notice of the meeting shall be given to each member and the manner of the call shall be noted in the minutes of the special meeting held. The Staff Liaison shall receive forty-eight (48) hours notice of the meeting and shall post meeting notices twenty-four (24) hours prior to such meeting.

SECTION 5: WORK STUDY/EXECUTIVE SESSIONS

Work Study and Executive Sessions of the Board may be held prior to or following any regular or special meeting or at any other time by call from the Chair or by a majority of the members and filed with the Staff Liaison, or by a majority of the members constituting a quorum at any previous meeting. All Work Study Sessions shall be open to the Public. Any action calling for a formal vote shall take place only at a regular or special meeting.

SECTION 6: SUBCOMMITTEE MEETINGS

When deemed necessary by a majority of the Board, subcommittees may be formed with members of the board for specific projects related to Board matters. Subcommittees may solicit advice and assistance from outside sources, but those advisors have no official status with the subcommittee. All subcommittee meetings shall comply with the open meeting laws which include notice to the public and the creation of minutes.

SECTION 7: LOCATION OF MEETINGS

The location of meetings of the Board shall be in the Municipal Center of the Town of Gilbert, or any other location as designated by the Chair and filed in the office of the Town Clerk and posted at designated locations in the Town and/or on the Town Web site at www.gilbertaz.gov.

SECTION 8: MEETING AGENDA

Agenda items may be submitted by any member to the Chair, who shall place such submittal items on the agenda. The following statement shall be placed on all agendas: "The Town of Gilbert endeavors to make all public meetings accessible to persons with disabilities. Persons needing any type of special accommodations are asked to notify the Town Clerk's Office at least 72 hours in advance. Accommodations for requests made less than 72 hours in advance cannot be guaranteed."

SECTION 9: QUORUM

A quorum necessary for the transaction of business shall consist of no less than one half of the current number of Members. Unless otherwise provided by these Bylaws, the members present at a duly called or held meeting at which a quorum is present, may continue to do business until adjournment, notwithstanding the withdrawal of a sufficient number of Members to leave less than a quorum, if action taken, where approval of a majority of the Members is required to constitute a quorum. At any Board meeting, any number of members may hold discussion on agenda items

A majority of the members present, whether or not a quorum is present, may adjourn any meeting or special session to another time and place. Any adjournment greater than 48 hours shall require proper notice in accordance with State law and Town ordinances.

SECTION 10: MEMBER ATTENDANCE

Members who are absent from three (3) consecutive regular meetings or absent from 50 percent or more meetings during any six-month period, or fails to attend required training, his office shall be automatically vacated per Town Code, Article VI, Sec. 1-205. All meetings or sessions held on one (1) day shall constitute as one (1) day.

SECTION 11: CONFLICT OF INTEREST

All Members shall comply with the Arizona Conflict-of-Interest law, Title 38, Chapter 3, Article 8, Arizona Revised Statutes.

ARTICLE IV
OFFICIAL RECORDS

SECTION 1: DEFINITION

The official records shall include these By-Laws, regulations and the minutes of the Board meetings together with all findings, applications, exhibits, correspondence, votes and recommendations to the Town Council and other official actions or items filed with or issued by the Board.

SECTION 2: PUBLIC RECORDS

Written minutes shall be kept of all Regular and Special meetings and Work Study sessions. Tape recordings may be kept of regular and special meetings. All official records shall be maintained and available for public viewing and filed in an orderly fashion by the Staff Liaison. Written minutes and tape recordings shall be retained on file for a period of time as required by the Town's Record Retention and Disposition Schedule. Minutes of meetings shall be distributed to all members of the Board for their review and approval or amendment at subsequent meetings.

ARTICLE V
RULES AND AMENDMENTS

SECTION 1: EFFECTIVE DATE

These By-laws and any amendments thereto, shall become effective at the April 7, 2015 meeting of the Board and after their adoption by an affirmative vote of a majority of the members present and subsequent to the approval of the Council.

SECTION 2: AMENDMENT PROCEDURES

These By-laws may be amended by a majority of members present at any meeting of the Board where as that notice of said proposed amendment(s) is provided in writing at least five (5) days prior to said meeting. Such amendment(s) shall be subject to ratification by the Town council and, if so approved, shall become effective at the next regular meeting of the Board following ratification.

SECTION 3: WRITTEN COMMUNICATIONS

All written communications from the Board shall be distributed over the signature of the Chair or Vice Chair of the Board.

SECTION 4: PARLIAMENTARY PROCEDURES

A roll call shall be taken at all regular meetings and special meetings and the minutes shall record the Members present or absent. The Chair shall call the Board to order and may call each matter of business in the order of the approved agenda.

All items submitted to the Town Council for approval by the Board shall require a majority vote of the Board. Each member attending shall be entitled to one vote and the minutes of the proceedings shall indicate the vote of each member on every acted upon or resolved matter.

Unless otherwise provided in these By-Laws or unless such rules are suspended or amended by majority vote of the Board, the Chair shall conduct the meeting as generally provided in Robert's Rules of Order, Revised.

SECTION 5: POLICY INITIATION/FOLLOW-UP PROCEDURES

Policies/recommendations voted on by the Board will go in the appropriate staff communication in support of items moving forward before council.

Requests of the board to study and/or make recommendations to council on strongly supported items will be communicated via letter with Board chair signature.

CERTIFICATE OF ADOPTION

The undersigned Chair and Vice Chair of the Town of Gilbert Park, Recreation and Library Service Advisory Board , hereby certify that the foregoing By-Laws were duly adopted by the unanimous consent of the Members of the Town of Gilbert Parks, Recreation and Library Services Advisory Board on April 7, 2015 and effective _____.

Executed on _____

By: _____
Ron Coleman
Chair

By: _____
Les Presmyk
Vice Chair

MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING OF APRIL 14, 2015 AT 5:00 PM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor John Lewis, Vice Mayor Jordan Ray, Councilmembers Eddie Cook, Jenn Daniels, Victor Petersen, Brigette Peterson and Jared Taylor

COUNCIL ABSENT: None

STAFF PRESENT: Manager Patrick Banger, Deputy Manager Marc Skocypec, Clerk Catherine Templeton, Attorney Michael Hamblin, Assistant Town Engineer Eliana Hayes

AGENDA ITEM

CALL TO ORDER

Mayor John Lewis called the meeting to order at 5:07 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Jamie Phillips, Adaptive Recreation Adult Unified Cheer Team, led the Pledge of Allegiance and scouts introduced themselves.

Vice Mayor Jordan Ray gave the invocation.

ROLL CALL

Clerk Catherine Templeton called roll and declared a quorum present.

PRESENTATIONS; PROCLAMATIONS

1. Proclamation declaring April 14, 2015 as Adaptive Recreation Adult Unified Cheer Day.

Councilmember Jenn Daniels read a proclamation declaring April 14, 2015 as Adaptive Recreation Adult Unified Cheer Day, and presented the proclamation. The Adaptive Recreation Adult Unified Cheer Day performed cheers.

2. Proclamation declaring April as World Autism Awareness Month.

Councilmember Jenn Daniels read a proclamation declaring April as World Autism Awareness Month and presented the proclamation. Mayor John Lewis signed an Autism Speaks certificate

3. Proclamation declaring April 19, 2015 as Congenital Diaphragmatic Hernia Awareness Day.

Councilmember Victor Petersen read a proclamation declaring April 19, 2015 as Congenital Diaphragmatic Hernia Awareness Day.

4. Proclamation declaring April 21, 2015 as Mothers Against Drunk Driving - PowerTalk 21® Day.

Mayor John W. Lewis read a proclamation declaring April 21, 2015 as Mothers Against Drunk Driving - PowerTalk 21® Day.

5. Proclamation declaring April 24, 2015 as Gilbert Arbor Day.

Councilmember Jared Taylor read a proclamation declaring April 24, 2015 as Gilbert Arbor Day, and presented the proclamation to Les Presmyk and Mary Harris from the Parks, Recreation and Library Services Advisory Board. Mary Harris reported that Gilbert has received this award for the past seven years and discussed scouts who planted trees at the Soccer Complex.

5A. Proclamation declaring April 10, 2015 as Relay For Life Gilbert Cancer Awareness Day.

Councilmember Brigette Peterson read a proclamation declaring April 10, 2015 as Relay For Life Gilbert Cancer Awareness Day and presented the proclamation. Representatives discussed the Relay For Life event, how funds raised are spent, and the impact of the event.

5B. Recognition of Gilbert Boards and Commissions.

Councilmember Jared Taylor welcomed Board and Commission members and recognized them for service. Those in attendance introduced themselves and a member of each Board and Commission briefly described what the Board does. Councilmember Brigette Peterson recognized members of the Gilbert Boards and Commissions and said the people present represent the board members, this is National Volunteer Week, and she thanked the members.

Mayor John Lewis mentioned that tomorrow there is the gathering for Board and Commission members at Art Intersection at 4:30 p.m. and there will be a program at 5:00 p.m. Mayor John Lewis presented a birthday certificate to former Councilmember Les Presmyk who serves on two boards.

6. Pillar of the Month - Trustworthiness.

Vice Mayor Ray read the Pillar of the Month, Trustworthiness.

7. Recognition of the Parks Improvement District by the Environmental and Energy Conservation Advisory Board for water conservation efforts.

Councilmember Eddie Cook read a brief statement about the award which promotes and recognizes water conservation efforts and stewardship. Councilmember Eddie Cook and members of the Environmental and Energy Conservation Advisory Board recognized Gilbert

DRAFT

employees Ryan Morasch; Rick Acuna, and Cody Brooks and they introduced themselves. Rick Acuna explained they have been monitoring water use from 2009 through 2014 and have saved millions gallons of water.

COMMUNICATIONS FROM CITIZENS

None.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Jordan Ray, seconded by Councilmember Brigette Peterson, to approve Consent Items 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25A, 26, 28 and 29; and remove Item 14 from the Consent Calendar. *Motion carried 7-0.*

8. ANNEXATION A15-02 – consider adoption of an Ordinance annexing approximately 2.95 acres of county rights-of-way from Higley Road between Warner Road and SR202 contingent upon approval by the Maricopa County Board of Supervisors.

This item was approved with the Consent Calendar vote. Ordinance No. 2529 was adopted.

9. AGREEMENT – consider:

a) approval of Gilbert's proportional share of $562,054 for the professional services agreement between the City of Mesa and Carollo Engineers for the development of a Design Concept Report for the Phase III Expansion of the Greenfield Water Reclamation Plant (WRP), pursuant to the related Intergovernmental Agreement dated June 22, 2004; and

b) authorize a Wastewater Contingency Fund Transfer in the amount of $162,054.

This item was approved with the Consent Calendar vote.

10. AGREEMENT – consider approval of Agreement No. 2015-2106-0683 with KB homes in order to allow the Town to collect payment for its costs for the future relocation of a utility pole and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

11. 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.

This item was approved with the Consent Calendar vote.

12. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-2106-0669 with Flood Control District of Maricopa County for Small

DRAFT

Project Assistance Funding on Coldwater Boulevard between Tucana Lane and Claiborne Avenue and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

13. INTERGOVERNMENTAL AGREEMENT – consider approval of Addendum to Intergovernmental Agreement No. 2012-1002-0263 between Higley Unified School District #60 and Town of Gilbert in an amount for Use of Facilities, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

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

Councilmember Victor Petersen reported he discussed this agenda item with staff and he would like to continue the item to put some items in place be sure there is not overspending. Councilmember Victor Petersen said he also had a brief discussion with one of the County Supervisors. He concluded that he would like to continue to the next meeting.

Councilmember Jared Taylor said he did not understand how many county properties were in this stretch of road.

Assistant Town Engineer Eliana Hayes responded she believes it is one property.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to continue Item 14 to the next meeting, May 14, 2015. *Motion carried 7-0.*

15. CONTRACT – consider approval of Architect/Engineering Contract No. 2015-7010-0667 with Sunrise Engineering in an amount not to exceed $273,900 for the design of the Fiesta Tech Lift Station and Force Main, Project No. WW099, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

16. CONTRACT – consider approval of Architect/Engineering Services Contract No. 2015-7010-0635 with Wilson Engineers in an amount not to exceed $161,349 for the Reclaimed Water Reservoir Rehabilitation Project, Project No. WW083, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

DRAFT

17. CONTRACT – consider:

a) approval of Construction Services Contract No. 2015-7012-0627 with FCI Constructors in an amount not to exceed $275,000 for Pool Chemical Rooms, Project No. PR106, and authorize the Mayor to execute the required documents; and

b) authorize a General Fund Contingency transfer in the amount of $75,000.

This item was approved with the Consent Calendar vote.

18. CONTRACT – consider:

a) approval of Construction Services Contract No. 2015-2106-0386 with DSC Contracting in an amount not to exceed $5,265,602.66 for the Warner and Higley Improvements, Project No. ST152, and authorize the Mayor to execute the required documents; and

b) authorize a CIP Contingency transfer in the amount of $300,000.

This item was approved with the Consent Calendar vote.

19. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 2014-7013-0180 with SDB, Inc. increasing the contract amount by $5,285 for the Police Detention Center, Project No. MF228.

This item was approved with the Consent Calendar vote.

20. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 2013-7003-0144 with Tristar Engineering and Management, Inc. increasing the contract amount by $63,360 for the Guadalupe and Gilbert Intersection Project, Project No. ST129.

This item was approved with the Consent Calendar vote.

21. FINAL PLAT S13-06 - consider approval of the final plat for Cooley Station Parcel 15 Phase 1 located north and east of the intersection of Recker Road and Vest Avenue.

This item was approved with the Consent Calendar vote with changes.

22. FINAL PLAT S14-10 - consider approval of the final plat for Segretto located at the northwest corner of Recker and Ray Roads.

This item was approved with the Consent Calendar vote.

23. FINAL PLAT S14-05 - consider approval of the final plat for Cooley Station Parcels 10 and 17 - Infrastructure located south of Williams Field Road and east of Recker Road along the Somerton Boulevard / Cooley Loop Road alignment.

DRAFT

This item was approved with the Consent Calendar vote with changes.

24. FINAL PLAT S14-05 - consider approval of the final plat for Cooley Station Parcels 10 and 17 - Phase 1 located south of Williams Field Road on the east side of Cooley Loop Road / Somerton Boulevard.

This item was approved with the Consent Calendar vote with changes.

24A. PROPERTY - consider adoption of a Resolution authorizing the publication of a notice and intent to sell certain Town-owned real estate located north of the northwest corner of Ray Road and Recker Road and authorizing the Town Manager to execute all documents necessary to finalize the sale of such property.

This item was approved with the Consent Calendar vote. Resolution No. 3791 was adopted.

25. TEMPORARY EXTENSION OF PREMISES – consider approval of a temporary extension of premises for Buffalo Wild Wings located at 970 South Gilbert Road for an event to be held on May 2, 2015.

This item was approved with the Consent Calendar vote.

25A. TEMPORARY EXTENSION OF PREMISES – consider approval of a temporary extension of premises for Jimmy's of Chicago located at 884 East Williams Field Road for an event to be held on May 9, 2015.

This item was approved with the Consent Calendar vote.

26. LIQUOR LICENSE – consider approval of an acquisition of control for the Series 9 Liquor Store License for Total Wine & More #1005 located at 2224 East Williams Field Road #120.

This item was approved with the Consent Calendar vote.

27. LIQUOR LICENSE – consider approval of an acquisition of control for the Series 12 Restaurant Liquor License for Peter Piper Pizza #225 located at 127 East Williams Field Road.

This item was approved with the Consent Calendar vote.

28. BOARDS AND COMMISSIONS – consider acceptance of the resignation of Steven Skirvin from the Human Relations Commission.

This item was approved with the Consent Calendar.

DRAFT

29. MINUTES – consider approval of the minutes of Study Session March 24, 2015, Special Meeting March 24, 2015 (4:30 pm), Special Meeting March 24, 2015 (6 pm), and Regular Meeting March 26, 2015.

This item was approved with the Consent Calendar vote.

PUBLIC HEARING

Mayor John Lewis opened the public hearing on items 30, 31, 32 and 33. No one wished to speak and Mayor John Lewis closed the public hearing.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Brigette Peterson, to approve public hearing items 30, 31, 32 and 33. *Motion carried 7-0.*

30. LIQUOR LICENSE – conduct hearing and consider approval of a Series 10 Beer and Wine Store Liquor License for CST Corner Store #1677 located at 1636 South Higley Road.

This item was approved with the public hearing vote.

31. BONDS - conduct hearing and consider:

a) providing an opportunity for interested persons to express their views with respect to the proposed issuance of certain pledged revenue obligations in the maximum aggregate face amount of not to exceed $40,000,000 to finance the construction, acquisition and equipping of an 87,000 square foot building located within the boundaries of the Town near Gilbert Road and Vaughn Avenue in the Heritage District of the Town for the use and benefit of, and to be operated by, Saint Xavier University, a nonprofit corporation which has been determined to be an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to fund, if necessary, capitalized interest and reserves for the obligations and to pay the costs and expenses of selling and issuing the obligations and delivering the Purchase Agreement; and

b) adoption of a Resolution approving the sale and execution and delivery of not to exceed $40,000,000 aggregate principal amount of subordinate lien pledged revenue obligations evidencing a proportionate interest of the owners thereof in a Purchase Agreement; approving the form and authorizing the execution and delivery of such Purchase Agreement and other necessary related agreements, instruments and documents; delegating authority to determine certain matters and terms with respect to the foregoing; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution and declaring an emergency.

This item was approved with the Public Hearing Vote. Resolution No. 3792 was adopted.

32. ANNEXATION A15-01 – conduct hearing on the proposed annexation of approximately 1.36 acres located at the northwest corner of Power Road and Nunneley Road.

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This item was a public hearing only.

33. PROPERTY ACQUISITION – conduct hearing and consider adoption of a Resolution approving the acquisition of right-of-way Parcel Nos. 304-79-018P, 304-79-018Q and 304-79-018X located on 164th Street for the PM 10 Paving Project, Project No. ST119.

This item was approved with the Public Hearing Vote. Resolution No. 3793 was adopted.

ADMINISTRATIVE ITEMS

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

Councilmember Jared Taylor reminded Council there is a Joint Meeting with the Parks, Recreation and Library Services Advisory Board on April 28. Council was asked to submit agenda items to Parks and Recreation Director Rod Buchanan.

Councilmember Victor Petersen thanked those who participated in *We Are Gilbert Day*. He reported the team at the United Food Bank boxed a lot of food and he thanked everyone for participating in *We Are Gilbert Day*.

Mayor John Lewis said there were 10 major projects in Gilbert under the leadership of Councilmember Victor Petersen. Mayor John Lewis stated this was a special day and described some of the teams that took part in *We Are Gilbert Day*. Mayor John Lewis reported it was also the day of Global Village Festival and it was another great day in Gilbert.

Councilmember Eddie Cook announced he attended a Gilbert Public Schools (GPS) Governing Board meeting a few weeks ago. GPS is looking at a special election in November for an

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override and it may be a topic where the community may be divided. There may be news in the future.

POLICY ITEMS

None.

FUTURE MEETINGS

No discussion.

COMMUNICATIONS

Report from the TOWN MANAGER on current events.

Manager Patrick Banger advised that we just received ratings from S&P and Fitch and the Saint Xavier bonds to be issued were rated A++ and this is unusual that subordinate bonds would have a rating equal to our senior lien bonds. This is a good indicator and a positive reflection of how we manage this community.

Report from the COUNCIL on current events.

None.

Report from the MAYOR on current events.

None.

ADJOURN

Mayor John Lewis adjourned meeting at 5:53 p.m.

ATTEST:

_____ _____

John W. Lewis, Mayor Catherine A. Templeton, CMC, Town Clerk

<u>CERTIFICATION</u>

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 14th day of April, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

DRAFT

_____
Catherine A. Templeton, CMC, Town Clerk

DRAFT

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: April 30, 2015

SUBJECT: Liquor License - Wal-Mart Supercenter #3861

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of Sampling Privileges for the existing Series 9 Liquor Store License for Wal-Mart Supercenter #3861 located at 5290 South Power Road.

or

A motion to issue an order to recommend denial of Sampling Privileges for the existing Series 9 Liquor Store License for Wal-Mart Supercenter #3861 located at 5290 South Power Road for the following reasons (specific reasons for denial must be included);

or

A motion to make no recommendation on Sampling Privileges for the existing Series 9 Liquor Store License for Wal-Mart Supercenter #3861 located at 5290 South Power Road (*a "no recommendation" results in a hearing being scheduled before the state liquor board*).

BACKGROUND/DISCUSSION

Effective July 29, 2010, the Arizona Revised Statutes were amended to allow for Series 9 Liquor Store and Series 10 Beer and Wine Store licensees to apply for unlimited sampling privileges. Existing licensees may submit a Liquor Store Sampling Privileges form to add sampling privileges to the license; new licensees may apply for sampling as part of the original application.

Wal-Mart Supercenter #3861 located at 5290 South Power Road currently has a Series 9 Liquor Store License.

A Series 9 Liquor Store License allows a spirituous liquor store retailer to sell all types of spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

The process to add sampling to an existing license consists of the Arizona Department of Liquor License & Control sending the Sampling Privileges form to the appropriate jurisdiction. This application is then reviewed by local governing bodies. The applicant is required to comply with the law as detailed on the Application for Sampling Privileges form; the applicant initials the form to indicate their compliance with the sampling regulations.

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 Code Compliance, Police Department, or Fire, or the Clerk.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control.

FINANCIAL IMPACT

There are currently no fees for processing this application.

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 –Sampling Privileges Form

Approved By	Approval Date
Cathy Templeton	4/14/2015 12:26 PM

ENTERED

State of Arizona
Department of Liquor Licenses and Control

800 W. Washington 5th Floor
Phoenix, Arizona 85007
(602) 542-5141

Sampling Privileges Form

- ■ Liquor Store (series 9)
- ☐ Beer and Wine Store (series 10)

Applicant's Name: Clare Hollie Abel (check one) Owner ☐ Agent ☒

Mailing Address: Dept. 8916; 702 SW 8th Street, Bentonville, AR ~~Maricopa~~ Benton co 72716-0500
Street Address or P.O. Box, City, State, County, Zip Code

Business Phone Number: ~~(623) 544-2200~~ 480-988-0012 Email: chabel@bcattorneys.com

Business Name: Wal-Mart Supercenter #3861 Current License #: 09073003

Physical Location of Business:
5290 South Power Road, Gilbert, AZ Maricopa 85236
Street Address, City, State, County, Zip Code

I, Clare Hollie Abel, understand that, upon approval, sampling privileges for the liquor license identified above will require compliance with the following:

Initial Here

CHA 1. the premises shall contain at least five thousand square feet to be eligible for sampling privileges for Beer and Wine Store (series 10) applicants only (A.R.S. §4-206.01(J)).

CHA 2. Any open product shall be kept locked by the licensee when the sampling area is not staffed.

CHA 3. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.

CHA 4. The licensed retailer shall make sales of sampled products from the licensed retail premises.

CHA 5. The licensee shall not charge any customer for the sampling of any products.

CHA 6. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.

CHA 7. Accurate records of sampling products dispensed shall be retained by the licensee.

CHA 8. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounce of wine and one ounce of distilled spirits per person, per brand, per day.

CHA 9. The sampling shall be conducted only on the licensed premises.

CHA 10. Upon approval of this form, a license for a liquor store with sampling privileges (series 9S) or a beer and wine store with sampling privileges (series 10S) will be issued and mailed to the licensee's address of record. The license must be displayed in a conspicuous public area of the licensed premises that is readily accessible for inspection by any peace officer, distributor, wholesaler or member of the public. (A.R.S. §4-261.01)

'15 FEB 4 Liq. Lic. AM 8:57

10/23/13

1

ENTERED

CHA 11. Liquor store license sampling privileges are not transferable.

CHA 12. I have read, understand, and assume responsibility for compliance with A.R.S. §4-206.01.

A.R.S. §4-206.01(J) Bar, beer and wine bar or liquor store licenses; number permitted; fee; sampling privileges

1. Any open product shall be kept locked by the licensee when the sampling area is not staffed.
2. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.
3. The licensed retailer shall make sales of sampled products from the licensed retail premises.
4. The licensee shall not charge any customer for the sampling of any products.
5. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.
6. Accurate records of sampling products dispensed shall be retained by the licensee.
7. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounces of wine and one ounce of distilled spirits per person, per brand, per day.
8. The sampling shall be conducted only on the licensed premises.

I, Clare Hollie Abel, attest that I am the OWNER/AGENT filing this form, that I have read, and assume responsibility for compliance with, A.R.S. §4-206.01 at the licensed establishment named on page 1, and verify all statements I have made on this document to be true, correct and complete. I understand that I am responsible for the $100 issuance fee and the annual $60 renewal fee for these sampling privileges. Sampling privilege renewal fees are due at the same time as the renewal for the "current license #" identified on page 1 of this application.

Signature, Clare Hollie Abel Title agent Date 1/29/15

Notarized Signature

The forgoing instrument was acknowledged before me this 29th (day) of JANUARY (month), 2015 (year).

Notary Public: Beth Briggs (Signature)

My commission expires: 03 (day), 08 (month), 2018 (year)

OFFICIAL SEAL
BETH BRIGGS
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires August 3, 2018

'15 FEB 4 AM 8:57

For DLLC Use Only

S License #: 09073003 Date of issuance: ____/____/____

Issuance fee applicable? ☒ Yes ☐ No ☐ $100 issuance fee collected

Initials: _____

36B

State of Arizona
Department of Liquor Licenses and Control

800 W. Washington 5th Floor
Phoenix, Arizona 85007
(602) 542-5141

TC 4-30-15

RECEIVED
TOWN OF GILBERT
CUSTOMER SERVICE CENTER

State/Local Government Routing Sheet
Add Sampling Privileges To Active
Liquor Store (series 9) or Beer and Wine Store (series 10) License

- [x] Liquor Store (series 9)
- [ ] Beer and Wine Store (series 10)

The attached form for sampling must be processed within105 days from this date:

Date Application Received at DLLC: 2/4/2015

Date of 60-days from receipt: 4/5/2015 105-days from receipt: 5/20/2015

If the local governing body has questions regarding the attached sampling form, please call:

DLLC Contact Name: Selena Gonzales

DLLC Contact Phone Number: 602-542-9040 DLLC Contact email: Selena.Gonzales@azliquor.gov

Upon local governing body approval, a new license with a sampling privilege ("S") designation will be issued to this licensee:

For DLLC Use Only

Current License #: 09073003 Date of issuance: 7/19/2007

S License #: _____ Date of issuance: ___/___/___

DLLC Contact: Selena Gonzales DLLC Phone #: 602-542-9040

For Local Governing Body Use Only

Date Receive: ___/___/___ Date Approved: ___/___/___

Recommendation: ☐ Approve ☐ Protest ☐ No Recommendation

I _____, hereby recommend that non-transferrable sampling
Government Official

privileges be added to this licensee on behalf of _____.
City, Town or County

(_____) _____ - _____ _____
Phone Number Email Address

February 2013

284126
Town of Gilbert

49066

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: April 30, 2015

SUBJECT: Liquor License - Cuisine & Wine Bistro

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 7 Beer and Wine Bar Liquor License for Cuisine & Wine Bistro located at 1422 West Warner Road #A100.

or

A motion to issue an order to recommend denial of a Series 7 Beer and Wine Bar Liquor License for Cuisine & Wine Bistro located at 1422 West Warner Road #A100 for the following reasons (specific reasons for denial must be included).

or

A motion to make no recommendation on a Series Series 7 Beer and Wine Bar Liquor License for Cuisine & Wine Bistro located at 1422 West Warner Road #A100 (*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

Lauren Kay Merrett is requesting approval of a Series 7 Beer and Wine Bar Liquor License for Cuisine & Wine Bistro located at 1422 West Warner Road #A100. *This is a person transfer and the business is operating with and interim permit.* An amendment was filed to Section 13 of the application.

A Series 7 Beer and Wine Bar Liquor License allows a beer and wine bar retailer to sell and serve beer and wine (no other spirituous liquors), primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

Public notice was posted for the required 20-day period in accordance with the Arizona Department of Liquor License and Control posting requirement. No adverse information to justify a denial of this application was received from Planning and Zoning, Building and Code Compliance, Police Department, or from Maricopa County Environmental Services Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-102 (Attachment 1).

FINANCIAL IMPACT

The license fee is $750 per year.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Cathy Templeton
Town Clerk

Attachments/Enclosures:

Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-102

Attachment 2 – Liquor License Application

Attachment 1

R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires, and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the board.
11. Comparison of hours of operation of the proposed premises to the existing businesses in close proximity.

Approved By	Approval Date
Cathy Templeton	4/21/2015 3:10 PM

'15 MAR 6 Liqr. Lic. PM 2:43

26C

Arizona Department of Liquor Licenses and Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007
www.azliquor.gov
602-542-5141

RECEIVED

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

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): 07070393

1. Type of License(s): series 07

2. Total fees attached: $ 200.00 (Department Use Only)

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. / Ms. Merrett (Last) Lauren (First) Kay (Middle)
(Insert one name ONLY to appear on license)

2. Corp./Partnership/L.L.C.: Stelauki LLC
(Exactly as it appears on Articles of Inc. or Articles of Org.)

3. Business Name: Cuisine & Wine Bistro
(Exactly as it appears on the exterior of premises)

4. Principal Street Location: 1422 W Warner Rd #A100 (Do not use PO Box Number) Gilbert (City) Maricopa (County) 85233 (Zip)

5. Business Phone: 480-497-1422 Daytime Phone: 602-738-1421 Email: _____

6. Is the business located within the incorporated limits of the above city or town? ☒YES ☐NO

7. Mailing Address: [redacted] (City) (State) (Zip)

8. Price paid for license only bar, beer and wine, or liquor store: Type _____ $_____ Type _____ $_____

DEPARTMENT USE ONLY

Fees: 100.00 Application; 100.00 Interim Permit; _____ Site Inspection; ✓ Finger Prints; $ 200.00 TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? ☒YES ☐NO

Accepted by: AC Date: 3/6/2015 Lic. # 07070393

1/7/2013

***Disabled individuals requiring special accommodation, please call (602) 542-9027.**

51635

422885

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. 07070393
4. Is the license currently in use? ☒ YES ☐ NO If no, how long has it been out of use?_____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, ZOYA VORA-SHAH, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER,
(Print full name)
MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

X [signature]
(Signature)

My commission expires on: 7/30/2016

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 27 day of February, 2015
Day Month Year

OFFICIAL SEAL
AMY BOEHNKE
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires July 30, 2016

[signature]
(Signature of NOTARY PUBLIC)

'15 MAR 6 Liqr. Lic PM 2:43

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND $22 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) _____

General-Limited	Last	First	Middle	% Owned	Mailing Address	City State Zip
☐ ☐						
☐ ☐						
☐ ☐						
☐ ☐						

) Y R A S S E C E N F I T

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO
If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City, State, Zip	Telephone#

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND $22 PROCESSING FEE FOR EACH CARD.

☐ CORPORATION ***Complete questions 1, 2, 3, 5, 6, 7, and 8.***

☒ L.L.C. ***Complete 1, 2, 4, 5, 6, 7, and 8.***

1. Name of Corporation/L.L.C.: Stelauki LLC
   (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 4/18/2014 State where Incorporated/Organized: _____
3. AZ Corporation Commission File No.: _____ Date authorized to do business in AZ: _____
4. AZ L.L.C. File No: L-1919955-1 Date authorized to do business in AZ: 4/22/2014
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
please see attached					

(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
please see attached					

(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.

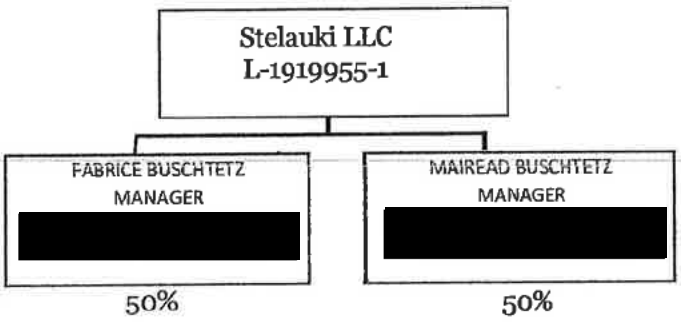
SECTION 8 Club Applicants:

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)



'15 MAR 6 LIQ. LIC. AM 2:45

0

SECTION 9 **Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store License:**

1. Current Licensee's Name: _____
(Exactly as it appears on license) Last First Middle

2. Assignee's Name: _____
Last First Middle

3. License Type: _____ License Number: _____ Date of Last Renewal: _____

4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 **Government: (for cities, towns, or counties only)**

1. Governmental Entity: _____

2. Person/designee: _____ _____
Last First Middle Contact Phone Number

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 **Person to Person Transfer:**

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY-Series 06,07, and 09).

1. Current Licensee's Name: Vora-Shah Zoya. Entity: AGENT
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)

2. Corporation/L.L.C. Name: WAAWAA LLC
(Exactly as it appears on license)

3. Current Business Name: MWC Bistro
(Exactly as it appears on license)

4. Physical Street Location of Business: Street 1422 W. Warner Rd #100
City, State, Zip Gilbert AZ 85233

5. License Type: Series 07 License Number: 07070393

6. If more than one license to be transfered: License Type: _____ License Number: _____

7. Current Mailing Address: Street 2616 S Bala Dr
(Other than business)
City, State, Zip Tempe AZ 85282

8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☒ YES ☐ NO

9. Does the applicant intend to operate the business while this application is pending? ☒ YES ☐ NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

10. I, Zoya Vora-Shah, hereby authorize the department to process this application to transfer the
(print full name)
privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, VShah Zoya Vora-Shah, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER
(print full name)
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

VShah
(Signature of CURRENT LICENSEE)

State of ARIZONA County of MARICOPA
The foregoing instrument was acknowledged before me this
6 MARCH 2015
Day Month Year

Robert Jon Bedient
(Signature of NOTARY PUBLIC)

OFFICIAL SEAL
ROBERT JON BEDIENT
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires June 1, 2017

My commission expires on: JUNE 1, 2017

15 MAR 6 LIQ. LIC. PM 2:45

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: (Exactly as it appears on license) Name _____
   Address _____

2. New Business: (Physical Street Location) Name _____
   Address _____

3. License Type: _____ License Number: _____

4. If more than one license to be transferred: License Type: _____ License Number: _____

5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizonal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

a) Restaurant license (§ 4-205.02)
b) Hotel/motel license (§ 4-205.01)
c) Government license (§ 4-205.03)
d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 1850 ft. Name of school Mesquite High School
   Address 500 S Mcqueen Rd Gilbert AZ 85233
   City, State, Zip

2. Distance to nearest church: 5200 ft. Name of church Life Link
   Address 725 W Warner Rd Gilbert AZ 85233
   City, State, Zip

3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)

4. If the premises is leased give lessors: Name B.H. Management Inc
   Address 11111 Santa Monica Blvd #600 Los Angeles CA 90025
   City, State, Zip

4a. Monthly rental/lease rate $ 5170.00 What is the remaining length of the lease 5 yrs. ____ mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other balance
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? $ 65k
Please list lenders you owe money to. previous owner is carrying a note

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip
Waawaa LLC c/o Canyon St Servicing - Escrow			$65k	3333 E Camelback Rd Phx AZ 85018		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Bistro

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 # 07070393 (exactly as it appears on license) Name Zoya Vora-Shah

---

SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☐ NO
   If yes, give the name of licensee, Agent or a company name:

   _____ and license #: _____
   Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.

3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.

4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☐ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

   _____
   applicant's signature

As stated in A.R.S § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection, visit www.azliquor.gov and click on the "Information" tab.

_____
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? _____
   month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.

4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).

5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows,or increase or decrease to the square footage after submitting this initial drawing.

_____
applicants initials

'15 MAR 6 Liq. Lic. PM 2:45

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.

see attached

'15 MAR 6 Liqr. Lic. AM 2:45

SECTION 16 Signature Block

I, Lauren Kay Merrett, hereby declare that I am the OWNER/AGENT filing this
(print full name of applicant)
application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X Lauren Kay Merrett
(signature of applicant listed in Section 4, Question 1)

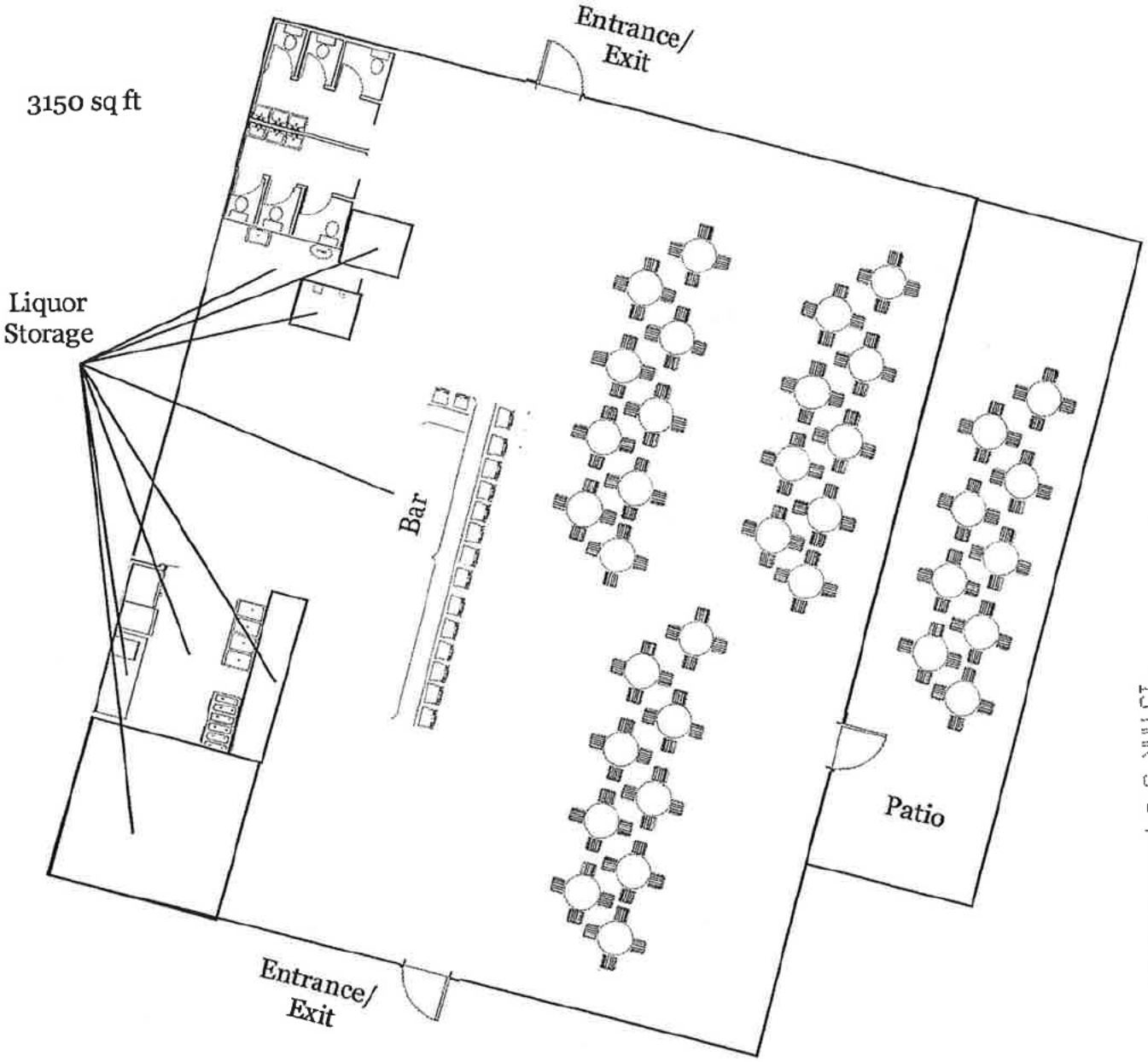
OFFICIAL SEAL
JUANITA A. ESPARZA
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires September 10, 2018

My commission expires on : _____
Day Month Year

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this
6 of March 2015
Day Month Year

signature of NOTARY PUBLIC



'15 MAR 6 Liq. Lic. PM 2:46

STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey
GOVERNOR

John Cocca
DIRECTOR

March 06, 2015

NOTICE OF TEMPORARY LIQUOR LICENSE APPLICATION NUMBER

The Department of Liquor is currently experiencing computer difficulties which require temporary numbers to be assigned to liquor licenses that are operating under an interim permit (IP).

The temporary number begins with the letters TIP. The temporary liquor license number, 07070393, has been assigned to the attached application for CUISINE & WINE BISTRO .

The interim permit number for this application is TIP 07070393 .

A new, permanent number will be assigned soon as our system is able to generate them again.

We're sorry for the inconvenience this may cause. Please call 602-541-5141 if you need additional information.

800 WEST WASHINGTON, 5th FLOOR PHOENIX, ARIZONA 85007-2934 PHONE (602) 542-5141 FAX (602) 542-5707

WWW.AZLIQUOR.GOV

Individuals requiring special accommodations please call (602)542-9051

26C

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

#07070393
1422 W Warner Rd
Gilbert AZ 85233

1. Current Business: (Exactly as it appears on license) Name _____ Address _____
2. New Business: (Physical Street Location) Name _____ Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizonal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

a) Restaurant license (§ 4-205.02)
b) Hotel/motel license (§ 4-205.01)
c) Government license (§ 4-205.03)
d) Fenced playing area of a golf course (§ 4-207 (B)(5))

'15 APR 21 Liq. Lic. #10000

1. Distance to nearest school: 1850 ft. Name of school Mesquite High School
   Address 500 S Mcqueen Rd Gilbert AZ 85233
   City, State, Zip
2. Distance to nearest church: 1795 ft. Name of church Chandler Baptist Church
   Address 835 E Warner Rd Chandler AZ 85225
   City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name B.H. Management Inc
   Address 11111 Santa Monica Blvd #600 Los Angeles CA 90025
   City, State, Zip

4a. Monthly rental/lease rate $ 5170.00 What is the remaining length of the lease 5 yrs. ____ mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other balance
(give details - attach additional sheet if necessary)

5. What is the total business indebtedness for this license/location excluding the lease? $65k
Please list lenders you owe money to. previous owner is carrying a note

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip
Waawaa LLC c/o Canyon St Servicing - Escrow			$65k	3333 E Camelback Rd Phx AZ 85018		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Bistro

RECEIVED
APR 21 2015
TOWN OF GILBERT
CUSTOMER SERVICE CENTER

AMENDMENT

51635

422885

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: April 30, 2015

SUBJECT: Liquor License - The Groves Bar & Grill

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for The Groves Bar & Grill located at 323 South Gilbert Road #111-113.

or

A motion to issue an order to recommend denial of a Series 12 Restaurant Liquor License for The Groves Bar & Grill located at 323 South Gilbert Road #111-113 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 The Groves Bar & Grill located at 323 South Gilbert Road #111-113 (*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

Anthony Edwards is requesting approval of a Series 12 Resaurant Liquor License for The Groves Bar & Grill located at 323 South Gilbert Road #111-113. *This is a new license and the business is operating with an interim permit.*

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.

RECEIVED

24A

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

'15 MAR 9 Liq. Lic. PM12:24

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): 1207A185

1. Type of License(s): SERIES 12 RESTAURANT

2. Total fees attached: $ ~~320.00~~ 294.00 (Department Use Only)

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. Ms. EDWARDS (Last) ANTHONY (First) N (Middle)
(Insert one name ONLY to appear on license)

2. Corp./Partnership/L.L.C.: MOKITO Investments LLC.
(Exactly as it appears on Articles of Inc. or Articles of Org.)

3. Business Name: THE GROVES BAR + GRILL B1038469
(Exactly as it appears on the exterior of premises)

4. Principal Street Location 323 SOUTH GILBERT RD #111 + 113 GILBERT MARICOPA 85296
(Do not use PO Box Number) City County Zip

5. Business Phone: 480-~~266~~-~~9332~~ 307-8477 Daytime Phone: ~~SAME~~ 480-266-9332 Email: Tonas@AOL.com

6. Is the business located within the incorporated limits of the above city or town? ☒YES ☐NO

7. Mailing Address: 323 SO GILBERT RD GILBERT AZ 85296
City State Zip

8. Price paid for license only bar, beer and wine, or liquor store: Type _____ $_____ Type _____ $_____

DEPARTMENT USE ONLY

Fees: 100.00 Application | 100.00 Interim Permit | 50.00 Site Inspection | 44.00 Finger Prints | $ 294.00 TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? ☒ YES ☐ NO

Accepted by: AE Date: 3/9/2015 Lic. # 1207A185

1/7/2013

*Disabled individuals requiring special accommodation, please call (602) 542-9027.

51609

421786

STATE OF ARIZONA

DEPARTMENT OF LIQUOR LICENSES AND CONTROL

ALCOHOLIC BEVERAGE LICENSE

REPRINT

License 12078732

Issue Date: 8/2/2011

Expiration Date: 3/31/2015

Restaurant

Issued To:
DIANA LYNN BLEWER, Agent
G DOUBLE D INVESTMENTS LLC, Owner

Location:
GROVES BAR & GRILL
323 S GILBERT RD #111 - 113
GILBERT, AZ 85296

Mailing Address:
DIANA LYNN BLEWER
G DOUBLE D INVESTMENTS LLC
GROVES BAR & GRILL
323 S GILBERT RD 111-113
GILBERT, AZ 85296

EXP 3/31/2015

POST THIS LICENSE IN A CONSPICUOUS PLACE

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.

15 MAR 5 PM 12:24

☐ 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.: MOKITO Investments LLC
(Exactly as it appears on Articles of Incorporation or Articles of Organization)

2. Date Incorporated/Organized: 6/6/2014 State where Incorporated/Organized: ARIZONA

3. AZ Corporation Commission File No.: ~~04703640~~ Date authorized to do business in AZ: 2/24/15

4. AZ L.L.C. File No: L-1931204-2 Date authorized to do business in AZ: 2/24/15

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
EDWARDS	ANTHONY	N	MEMBER	[redacted]	
EDWARDS	CHRISTOPER	DANA	MEMBER		
Hermano	Revocable living Trust		Managing Member		

(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
EDWARDS	ANTHONY	N	AZ 49 ~~50~~	[redacted]	
EDWARDS	CHRISTOPHER	DANA	AZ 49 ~~50~~		
No One else owns 10% or more					

(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.

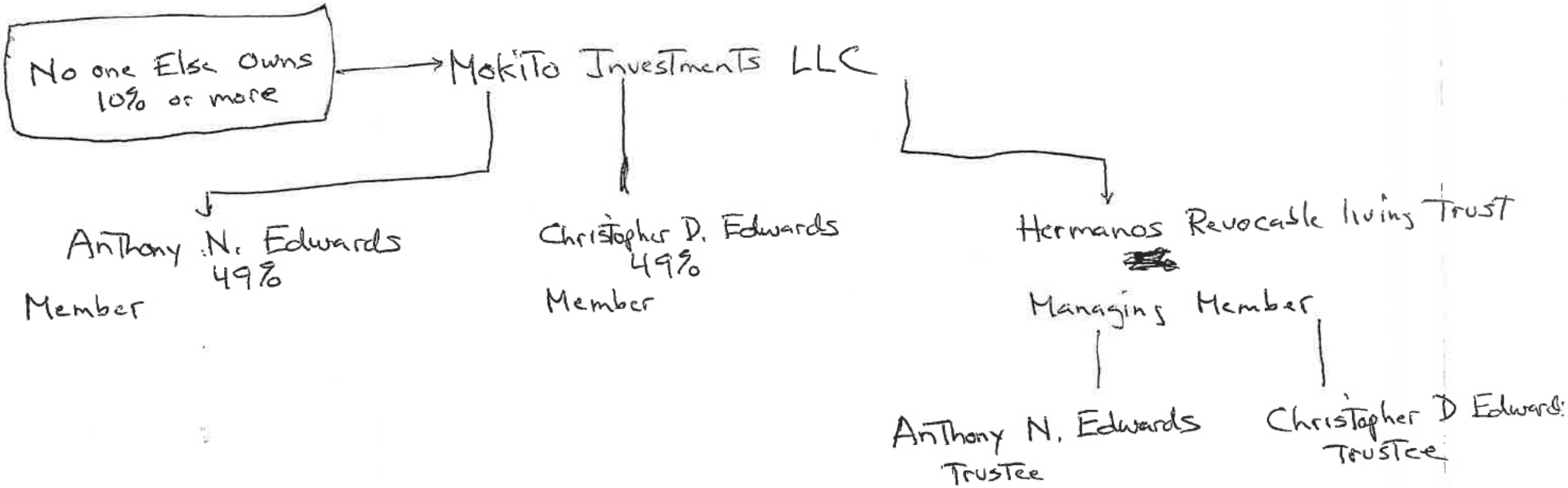
1. Name of Club: _____ Date Chartered: _____
(Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)

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)



'15 MAR 9 Liq. Lic. PM12:24

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: (Exactly as it appears on license) Name _____
   Address _____
2. New Business: (Physical Street Location) Name _____
   Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizonal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

a) Restaurant license (§ 4-205.02)
b) Hotel/motel license (§ 4-205.01)
c) Government license (§ 4-205.03)
d) Fenced playing area of a golf course (§ 4-207 (B)(5))

15 MAR 9 LIQ. LIC. PM12:24

1. Distance to nearest school: 1000 ft. Name of school MESQUITE JR HIGH
   Address 130 W MESQUITE GILBERT AZ 85296
   City, State, Zip
2. Distance to nearest church: 500 ft. Name of church NEW LINE CHURCH
   Address 202 S GILBERT RD GILBERT AZ 85296
   City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name DAVID CHANCHE
   Address [redacted] GILBERT AZ 85296
   City, State, Zip

4a. Monthly rental/lease rate $ 3,800 What is the remaining length of the lease 3 yrs. 0 mos.

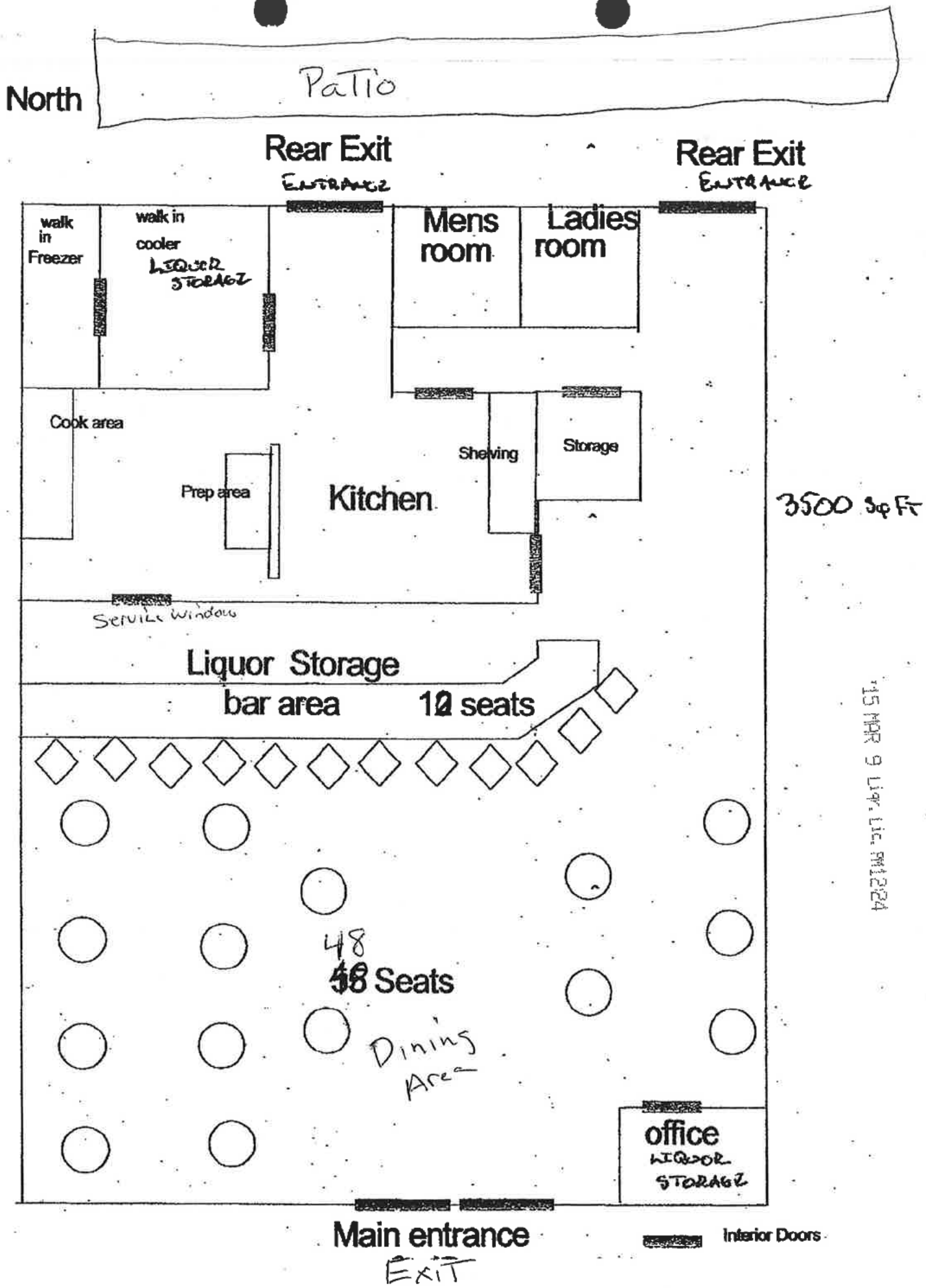
4b. What is the penalty if the lease is not fulfilled? $ 0 or other _____
(give details - attach additional sheet if necessary)

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)? RESTAURANT


North
Patio
Rear Exit
Entrance
Rear Exit
Entrance
walk in Freezer
walk in cooler
Liquor Storage
Mens room
Ladies room
Cook area
Prep area
Kitchen
Shelving
Storage
3500 Sq Ft
Service Window
Liquor Storage
bar area
12 seats
48
48 Seats
Dining Area
office
Liquor Storage
Main entrance
Exit
Interior Doors
'15 MAR 9 Liq. Lic. M1224

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

'15 MAR 9 LIQ. LIC. PM12:24

SECTION 16 Signature Block

I, Anthony N. Edwards, hereby declare that I am the OWNER/AGENT filing this
(print full name of applicant)
application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X [signature]
(signature of applicant listed in Section 4, Question 1)

State of Arizona County of Maricopa

OFFICIAL SEAL
JUANITA A. ESPARZA
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires September 10, 2018

The foregoing instrument was acknowledged before me this
9 of March, 2015
Day Month Year

My commission expires on : _____
Day Month Year

[signature]
signature of NOTARY PUBLIC

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Amy Temes, Senior Planner (480) 503-6729

MEETING DATE: April 30, 2015

SUBJECT: GP14-02 - Gilbert 2014 Annual General Plan Update: Chapter 10

STRATEGIC INITIATIVE: Community Livability

RECOMMENDED MOTION

Move to adopt the attached resolution and approve GP14-02, a minor General Plan text amendment to the General Plan Chapter 10, Character Areas, Santan Character Area.

BACKGROUND/DISCUSSION

Overview

The General Plan provides the basis for Gilbert's long-range plans and proposals for different geographic areas. The General Plan contains policies that guide the development of the community such as the mix of land uses, character, design, open space, natural environment, community service, neighborhood revitalization, transportation and economic growth. It sets forth the physical form of Gilbert in the Land Use Map.

Gilbert has four Character Areas within the General Plan, each with distinct visions, goals or features that make them special. The Santan Character Area (SCA) is the largest of the four encompassing 10,309 (TOG GIS) acres. A Specific Area Plan was created in 1998 when Gilbert's planning area increased with this southern territory. After many open house meetings and hearings, the original Character Area was created and has served as the tool to recognize the important rural agricultural heritage of South Gilbert.

History

Date	*Action*
April 16, 2014	Town of Gilbert held the 1st Open House for the Santan Character Area update.
May 14, 2014	Town of Gilbert held the 2nd Open House for the Santan Character Area update.

June 4, 2014	Planning Commission Study Session to review Open House results.
November 5, 2014	Planning Commission Study Session to review data collection and analysis.
February 4, 2015	Planning Commission Study Session to review additional data collections and new General Plan outline and appearance for Chapter 10.
April 1, 2015	Planning Commission Public Hearing for General Plan Minor Amendment for Chapter 10

General Plan Amendment

Because South Gilbert has changed significantly since 1998 when the Santan Character Area (SCA) was originally formed, it will be the first of the four character areas to be reviewed and revised. The SCA was created based on unique attributes, such as the heritage in farming, respect for the land, and family atmosphere. The once predominantly rural agricultural environment has seen the construction of master planned communities, such as Seville and Layton Lakes, the development of 84 miles of new collector and arterial roads, 20 traffic signals and over 100 new businesses and restaurants, schools, churches continue to be constructed. There is still much interest from the home building community to continue residential construction on any available land in the SCA, placing Gilbert at the forefront of residential building permits in the State of Arizona. The service oriented in-fill development is just beginning to respond to the housing construction boom in South Gilbert.

Character Area Update Summary

The Santan Character Area (SCA) is the first General Plan Character Area to be modified. The new format and outline will set the standard for the remaining character area updates. The update includes integration of public input, updated data, revised terminology, web based graphics/links, Gilbert Town branding, and new imaging. The current sense of place, existing conditions and future needs were cross-referenced with the existing SCA document and synthesized into new Goals and Policies. The Goals and Policies are based on five (5) Characteristics identified by staff from the community input:

- Celebrating Heritage
- Connect People and Places
- Open for Business
- Sense of Place
- Leisure and Culture

In Staff's opinion, the intent of the original San Tan Area Plan and text of the existing General Plan is still represented, and in many cases strengthened/supported, by the new SCA chapter.

Data Analysis Summary

Residential Potential

The residential housing market remains strong within Gilbert. The building community is actively seeking vacant land. Some of the remaining dairymen and farmers are open to the sale of their property to developers. Others wish to continue their family business regardless of the market potential. During the open house meeting, the public did indicate that the current General Plan Land Use Classifications were acceptable and encouraged the new communities to embrace the agricultural past and character through fencing, architecture, landscape, trails and open space. The public is essentially seeking modern conveniences within developments that retain a small town feel.

Commercial Potential

The Commercial land uses for the SCA are supported by the 34,000 (MAG/Census) residents within the boundary and an additional 77,500 (MAG/Census) residents on the 3 mile periphery (Chandler, Mesa, Queen Creek, the Gila Indian Reservation and County lands). Based on citizen input, there remains a significant need for neighborhood services such as restaurants, salons, automotive repair, day care, medical offices, grocery stores, dry cleaners, fast food, and other uses that support daily life. Other non-retail services needing land uses designated for larger non-residential property could include offices, business services, health care, etc. The commercial corner of Higley and Riggs was envisioned to develop as a village center, providing a commercial hub of mixed uses for the South Gilbert Community.

Recently the retail markets for South Gilbert were analyzed by an applicant as part of a Major General Plan Amendment. The summary of the market analysis (dated Oct 2013) stated that South Gilbert did not generally contain the density of development to support large retail centers, now or in the future. Staff has reviewed retail trade area maps for a range of commercial development types. These maps show that while a large retail "power center" may not be supported; there are gaps in medium and small retail trade centers needed to serve existing and future neighborhoods. Additionally, other non-residential land uses on large parcels are necessary to serve the diverse Santan area such as health care facilities, colleges, congregate living facilities, cultural institutions, etc.

In staff's review of the distribution of adopted General Plan land uses, it was found that the Commercial/ Office/ Industrial land uses in the SCA consume only 4% compared to 18.2% for Gilbert town wide (excluding right of way). Gilbert's review of proposed land use changes for the SCA has been careful when the loss of non-residential land uses are proposed. The growing Senior and Millennium populations tend to prefer mixed use development with convenient amenities. Most of the commercial land use classifications in the SCA offer this option.

During the public Open Houses and Study Sessions, the long range planning question was raised time and time again as to what is the ideal ratio between population and non-residential employment and commercial services. In response, Staff compared the ratio of Gilbert's current population to the existing non-residential land uses (developed land) and to the projected build out of the General Plan. The acres per capita analysis was run for the SCA and the rest of Gilbert. Acreage amounts by land use were calculated from the General Plan map. To

determine how many acres per person, the total acres were divided by the total population for each land use grouping. The results are explained as follows.

Gilbert's planning boundary consists of approximately 72.67 square miles, of which the SCA is approximately 16.11 square miles or 22%. Excluding the SCA, the current ratio of developed Commercial/ Office/ Industrial land uses in Gilbert is approximately 0.018 acres per person. Within the SCA, the current ration of developed Commercial/ Office land uses is approximately 0.0035 acres per person. In comparison, the difference is currently more than five times greater in the rest of Gilbert than in the SCA.

At the 2040 build-out, the projected Commercial/ Office/ Industrial land uses in Gilbert is 0.025 acres per person, excluding the SCA. The Commercial/ Office land uses within the SCA are only projected to serve 0.006 acres per person or 4 times less than what a resident of North Gilbert would have as commercial service options. Keep in mind that these figures do not include peripheral population within the commercial trade areas (2-3 miles), which equals another approximately 70,000+ people.

In summary the analysis showed that the SCA, based on population, is currently under served. Even at build-out, as depicted on the General Plan, the South Gilbert community will not equal the ratio of non-residential and commercial support services provided to North Gilbert. These land uses include, but are not limited to, colleges, medical, offices, tourism, retail, restaurants and other service industries. The conclusion of the basic analysis shows that the commercial, office and any potential future employment land uses in the SCA should be preserved and fostered over the long term. Proposed changes in land use will continue to be evaluated on a case-by-case basis.

Supporting Data Sources

The Existing Conditions and Future Needs sections of SCA were cross referenced with County plans, Capital Improvement Plans, the Transportation Master Plan and the Parks and Recreation Master Plan to help determine conditions, projects, timing and staff follow-up.

PUBLIC NOTIFICATION AND INPUT

An agenda notice was published in a newspaper of general circulation in the Town and an official notice was posted in all the required public places within the Town.

In the hopes of reaching the maximum SCA population, the Town mailed over 10,000 Open House notices, created a SCA web page, posted announcement to Facebook, Tweeted and posted on the Town of Gilbert website, encouraging and inviting the public to come and provide input on the future of the SCA. The Town of Gilbert Development Services Department held its first open house on April 16, 2014. Approximately 50 people attended or provided comments. Many of the attendees were large lot home owners supporting the rural lifestyle that they bought into years ago. Residents attending from the master planned communities espoused the need for restaurants, business and employment. Much of the conversation revolved around capital improvement projects such as road construction and public parks.

A second Open House was held on May 14, 2014. Notices were emailed to anyone that participated at the first neighborhood meeting or that contacted staff. A notice was also posted on the SCA web page, announced on Facebook, and Tweeted. Approximately 15 – 20 people attended or provided comments to staff. The public was asked to clarify any of their previous comments, evaluate staffs' process for the update and request future research. Much of the discussion focused on research, capital project funding and timelines. Staff has received limited public input in the last few months. The recent comments received were: support and encourage large lot development, that there is too much discussion in the draft document about agricultural uses in the SCA and that farming is no longer relevant or a supported use in the area. Staff did re-evaluate the draft text based on the comments provided.

PLANNING COMMISSION RECOMMENDATION

Planning Commission held a public hearing on April 1, 2015 to discuss the proposed changes to Chapter 10 of the General Plan. The Planning Commission recommended with a 7-0 vote that Town Council accept and approve the chapter as revised.

STAFF RECOMMENDATION

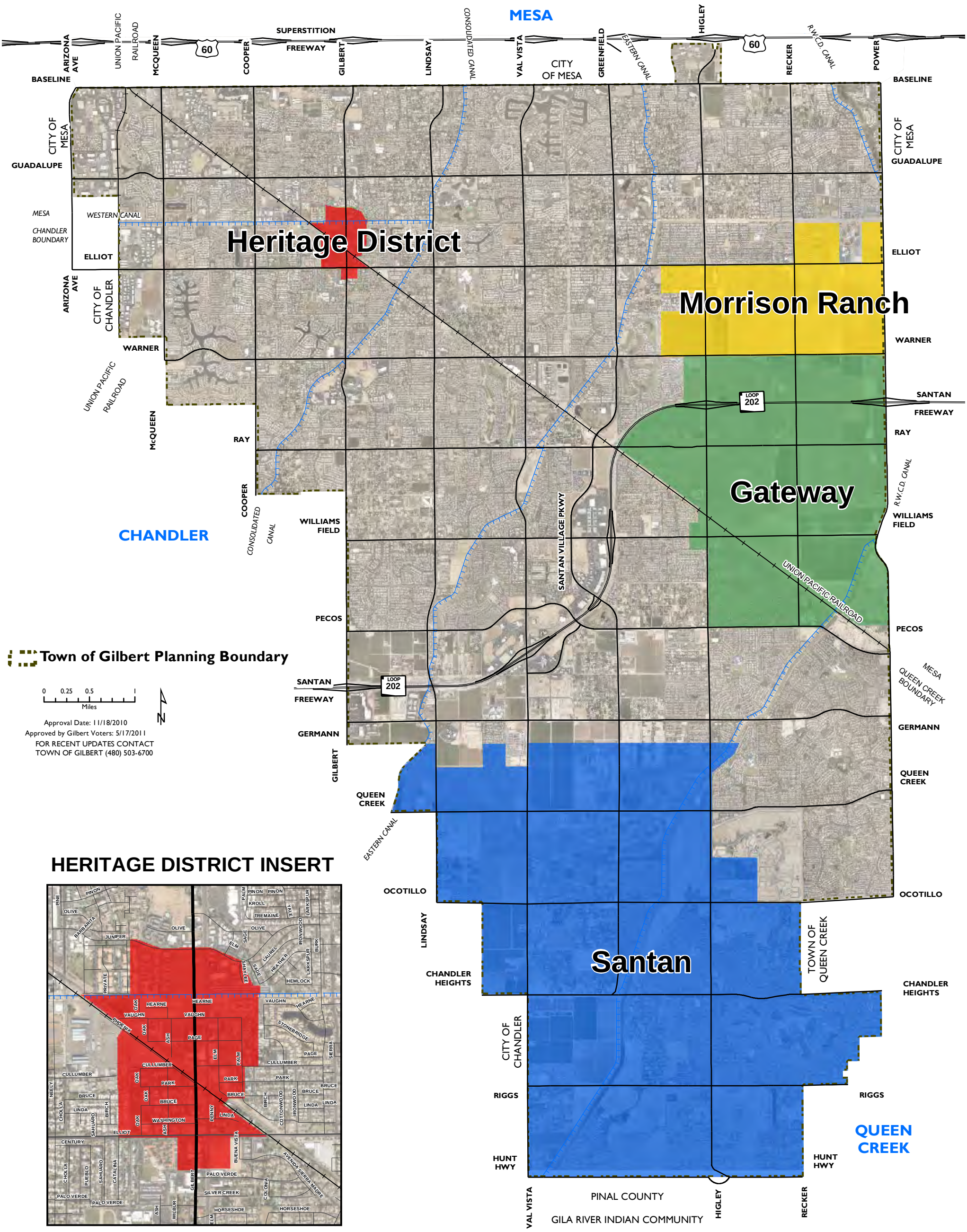
Adopt the attached resolution and approve GP14-02, a minor General Plan text amendment to change the General Plan document Chapter 10, Character Areas.

Respectfully submitted,

AMY TEMES
SENIOR PLANNER

Attachments:
1) Vicinity Map
2) Resolution
   Exhibit 1: General Plan Chapter 10 – Santan Character Area
3) General Plan Land Use Map
4) Planning Commission Minutes from April 1, 2015
5) Correspondence

Approved By	Approval Date
Catherine Lorbeer	4/15/2015 11:11 AM
Linda Edwards	4/15/2015 11:21 AM
Jack Vincent	4/20/2015 10:59 AM
Cris Parisot	4/16/2015 4:38 PM



CHARACTER AREAS MAP

GILBERT ARIZONA

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, DECLARING THE EXHIBITS ENTITLED "GENERAL PLAN CHAPTER 10 - SANTAN CHARACTER AREA, DATED APRIL 30, 2015" AS A PUBLIC RECORD; ADOPTING THE 2014 UPDATE TO THE TOWN OF GILBERT GENERAL PLAN, BY REFERENCE; AMENDING THE GILBERT GENERAL PLAN AS FOLLOWS: UPDATE TO THE TEXT AND IMAGES PERTAINING TO THE SANTAN CHARACTER ARES WITHIN CHAPTER 10 OF THE GENERAL PLAN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, the Town of Gilbert General Plan was approved by the Gilbert town Council on November 18, 2010 and ratified by the voters on May 17, 2011; and

WHEREAS, the Gilbert General Plan provides for annual review and updates to the General Plan; and

WHEREAS, the Town of Gilbert has solicited and received public input regarding the proposed amendments to the General Plan through notice and public hearings as required by law; and

WHEREAS, the Common Council of the Town of Gilbert has received a recommendation from the Town of Gilbert Planning Commission regarding the proposed land use map change; and

WHEREAS, the certain exhibits entitled "General Plan Chapter 10 – Santan Character Area", three copies of which are on file in the office of the Town Clerk, is hereby declared to be a public record and said copies are hereby ordered to remain on file with the Town Clerk;

NOW THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Town of Gilbert General Plan is hereby amended as follows:

(1) Amending the General Plan Chapter 10 – Santan Character Area;

BE IT FURTHER RESOLVED that all resolutions and parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 20__.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
Jack A. Vincent, Assistant Town Attorney

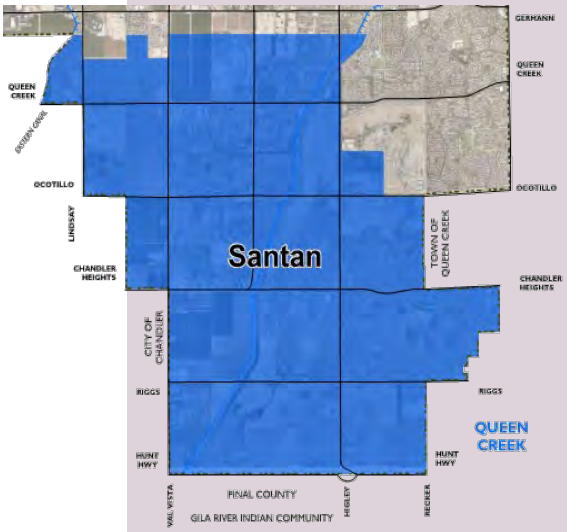
The following exhibits are attached hereto and incorporated herein:

1. General Plan Chapter 10 – Santan Character Area

Santan Character Area

Introduction

Santan Community Character



In 2000, the Santan Character Area (SCA) was created to capture the unique qualities of this growing area because it had recently been added into Gilbert's planning area. The SCA encompasses 10,309 (TOG GIS) acres. This 16 square mile area is part of the Town's 72 square mile planning area. The character area serves as a tool to recognize the importance of the rural agricultural heritage of South Gilbert. ***Over time, the once predominantly agricultural area has seen the growth of well-designed master planned communities, the development of 84 miles of new collector and arterial roads, 20 traffic signals and over 100 new businesses and restaurants.***

In 2000, there were 6,400 acres of agricultural land in the SCA -- today there is less than 200 acres. Service oriented infill development is just beginning to respond to the SCA population growth. Schools, churches and residential rooftops are now dominant in the area. There is still significant interest from the development community to continue residential construction in the SCA.

The VISION

The people of the Santan Character Area envision the area as a combination of rural and suburban neighborhoods that enjoy the natural environment including wildlife and small scale agricultural activities. Emphasis is placed on outdoor living enjoyment and the ability to live and play in a secure and safe environment. Low and medium density residential development blend with farming, trails, open space and commercial uses to make-up the character of the Santan area.

Multi-use trails, desert washes and proximity to the Santan Mountains make the area unique. The SCA continues to require special attention due to the land use issues related to residential and non-residential development. Residents have expressed concern about the lack of services and commercial amenities, yet desire a pattern of development consistent with the rural lifestyle and open spaces that characterize the Santan area. The General Plan land use map shows approximately 45% of the SCA designated for residential development between 2–3.5 DU/Acre. About 35% is designated for densities between 0–2 DU/Acre and the remaining 20% is for commercial, public and open space uses. If all residential lands were developed at these densities, there would be between 9,278 and up to 23,452 homes in the SCA.

The Santan Character Area Plan contains goals and policies to guide future development. It is used by the Town Council, Planning Commission and the public as a long range planning tool to evaluate changes in land use, new development, and budget decisions.

5 Characteristics

Using the community's feedback from open house meetings and researching the historical context, five (5) characteristics for the Santan area were created as a framework for the SCA's goals and policies.

Celebrate Heritage

We value our Sonoran and rural agricultural roots.

Connect People and Places

We value our ability to connect to each other and the surrounding community with community facilities, roads, trails, bike lanes, and pedestrian paths in a safe and efficient manner.

Open for Business

We value our strong entrepreneurial spirit of small business and farming supported by nodes of commercial services.

Sense of Place

We value our Santan Character Area as a great place to grow-up, raise a family and comfortably retire in a safe and attractive environment.

Leisure and Culture

We value our healthy lifestyle with a wide variety of leisure and cultural opportunities that enhance daily life.

Existing Conditions

SCA Yesterday and Today...

Community History

The history of the Santan Character Area is strongly rooted in farming and the dairy industry. At one time there were over eight dairies in the SCA area. Today there are three dairies. ***Of the 10,309 (TOG GIS) acres within the SCA, there is less than 3,665 (TOG GIS) acres of undeveloped vacant land remaining.***

Many residents in the SCA area remember the open irrigation canals, huge fields, wildlife and crop dusters fondly. Though neighbors were often spread apart, they all knew each other and came to each other's aid in times of crisis. The SCA was a place where children walked on farm roads to visit friends, residents rode horses along canals and the opening day of dove season was an event. With the population growing from 2,200 to over 27,000 in 14 years, residents supported roads, public services, schools, churches and commercial services. Large master planned communities were developed with trails, open spaces and a transition of lot sizes along the edges to buffer adjacent large lot development.

Rural residential lands > 0–2 dwelling units per acre equal approximately 32% (TOG GIS) of vacant land use.

Sense of Place

Urban Design

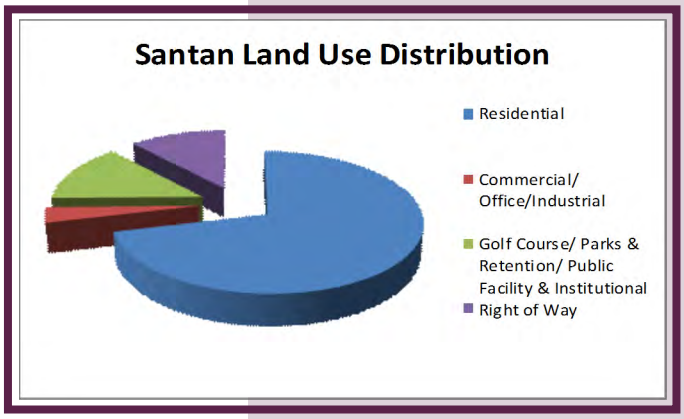
In 1998, the architecture and urban form within the SCA was predominantly mid-20th century ranch houses on large plots of land. The dirt farm roads served as fields and homestead access. As time progressed, lot splits, minor land divisions and rural subdivision of one, two and five acre farm lots into small neighborhoods occurred. Most of the lots still embraced farm animals and pastures even as the homes grew larger and more elaborate. Some of these neighborhoods grew larger such as the rural residential area between Val Vista Drive and Greenfield Road, from Queen Creek Road to Chandler Heights Road. The average density of the neighborhoods in the SCA is approximately 1.8 DU/Acre (TOG GIS). The area is almost completely built-out barring except for lot splits, development of approximately 2,555 acres of vacant residential lands and the completion of commercial corners at the major intersections. ***Rural residential lands > 0–2 DU/Acre equal approximately 32% (TOG GIS) of the vacant land use within the SCA. Medium density of > 2-3.5 DU/Acre equate to approximately 37% of the vacant land use within the SCA.***

In the late 1990s, custom homes constructed on the farm lots became larger and more elaborate with improved roads and utilities. As the construction boom continued, larger master planned subdivisions began developing within the SCA. The master planned communities tended to have smaller lots in the 6,000 sf to 10,000 sf range with an average density of > 2-3.5 DU/Acre. The new homes displayed contemporary design with touches of architectural styles reminiscent of Italian, Spanish, Mission, Craftsman and Prairie. The major master planned communities and subdivisions (Layton Lakes, Freeman Farms, Shamrock Estates, Adora Trails, Seville) equal approximately 2,437 acres within the SCA. The SCA is now an area with urban amenities that embrace the past.

Jobs and Services

The SCA is predominantly residential with commercial growth planned for designated areas to serve existing and future populations. Commercial land uses are primarily constructed adjacent to large mature master planned communities. The vernacular of the non-residential development is consistent with the style of the adjacent master planned community or the SCA's agricultural heritage. Vacant land designated for commercial land uses is available at:

- Higley/ Riggs Roads
- Val Vista Drive/ Riggs Road
- Greenfield/ Ocotillo Roads
- Greenfield/ Queen Creek Roads
- Val Vista Drive/ Chandler Heights Road
- Val Vista Drive/ Queen Creek Road, and
- Lindsay/ Queen Creek Roads



Some of these areas are adjacent to master planned developments that are still under construction or have lower population density. Other lands are adjacent to large lot development or vacant lands yet to be annexed or developed.

At the projected 2030 build-out, the commercial land use amount in Gilbert, excluding the SCA, is calculated as approximately 0.024 acres per person. In comparison, the commercial lands in the SCA are only projected to supply about 0.006 acres per person or 4 times less than what a resident of north Gilbert would have as commercial service options. These figures do not include County lands, adjacent municipality's commercial services or peripheral population within the commercial trade areas. This basic analysis shows that the commercial, office and any potential future employment land use in the SCA should be preserved and fostered over the long term.

Connectivity

Access is a key determinant of growth because it facilitates the flow of goods and people. The SCA is well connected with close proximity to the Santan Freeway, railroad, airports, bike paths and trail systems. Adjacent municipalities are connected with arterials that make it easier for residents and visitors to share regional attractions.

Roads

The mile grid system exists throughout the character area and over time County farm roads have been annexed and improved to meet Town standards. However, new subdivision development has not always been contiguous, causing scalloped streets, unimproved intersections and points of congestion. Traffic volumes and safety concerns have required that some of the Capital Improvement Projects in the SCA be moved forward more quickly than originally planned, to alleviate congestion. Pass-through traffic continues to be a concern in the South Gilbert area. Adjacent municipalities that do not have freeway access pass through South Gilbert to access the 202 Freeway with northbound arterials. Other traffic travels through the SCA to the Santan Mall, parks and other larger power centers in central Gilbert.

Bike Paths and Trails

As the roads develop in the SCA, bike lanes on arterial and collector streets have been constructed. These bike lanes connect into the Town's road networks and open space systems. The Town continually works to require, construct and/or retrofit roads to accommodate new bike lanes. The bike lanes connect to bike paths along canals, utility corridors and washes. The recent Queen Creek Wash improvements include a multi-use trail that connects into the Queen Creek trail system. The upcoming Sonoqui Wash project will also include multi-use trails and paths that will link into the Queen Creek Wash. Both of these improvements currently terminate at the East Maricopa Floodway just inside of the SCA eastern boundary. Chapter 4 of the General Plan and the corresponding Parks, Open Space, Trails and Recreation Plan Map, show that it is intended for these paths and trails to continue along the wash and connect trails in neighborhoods such as Seville to existing trails alongside roads including Brooks Farm Road, Hunt Highway, Queen Creek Road (along the power lines), and Greenfield Road (from Queen Creek Road) to connect up to the Hetchler Soccer Complex.

Railroad

Many residents reminisce about the sound of the train. The Union Pacific Railroad runs southeast to northwest through the Town just north of the SCA. The railroad noise and vibration have little to no impact on the South Gilbert community. The rail service does provide future opportunity for employment and transit connections within a 10-15 minute drive north from the SCA.

Airports

There are two airports within 10-20 minutes of the SCA. The Chandler Municipal airport is located to the northwest. It is owned by the City of Chandler and is considered a business oriented airport surrounded by charter, excursion and training institutions. The airport chartered 200,000 operations in 2014. A larger airport northeast of the SCA is the Phoenix-Mesa Gateway Airport. Gateway is owned and operated by the Phoenix-Mesa Airport Authority and is a reliever airport of Phoenix Sky Harbor International Airport. The authority is governed by the Town of Gilbert, City of Mesa, Town of Queen Creek, Gila River Indian Community, City of Phoenix and City of Apache Junction. Phoenix-Mesa Gateway airport had over 700,000 enplanements in 2014 and is expected to reach 850,000 by 2017.

Phoenix-Mesa Gateway Airport is expected to reach 850,000 enplanements by the year 2017.

Infrastructure and Amenities

The Backbone — Water and Sewer

Infrastructure improvements within the SCA have primarily occurred with new master planned development. Due to the location of the South Area Waste Water Treatment Facility, reclaimed water lines are available on most of the major arterial roads within the SCA. Water lines are generally available with private wells being incorporated into the Town system as development occurs. Water service continues to be improved as new development adds loops into the system that help to maintain pressure. Some large lots retain their private wells and water rights. In addition, a majority of the large lots have flood irrigation provided by private companies.

Sewer extends through most of the major public roads in the SCA with gaps occurring adjacent to large areas of vacant land or mature large lot areas. Septic systems exist on many mature large lots.

Other utility infrastructure is provided by private or quasi private service providers through franchise agreements with the Town of Gilbert. Examples of these providers include Cox Communications, Arizona Public Service (APS), Salt River Project (SRP), Roosevelt Water Conservation District (RWCD) and Southwest Gas.

Recreation and Leisure

Public parks and open spaces in the SCA have primarily been developed as part of large master planned communities or through public-private partnerships such as the Hetchler Soccer Complex located at the far north boundary of the SCA. There are no other existing public parks within the SCA. The South Recharge Facility is not considered a park facility though residents may walk around it and it is often used for bird watching. The East Maricopa Floodway and the surrounding Roosevelt Water Conservation District canal access roads are not open to the public as a trail system at this time. The Town is currently working toward the acquisition of land for a regional park in the SCA.

Community Facilities

The SCA is supported by the South Area Service Center located at Greenfield and Queen Creek Roads. Currently, the service center houses a police substation, solid waste transfer facility, hazardous material drop-off and a few other small services. Per the Parks and Recreation 2014 Master Plan, the Service Center is envisioned to be the future home of a Recreation Center. A public library is located at Perry High School on Queen Creek Road and Val Vista. Another library is located at Basha High School, which is at Val Vista Drive and Riggs Road just outside of the Town of Gilbert and SCA planning boundary.

Environmental

Canals, Flood Channels and Washes

The SCA has several floodplains, canals, washes and flood control structures within its boundaries. The Santan Mountain has significant sheet flow run-off that inundates the neighborhoods and properties at the foot of the mountain. A large drainage channel adjacent to Riggs Road was recently constructed to help with the floods that gather on the streets. The channel's outfall is to the east Maricopa Floodway under the jurisdiction of the Flood Control District of Maricopa County. The floodway transects the eastern half of Gilbert from south to north draining toward the Salt River Basin. The East Maricopa Floodway is approximately 250 feet wide and requires major bridge crossings. At some locations there are overflow and catch basins constructed that extend the floodway to over 2,500 feet wide. Adjacent to the floodway is the Roosevelt Water Conservation District canal. The canal is 25 feet wide with service roads on either side for a total width of 100 feet. Neither the floodway nor the Roosevelt Canal property is open to the public. The Town has been in contact with both entities to discuss recreation and trail options for the future.

Ground Water and Fissures

The sediment filled underground aquifers hold large quantities of groundwater in storage over bedrock. When large amounts of water are withdrawn, the surface subsides and cracks. The cracks are known as fissures. In Arizona, fissures were first noted in the agricultural area south of Phoenix in the 1920s. The physical appearance of fissures vary greatly from almost undetectable hairline cracks to large, deep earth openings more than a mile in length, up to 15 feet wide, and 100's of feet deep. During torrential rains, fissures erode rapidly presenting a substantial hazard to people and infrastructure. Moreover, fissures provide a ready conduit to deliver runoff and contaminated waters to basin aquifers.

In August 2005, the Arizona Legislature drafted legislation that addressed earth fissures in Arizona. Effective September 21, 2006, Ariz. Rev. Stat. § 27-152.01(3) charges the Arizona Geological Survey (AZGS) with 1) comprehensive mapping of earth fissures throughout Arizona, and 2) delivering earth fissure map data to the State Land Department to be posted online with other GIS map layers for public use.

The damaging effect of subsidence can include gradient changes in transportation, utility, and flood control facilities. Settlement is the gradual downward movement of an engineered structure due to the compaction of the unconsolidated material below the foundation. Because of the gradual, long term nature of subsidence and settlement, these phenomena do not pose a life safety hazard, but do result in property losses. The effects of subsidence can create decreased groundwater storage capacity, change slope patterns (affecting irrigation, flood control, and drainage patterns), and cause damage to both surface and underground structures.

For more information on Fissures go to: http://www.azgs.az.gov

Vistas and Landmarks

Two of the three most predominant landmarks in South Gilbert are not located within the SCA: Santan Mountain south of Hunt Highway and the LDS Temple at Pecos and Greenfield Road. The third landmark is the East Maricopa Floodway. The East Maricopa Floodway is a greenbelt running north to south within East Gilbert. The engineered channel has been landscaped with natural grasses, but not trees, shrubs or trails. The Maricopa Floodway connects into the Queen Creek and Sonoqui Wash drainage and trail systems. Local wildlife uses these channels as corridors and can be spotted on a regular basis.

Santan Mountain also has animal wildlife corridors that connect into South Gilbert and the East Maricopa Floodway. Various types of wildlife may be observed, including reptiles, birds, and mammals. The scenic Santan Mountain Park Regional Park, about one mile south of the SCA, consists of over 10,000 acres. The park ranges in elevation from about 1,400 feet to over 2,500 feet. The vegetation changes from creosote flats to dense saguaro forest.

The other predominant feature in South Gilbert, located just north of the SCA boundary, is the LDS temple. The Temple is 198 feet to the tip of the spire and may be seen from as far as Sacton I-10 Freeway heading north. The temple is a regional destination and is a landmark for the East Valley.

Future Needs

SCA Tomorrow...

Housing Stock

The residential housing market remains strong within the Town of Gilbert. The building community actively seeks vacant land for new subdivisions. Existing residents encourage new communities to buffer future residents that are not accustomed to the agriculture dust, aroma and hours of operation as they consider it a part of the SCA lifestyle. The community further embraces the rural heritage and character through the design of fencing, architecture, landscape, trails and open space and expects that new development will also. As builders continue to seek land for new development, the General Plan goals are to be reviewed carefully with each request to ensure the SCA lifestyle continues to develop as envisioned.

Jobs and Services

Within the SCA, most of the employment opportunities relate to schools, churches, retail, food service or home occupations. ***Significant employment opportunities are occurring a few miles to the north along the 202 Santan Freeway at Mercy Gilbert Hospital, the Santan Motorplex, Val Vista Square, SanTan Mall, the Chandler Airpark, ASU Polytechnic and the Phoenix-Mesa Gateway Airport.*** The commute to these locations is less than 20 minutes.

Based on resident input, there remains a significant need for neighborhood services such as restaurants, salons, automotive repair, day care, medical offices, grocery stores, dry cleaners, fast food, and other uses that support daily life.

Staff has reviewed retail trade area maps for a range of commercial development types. These conceptual maps showed that while a larger retail “power center” may not be competitive in South Gilbert, gaps exist in smaller retail trade centers that are needed to serve existing and future neighborhoods. Additionally, other non-residential land uses are vital to serve the diverse Santan area such as health care facilities, colleges, congregate living facilities, eating and drinking establishments, and cultural institutions.

Connectivity

Roadway projects within the SCA have continued to move forward on the Capital Improvement Project (CIP) schedule as development and population increase. The main focus is improving the major arterials, eliminating scalloped street sections, and completing critical connections.

Along with the arterial improvements come the traffic signals and left turn lanes, which often help ease traffic congestion. A well-developed collector road system will provide relief to the arterial streets.

Community Facilities

As noted during the data collection phase and public process, South Gilbert lacks community facilities such as parks, recreation centers, trails and other gathering places. Implementation of the recent Parks and Recreation Master Plan is underway with a field needs study and review of shared facilities/land with other governmental agencies. Once these studies are completed, the CIP will be updated with new projects.

Environment

It is the Town's goal to preserve scenic vistas and to limit negative impacts on the environment. Fissure mitigation measures continue as new fissures are found that impact infrastructure and safety. Home owners are encouraged to familiarize themselves with the USGS maps and to contact either the USGS or the Town of Gilbert if they believe a new fissure has been located. Never allow children or animals near an identified or possible fissure. Fissures are not arroyos and should not be treated as such.

To stay up to date on upcoming CIP projects and construction visit the Town of Gilbert CIP Home page for schedules, maps and project descriptions.

http://www.gilbertaz.gov/departments/development-services/engineering/captial-projects

Goals and Policies

The following goals and policies reflect the desired character for this area and will guide decisions about how the SCA grows and changes in the future. Goals provide the long term vision, and policies bridge the goals to the implementation strategies.

Celebrate Heritage

SCA GOAL 1.0 Value our Sonoran and rural agricultural roots.

POLICIES

SCA.1.1 Preserve existing desert landscape as appropriate and re-vegetate areas that have been disturbed.

SCA.1.2 Use large-lot residential areas that integrate with the rural character as relief from more intense suburban development.

SCA.1.3 Encourage the development of unique, low-density projects mixed with open space.

SCA.1.4 Promote the use of rural design themes within the buffer area for residential and commercial development.

SCA.1.5 Design aesthetically pleasing, rural-themed streetscapes.

SCA.1.6 Encourage a variety of walls including view walls, landscaping and agricultural themed fencing, where appropriate.

SCA.1.7 Consider the unique aspects of this Character Area when selecting sites for commercial development.

SCA.1.8 Encourage development of agribusiness and support existing agricultural uses.

SCA.1.9 Support residential development that allows agricultural activities.

SCA.1.10 Promote new development that is compatible with noncommercial or small scale agriculture.

Connect People and Places

SCA GOAL 2.0 Connect to each other and the surrounding community with roads, trails, bike lanes, and pedestrian paths in a safe and efficient manner.

POLICIES

SCA.2.1 Connect developments with a greenbelt buffer that includes multi-use trails.

SCA.2.2 Utilize canals, desert washes and roadway buffer areas as part of the trail system.

SCA.2.3 Promote a multi-use trail connection from the Santan Area to the Santan Regional Park.

SCA.2.4 Promote collector street system.

SCA.2.5 Provide alternative modes of transportation (pedestrian, equestrian, and non-motorized vehicles) along the trail system throughout the Santan area.

SCA.2.6 Encourage subdivision design to optimize open space areas for community gatherings.

Open for Business

SCA GOAL 3.0 Encourage small business, farming and nodes of commercial services.

POLICIES

SCA.3.1 Encourage development of commercial centers adjacent to open space, trails and parks.

SCA.3.2 Encourage master planned communities to create village centers.

SCA.3.3 Promote the inclusion of neighborhood commercial to provide convenient services to residents.

SCA.3.4 Encourage commercial and entertainment uses in appropriate locations.

SCA.3.5 Buffer adjacent land uses with local streets, landscaping and higher density developments.

SCA.3.6 Provide buffering between different land uses and densities.

Sense of Place

SCA GOAL 4.0 Recognize the Santan Character Area as a great place to grow-up, raise a family and comfortably retire.

POLICIES

SCA.4.1 Preserve and enhance the scenic beauty and natural desert in open space and public areas.

SCA.4.2 Use building and landscape materials that blend with the natural environment.

SCA.4.3 Protect views along major streets, gateways, and pedestrian paths to provide a sense of place and orientation.

SCA.4.4 Promote infill development that reflects sensitivity to site, context, climate, and surrounding neighborhoods.

SCA.4.5 Encourage the preservation of the view corridors to the Santan Mountains in all areas of the SCA by promoting development patterns that protect the scenic qualities.

SCA.4.6 Ensure new development protects wildlife ecosystems and sensitive habitat areas.

SCA.4.7 Encourage minimal nighttime lighting to maintain dark skies.

SCA.4.8 Maintain and preserve existing low density and rural residential neighborhoods.

SCA.4.9 Encourage new development to buffer non-residential uses with open space areas or other appropriate transitional uses.

Leisure and Culture

SCA GOAL 5.0 Provide leisure and cultural opportunities that enhance a healthy lifestyle.

POLICIES

SCA.5.1 Continue development of the adopted trail system as illustrated on the Parks, Open Space, Trails and Recreation Plan map.

SCA.5.2 Adapt canals, irrigation laterals, washes and floodways for parks, recreation areas and trail uses.

SCA.5.3 Coordinate Intergovernmental Agreements with other entities to encourage regional parks and trail systems.

SCA.5.4 Connect development to trails that link to equestrian and hiking areas.

SCA.5.5 Design private parks and open spaces with access to trails and canals.

SCA.5.6 Blend uses that facilitate water recharge and natural systems with recreational trails and passive activities.

Implementation

Development Criteria

In concert with the adopted goals and policies, criteria assist with the evaluation of development applications by staff, the Design Review Board, the Planning Commission and Town Council and offer a means to mitigate possible negative impacts and to maintain consistency with community character.

Applicants for rezoning are expected to meet with area residents, particularly those within one-eighth mile (660') of the subject property, for the purposes of informing the public and integrating concerns prior to public hearings.

Density

The land use map designates the majority of the Santan Character Area as Residential >0-1 DU/Acre and Residential >2-3.5 DU/Acre. Densities for other land use categories shall comply with the land use map. All proposed development shall demonstrate a response to:

- Subdivision design that provides ample open space as a community focal point and buffers existing adjacent large lots with similar lot sizes.
- Provide a minimum ten percent (10%) open space or acceptable alternatives, which meet the spirit and goals of the Santan Character Area.
- Peripheral lots adjacent to existing development 1 acre or greater should buffer those existing large lots with subdivision design including: open space areas, separation between the existing and new development with a local street and lot size similar to existing adjacent lot size. New lot sizes are not required to be 1 acre or larger.
- Rural design themes, such as open fencing, country entry treatments; and response to Santan Character Area objectives, including retention of farm irrigation, incorporating mature citrus into new development, enhancing native landscape and utilizing existing natural washes in the trails system.
- Lots less than 15,000 square feet in area should be screened from arterial roadway view.
- Trail systems throughout the project, totaling twenty-five (25) lineal feet for each acre in the development, with connection points to community wide trails should be incorporated.

Non-Residential

Retail and service establishments are to be located on appropriately sized parcels at major roadway intersections. Neighborhood retail/service centers may be appropriate at the intersection of two major arterials in addition to shopping facilities master planned in a core.

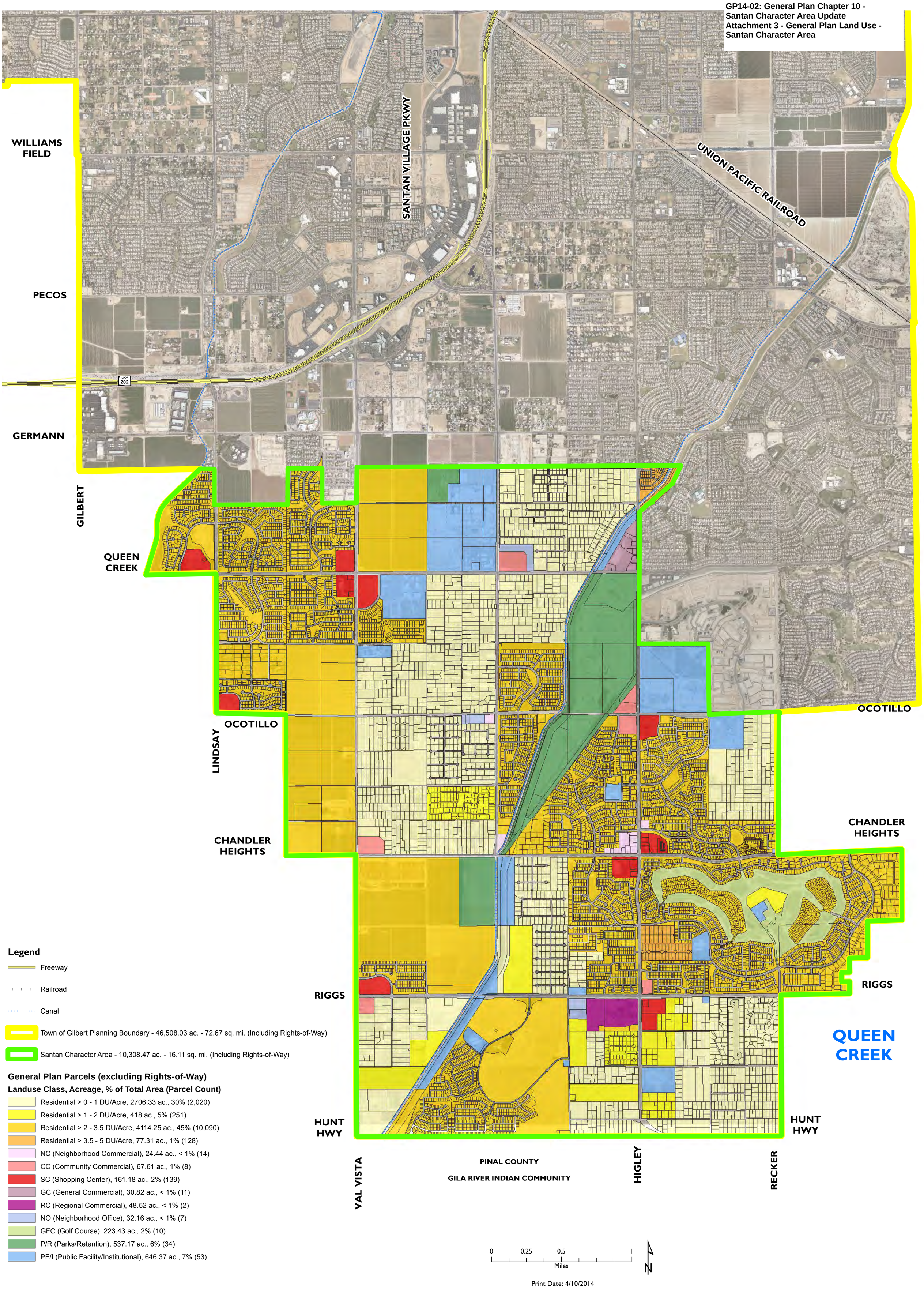
Circulation

Neighborhoods should be designed so as to disperse peak hour traffic, with a minimum of one point of ingress/egress to an arterial road for each forty (40) acres of development.

Environmental Issues

Lands should be assessed for sensitive physical or cultural sites prior to application for rezoning or preliminary subdivision map approval. Requests for development entitlements must be accompanied by a list of mitigation measures for any sensitive condition found. Mitigation measures must be translated into conditions of development approval. Areas of investigation include, but are not limited to, the following:

- Wildlife habitat or travel corridors, riparian and other distinctive vegetation;
- Potentially hazardous geologic or soil conditions, such as fissuring as a result of land subsidence; and
- Sites of archaeological, cultural or historic significance.



GENERAL PLAN (Excluding Rights-of-Way)
SANTAN CHARACTER AREA MAP (2014)

GILBERT ARIZONA

TOWN OF GILBERT
PLANNING COMMISSION REGULAR MEETING
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT ARIZONA
APRIL 1, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner Brent Mutti** **Commissioner Jennifer Wittmann** **Commissioner David Blaser** **Commissioner Carl Bloomfield**
COMMISSION ABSENT:	**Commissioner David Cavenee** **Alternate, Todd Hall**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Principal Planner Catherine Lorbeer** **Senior Planner Jordan Feld** **Senior Planner Amy Temes** **Senior Planner Bob Caravona** **Planner Nichole McCarty** **Planner Nathan Williams**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

PLANNER	CASE	PAGE	VOTE
NICHOLE McCARTY	UP15-01	2	CONTINUED
BOB CARAVONA	S14-12	3	APPROVED
BOB CARAVONA	UP14-12	5	APPROVED
NICHOLE McCARTY	UP15-04	6	CONTINUED
NATHAN WILLIAMS	UP15-02	10	APPROVED
NATHAN WILLIANS	GP14-10	11	APPROVED
NATHAN WILLIAMS	Z14-28	11	APPROVED
AMY TEMES	GP14-02	18	APPROVED

CALL TO ORDER:

Chairman Joshua Oehler called the meeting to order at 6:00 p.m.

ROLL CALL

Ms. Fry called roll and a quorum was determined to be present.

APPROVAL OF AGENDA

Chairman Oehler asked if there was a motion to approve the Agenda.

b. The density and maximum number of dwelling units for the Seville Tract T PAD shall be conditioned upon and included in the calculations of density and number of dwelling units for the Seville Planned Area Development Plan, as set forth in Condition 'y' of Ordinance No. 1264. The maximum number of dwelling units allowed within the Seville Planned Area Development, including the number of dwelling units in the Seville Tract T Planned Area Development shall be 3,025 and maximum residential density shall be 2.33 dwelling units per gross residential acre.

c. Developer shall comply with and coordinate with the requirements for the Seville Planned Area Development Master Plan for water, sewer and drainage, trails and amenities, view walls on the golf course, parks, and archeological features, as set forth in Ordinance No. 1264, as amended by Ordinances No. 1398, 1414, ~~and~~ 1489, and 2188.

d. Developer shall create a Homeowner's Association (HOA) OR BE PART OF THE SEVILLE HOA for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way. Maintenance responsibilities for common areas and open space areas shall be specified on the approved site plan or final plat.

e. Developer shall record easement to be owned by the HOA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat recordation, or earlier if required by the Town Engineer.

GP14-02: SANTAN CHARACTER AREA UPDATE

Senior Planner Amy Temes stated that approximately one year ago staff came before the Planning Commission and asked to move forward with an update to Chapter 10 of the General Plan and specifically the Santan Character Area (SCA). Gilbert has four Character Areas within the General Plan, including the Santan Character Area (SCA). Character Areas each have distinct visions, goals or features that make them special. The SCA is the largest in South Gilbert and the one that has been having a lot of activity with development. It's been mentioned numerous times that perhaps they should revisit not only the SCA standalone plan but also Chapter 10. They started out holding open houses for the public and mailed out over 10,000 invitations and had two public meetings which were held last summer. They received a lot of input and comments. Planner Temes displayed an aerial which showed the development that has been happening in the area and that there was not much vacant land left. Many of the comments that were received from the public said to leave the General Plan the way it is and that they supported the General Plan as shown in the current land use category. An overall analysis of land uses in the area was done and a point of discussion in numerous discussions was whether there was commercial land and enough employment in the SCA and how the numbers looked. They did some number crunching and found that the SCA was substantially underserved both today and at build out and north Gilbert had substantially more services. That's not surprising to find in employment considering the remainder of Gilbert has the Santan Freeway running through it and in some areas touches US 60 and there are also Williams Gateway Airport as well is the Chandler Airport. Finding employment at a higher level in the remainder of Gilbert is something that was to be expected and staff and the public thinks the 15 to 20 minute drive to some of those employment areas is still reasonable. There are over 75,000 people in South Gilbert that need services. The neighbors want support services and they want to keep the commercial that is planned and they want to support the commercial that exists and the numbers that were analyzed support those facts. Planner Temes said that staff also moved forward with updating and reviewing the documents that exist based on the existing SCA standalone plan they then reviewed what Chapter 10 said to make sure that it still coordinated and that there was nothing in Chapter 10 of the General Plan that was in conflict with existing documents, policies or the LDC. The draft document that the Commission had in their packet was based on the new branding character of the town of Gilbert as well as the comments that were received. Based on the neighborhood meetings staff created 5 characteristics that they thought represented the community's feedback which were listed on page 3 of the staff report and are as follows:

- Celebrating Heritage
- Connect People and Places

- Open for Business
- Sense of Place
- Leisure and Culture

A fissure hotline was also added because there are a lot of fissures that do occur at the base of the mountain and it is something that needs to be kept up-to-date and that residents need to be aware of. The goals policies and implementation are really great guidelines and benchmarks for which to judge projects that are coming in that are asking possibly for changes or projects that are moving forward to Design Review. It always gives staff something to go back to compare against and those are very clear concise and easy to use not only for staff but also for the public. Planner Temes said staff invited support from the Planning Commission to recommend approval to the Town Council at the end of April for approval of the General Plan Update for Chapter 10.

Vice Chairman Sippel read into the record the following letter which was sent to the planning staff:

Hello Planning Commission,

My name is Greg Ostapuk. I am a long time Gilbert resident and a proponent of preserving the San Tan Character Area. I have been a spokesperson many times speaking before this commission and the Town Council. However, another commitment doesn't allow me to speak tonight.

As you know, the Santan Character Area has been planned with many stakeholders input and overwhelmingly support and approval from Gilbert residents. It is an area of town that allows us to be unique from our neighboring cities. It attracts many new residents because of the thoughtful planning in place but because there is much undeveloped land it can be quickly consumed and lose its valuable identity.

The Planning Commission has an updated look at the Santan Character Area providing by Town Staff. Town Staff asked for Santan Character residents to come forward once again to share their vision. The resident's vision continues to include open space and preserving what little vacant R 0-1 and R 1-2 land use classification parcels that are left. In addition, to buffer existing large lot residential homes from higher density homes with transitional zoning, open space buffers and similar sized adjacent lots. It is up to the Town to preserve and protect that vision.

However, even though there has been strong residential input to support the Santan Character Area's vision the Town Council has amended the General Plan to accommodate new higher density development **17** times since voters last approved the document in 2011. Let me state it again. Seventeen times. The council vote was unanimous in every instance but one. (Source: AZ Republic Newspaper June 2013)

There is very little vacant lower density vacant land left. As of March 2013, only 5% of Gilbert's vacant land is designated land use lower than 2 homes per acre. (Source: Town of Gilbert Planning Department). There is even less in the designated lower density Santan Character Area.

This updated Santan Character Area document is worthless if Town Staff, you the Planning Commission and Town Council do not support it with your actions and votes. I believe you represent the residents and our vision much better than the developers. It's time to step up and preserve and protect that vision.

Thank you for your volunteer work and caring about great town of Gilbert.

Chairman Oehler opened the public hearing and asked if there was anyone from the public who wished to speak, hearing none he closed the public hearing and asked if there was a motion.

A motion was made by Commissioner Brent Mutti and seconded by Commissioner David Blaser to approve GP14-02.

Motion carried 6 - 0

A. Recommend to the Town Council approval of GP14-02, a minor General Plan text amendment.

ADMINISTRATIVE ITEMS

Minutes - Consider approval of the minutes of the Study Session and Regular Meeting of March 4, 2015.

A motion was made by Commissioner Jennifer Wittmann and seconded by Vice Chairman Kristofer Sippel to approve the minutes of the Study Session and Regular Meeting of March 4, 2015.

Motion carried 6 – 0

COMMUNICATIONS

Report from the Chairman and Members of the Commission on current events.

None

Report from Council Liaison

Town Council Member Brigette Peterson said that she very much liked the new branding of the General Plan. On March 13, Army Ranger Corey Remsburg, who was the soldier who was recognized at the last state of the union, was given a home in Gilbert and as a big surprise president Obama showed up at Corey's home. The Gilbert Police Department stepped up at very short notice to help close streets and block traffic to keep the area safe and controlled. At that same time the Mayor, the Town Manager and Council member Peterson were meeting with the delegation from China. They were very happy to be here and have asked for a delegation to go to China this year. Parks and Rec is looking for feedback on designing a few playgrounds in Gilbert and you can visit Gilbert AZ.gov/projectplayground and they will be taking votes up until April 12th. Saturday, April 11th is We Are Gilbert Day which is a day you can get out and volunteer in the community and that website is Gilbertcan.org. At the April 14th Council meeting at 5 PM they will be looking for one member of each Board and Commission to come to the meeting in honor of national volunteer week. On April 15th every Board and Commission member is invited to attend a get together at the Art Intersection and they will be receiving an invitation from the clerk's office.

Report from the Planning & Development Services Manager on current events.

Planning Manager Linda Edwards thanked the Planning Commission as well as staff for their efforts on the General Plan. She noted that four of the Commissioners were up for reappointment and to be sure that if they were one of those four that they would put in for a potential reappointment.

ADJOURNMENT

Chairman Oehler adjourned the meeting at 9:00 p.m.

_____
Chairman Joshua Oehler

ATTEST:

_____
Recorder Margo Fry

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Thank you for your volunteer work and caring about great town of Gilbert.

Greg Ostapuk

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Nathan Williams, AICP, Planner II, (480) 503-6805

MEETING DATE: April 30, 2015

SUBJECT: Z14-28/Z14-28 - Legacy Point at Seville (Seville Tract T)

STRATEGIC INITIATIVE: Community Livability
To allow the development of a 61 lot residential subdivision compatible with the current surrounding uses

RECOMMENDED MOTION

A. MOVE TO ADOPT THE ATTACHED RESOLUTION APPROVING GP14-10; AND

B. MOVE TO MAKE THE FINDINGS OF FACT AND ADOPT THE ATTACHED ORDINANCE APPROVING Z14-28.

BACKGROUND/DISCUSSION

History

Date	Description
May 15, 2000	Town Council approved Z99-62 (Ordinance No. 1264), establishing the original Seville PAD zoning for the 1,380 acre, 3,025 dwelling, (2.33 DU/Acre) master planned community. Seville Tract T was originally zoned Entertainment Recreational District under the ULDC.
March 3, 2005	Town Council adopted the LDC that modified Seville Tract T zoning from Entertainment Recreational (ER) to the corresponding General Commercial (GC) District.
July 8, 2008	The Town Council approved GP08-14 (Resolution No. 2907) and Z08-22 (Ordinance No. 2188), to amend Land Use Category from 19 acres of General Commercial (GC) to Residential > 1-2 DU/ Acre and the

	subsequent rezoning of Seville Tract T, from General Commercial (GC) with a PAD to Single Family15 (SF-15) PAD zoning district.
April 1, 2015	The Planning Commission recommended approval (6-1) for GP14-10 and Z14-28, Seville Tract T PAD at the Planning Commission hearing.

Overview

The applicant is requesting to rezone the 19.17 acre subject site from SF-15 PAD to SF-7 PAD for a 61 lot residential subdivision with a minimum lot size of 70' x 125' (8,750 sq. ft.). The proposed Legacy Point at Seville PAD rezoning is located in the central portion of the Seville Master Planned Community adjacent to the Seville Golf Course and Country Club on a significant undeveloped piece of property (a 19.17 acre portion of Seville Tract T). The applicant is also requesting deviations from the Land Development Code (LDC) conventional SF-7 zoning district standards to modify minimum lot area and lot dimensions; minimum front, side and rear setbacks; front facing garage recess requirements and to allow one-story homes only, as noted below in the Site Development Standards Table.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	**Existing Zoning**	**Existing Use**
North	Golf Course (GFC)	Public Facility/ Institutional (PF/I) PAD	Seville Golf Course
South	Golf Course (GFC)	Public Facility/ Institutional (PF/I) PAD	Seville Country Club
East	Golf Course (GFC)	Public Facility/ Institutional (PF/I) PAD	Seville Golf Course
West	Golf Course (GFC)	Public Facility/ Institutional (PF/I) PAD	Seville Golf Course
Site	Residential > 1-2 DU/ Acre	Single Family 15 (SF-15) PAD	Undeveloped

Site Development Standards:

	Existing Seville Tract T PAD: SF-15 PAD (Z08-22)	**LDC Conventional SF-7**	**Seville Master Planned Community: SF-7 PAD (Z99-62)**	**Proposed Development for Seville Tract T PAD: SF-7 PAD (Z14-28)**
Zoning District:	SF-15 PAD	SF-7	SF-7 PAD	SF-7 PAD
Number of Lots/ Density	1-2 DU/ Acre	N/A	N/A	61 lots (3.18 DU/ Acre)
Minimum Lot Area (sq. ft.)	15,000 sq. ft.	7,000 sq. ft.	7,000 sq. ft.	**8,750 sq. ft.**
Minimum Lot Dimensions (ft.)	100' x 150'	65' x 100'	60'x110'	**70' x 125'**

	Existing Seville Tract T PAD: SF-15 PAD (Z08-22)	LDC Conventional SF-7	Seville Master Planned Community: SF-7 PAD (Z99-62)	Proposed Development for Seville Tract T PAD: SF-7 PAD (Z14-28)
Maximum Height (ft.)/Stories	35'/ 2-stories	30'/ 2-stories	30'/ 2-stories	**25'/ 1-story only** (61 lots total)
Setbacks: Front Yard Side Yard Rear Yard	 25' 10'/10' 30'	 20' 5'/10' 20'	 18' 5'/ 10' 20'	 20' 5'/10' 20'
Lot Coverage	40% single story 35% two/ three-story	45% single story 40% two/ three-story	45% single story 40% two/ three-story	45% single story N/A two/ three-story
Front Setback: Staggering	3' minimum stagger/ variation	3' minimum stagger/ variation	3' minimum stagger/ variation	3' - minimum stagger/ variation
Front Setback: Livable (non-garage)	20'	15' (20' minimum recess for front facing garage to plane of livable area)	15'	15'
Front Setback: Side Entry Garage	20'	15'	10'	10'
Side Setback: Adjacent to Non-Residential Uses	N/A	15'	15'	15'
Rear Setback: Adjacent to Non-Residential Uses	25' single story 35' two story	25' single story 30' two story	25' single story 35' two story	**20' single story** N/A two story

Land Use and Rezoning

The rezoning proposes to develop a residential subdivision on a 19.17 acre portion of Tract T within the Seville Master Planned Community. The subject site is surrounded by the Seville Golf Course and Country Club. The requested change in land use designation on the subject site from Residential > 1-2 DU/ Acre to Residential > 2-3.5 DU/ Acre will be compatible with the surrounding residential parcels of the Seville PAD, which are also designated as Residential > 2-3.5 DU/ Acre. Additionally, the rezoning request will change the 19.17 acre subject site of Single Family - 15 (SF-15) PAD zoning district to Single Family - 7 (SF-7) PAD zoning district.

Staff notes that under the original Seville PAD approved in April of 2000 under Z99-62 (Ordinance No. 1264), the maximum number of dwelling units allowed within the Seville PAD is 3,025 dwelling units, the maximum residential density shall be 2.33 dwelling units per gross residential acre, and the maximum number of platted dwelling units east of Recker Road shall be 690 units.

The applicant has provided an update to the overall Seville PAD dwelling units and density with the proposed project, which would now consist of 2,914 dwelling units (remaining under the 3,025 dwelling unit cap) and a residential density of 2.21 dwelling units per acre (remaining under the 2.33 DU/ acre cap). There will also be the additional 8 lots east of Recker Road, which would bring the new total to 687 dwelling units (remaining under the 690 residential dwelling unit cap).

The main access to the subject site is shown via Clubhouse Drive, with direct access from Chandler Heights Road. A secondary emergency access is proposed in the southeast corner of the subject site to the Seville Golf & Country Club (Seville G&CC) parking lot. Staff notes this emergency access point will require a dedicated access easement from the Seville G&CC and the removal of a couple of parking spaces.

Open space areas for Legacy Point at Seville (Tract T) are predominantly located in the central portion of the 19.17 acre site with some open space tracts that connect to the surrounding open space/ golf course areas. The subject site is buffered on all sides by the golf course and country club facilities. There will be multiple pedestrian connections from the surrounding areas and trails through the subject site and will not be gated but will remain open. The applicant has provided a development plan that shows the continuation of these existing pedestrian connections across the subject site to the adjacent and existing Seville Country Club as well as some internal trails, in addition to the proposed sidewalks.

Compatibility with Elements of the General Plan and the Santan Character Area

General Plan

Chapter 2 - Land Use and Growth Areas

Policy 1.1 Maintain a balance of housing types and provide a variety of employment opportunities with easily accessible retail and service uses.

Policy 1.2 Create neighborhoods with an identity that complement Gilbert's heritage and connect to the broader community.

Policy 1.3 Encourage residential development that allows for a diversity of housing types for all age groups and is accessible to a range of income levels.

Policy 1.6 - Encourage new residential developments to provide pedestrian linkages to parks, schools, and other appropriate public facilities.

Policy 4.1 - Provide an adequate supply of appropriately zoned land to accommodate a variety of future housing needs.

Chapter 3 - Circulation

Policy 3.1 Encourage new development to establish pedestrian, equestrian, multi-use and/or bike paths consistent with the development's theme.

Policy 3.2 Connect neighborhoods, school sites, activity centers and recreational sites with sidewalks, trails, and bikeways.

Chapter 6 – Community Design

Policy 2.5 Maintain an open feel in new developments by strategically placing open space for visual relief, active uses, buffering, and entry accents.

Policy 3.2 Encourage builders to provide diverse house designs in new and infill developments by providing distinct house plans with elevation options that offer architectural articulation and thematic features on all sides of the houses.

Policy 3.7 If gated communities are proposed in a master plan or infill project, ensure the natural flow of traffic from arterial and collector roads is uninterrupted and the community remains accessible to pedestrian traffic; and that the private streets be constructed to the same quality level as public streets.

Policy 3.8 Allow gated neighborhoods in infill parcels on a limited basis.

Chapter 8 – Housing and Conservation

Policy 1.1 Add to the variety of housing to meet the needs of all segments of the Gilbert community through neighborhood revitalization, redevelopment and infill developments.

Policy 1.3 Establish guidelines for infill development that respect the scale and character of the neighborhood.

Policy 2.1 Protect and preserve older residential neighborhoods.

Policy 4.1 Promote the development of a broad variety of new housing types.

Santan Character Area

Housing The majority of the Santan area is planned for residential development ranging from 0-1 dwelling unit/acres and 2- 3.5 dwelling units/acre.

Density: The General Plan land use map designates the majority of the Santan Area as Residential > 0-1 DU/Acre and Residential > 2-3.5 DU/Acre. Densities for other land use categories shall comply with the land use map. All proposed development shall demonstrate a response to: Subdivision design that provides ample open space as a community focal point and buffers existing adjacent large lots with similar lot sizes. Provide a minimum ten percent (10%) open space or acceptable alternatives, which meet the spirit and goals of the Santan Character Area.

TW Lewis by David Weekley Homes request will continue to maintain and provide a variety of housing types within the area. Development plans for the existing Seville Master Plan are designed as a series of neighborhoods, each with their own identity, yet collectively, a unique community planned to be functionally efficient and create a distinct experience for residents. Tract T will have its own identity, but will incorporate the design and theming, visually, aesthetically, and materially, of Seville through the Open Space Plan materials.

Changes from the February 4, 2015 Planning Commission Study Session:
Based upon input from the Planning Commission and Town staff, the applicant has reduced the number of deviations requested from the Single Family-7 (SF-7) zoning district (see Site Development Standards Table) from the original request filed under Z14-28. The majority matches or are less intense than the deviations that have been previously approved for SF-7 zoned parcels within the Seville PAD.

The applicant has revised the proposed deviation request to eliminate the required 3' stagger/ variation and will now provide the required 3' stagger/ variation throughout the subdivision per LDC requirements. This new proposal eliminates any need for additional language to create front setback variation and require each dwelling unit having livable area as the most forward element of the home to provide a 5-foot minimum setback variation between the facade of the front entry garage and the facade of the projecting livable area.

Staff believes that the proposed deviations do remain consistent with existing SF-7 portions of the Seville Master Planned Community. Additionally, the Seville Tract T site is unique in its size and shape and that it is surrounded by the Seville Golf Course and Country Club and staff agrees that the proposed minor deviations are justifiable and applicable for the subject site.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

A neighborhood meeting was held on November 21, 2014. Some comments included drainage, pedestrian access and not allowing 2-story homes on the subject site. Staff notes that the primary concern by the neighbors speaking at the April 1, 2015 Planning Commission hearing were also drainage of the site and the overall Seville PAD.

Staff has received has not received any additional public comment at the time this report was written.

SCHOOL DISTRICT

The Chandler Unified School District has not commented on this specific project.

PROPOSITION 207

An agreement to "Waive Claims for Diminution in Value" Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

WATER IMPACT

Per the Water Conservation Department, the proposed rezoning and development plan will have no impact on project water resources demand.

FINANCIAL IMPACT

The project will connect to public utilities but will be a gated subdivision with private roadways and will be a part of the Seville HOA.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission recommended approval (6-1 vote) of GP14-10 and Z14-28 as presented on April 1, 2015.

STAFF RECOMMENDATION

A. Adopt the attached resolution approving GP14-10, a minor General Plan Amendment to change the land use classification; and
B. Make the Findings of Fact and adopt the attached ordinance approving Z14-28, subject to the conditions in the draft ordinance.

Respectfully submitted,

Nathan Williams, AICP
Planner II

Attachments:
1) Notice of Public Hearing
2) Resolution
   Exhibit 1 Legal Description
   Exhibit 2 General Plan Map
3) Findings of Fact
4) Zoning Ordinance
   Exhibit 1 Legal Description
   Exhibit 2 Zoning Map
   Exhibit 3 Development Plan
5) April 1, 2015 Planning Commission Meeting Minutes (9 pages)
6) Open Space Exhibit – Reference Only

Approved By	Approval Date
Catherine Lorbeer	4/15/2015 11:11 AM
Linda Edwards	4/15/2015 11:22 AM
Jack Vincent	4/20/2015 10:44 AM
Cris Parisot	4/16/2015 4:35 PM

Notice of Public Hearing

PLANNING COMMISSION DATE: ***Wednesday, April 1, 2015* TIME: 6:00 PM***
TOWN COUNCIL DATE: ***Thursday, April 30, 2015* TIME: 7:00 PM***

LOCATION: Gilbert Municipal Center
Council Chambers
50 E. Civic Center Drive
Gilbert, Arizona 85296

*** Call Planning Department to verify date and time: (480) 503-6805**

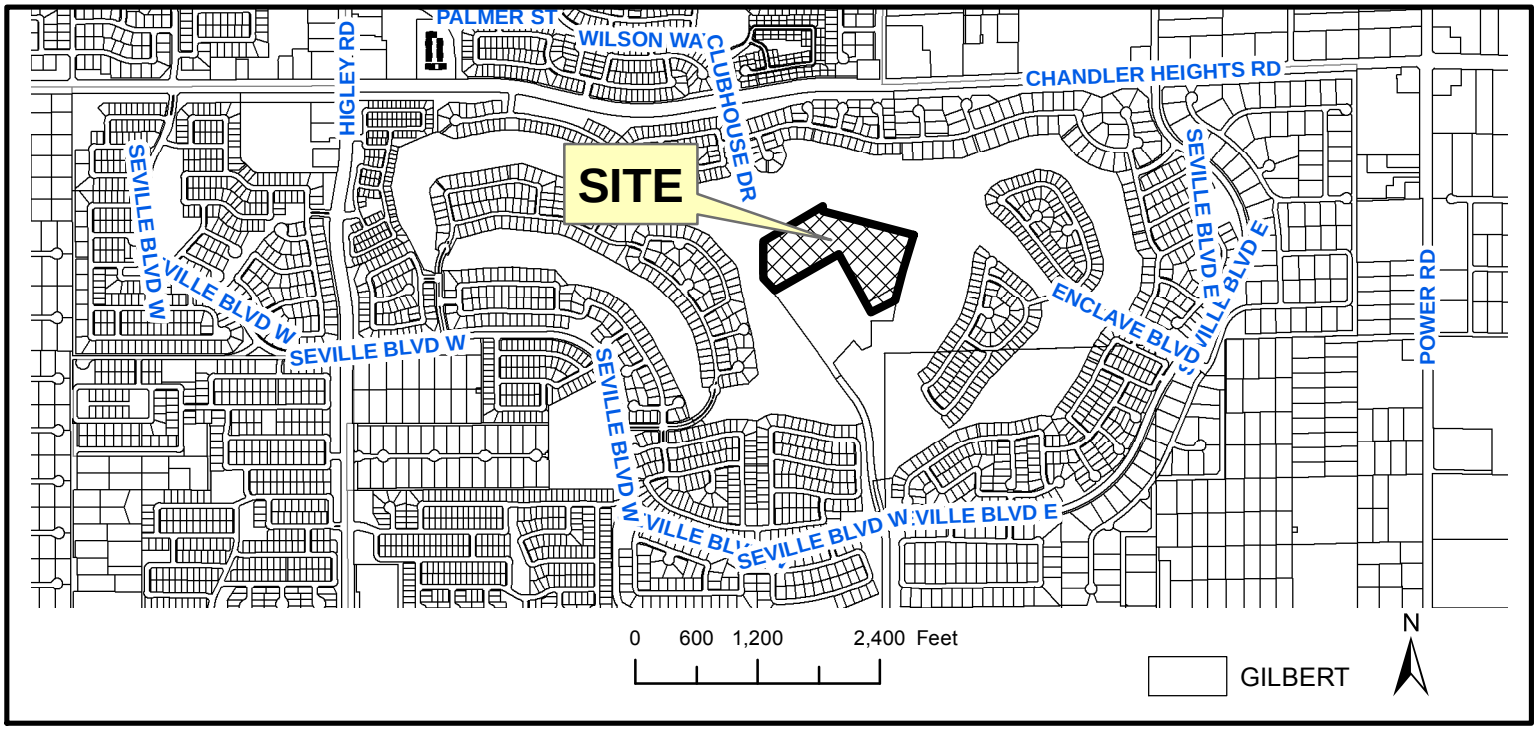
REQUESTED ACTION:

GP14-10: Legacy Point at Seville (Seville Tract T): Request for minor General Plan Amendment to change the land use classification of approximately 19.17 acres of real property generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road from 19.17 acres of Residential > 1-2 DU/acre land use classification to 19.17 acres of Residential > 2-3.5 DU/acre land use classification. The effect of this amendment will be to change the plan of development for this property to allow for increased density of residential development.

Z14-28: Legacy Point at Seville (Seville Tract T): Request to amend Ordinance Nos. 1264, 1398, 1414, 1489, and 2188 and rezone approximately 19.17 acres of real property within Seville Tract-T Planned Area Development (PAD) and generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road, from approximately 19.17 acres of Single Family - 15 (SF-15) zoning district, all with a Planned Area Development overlay zoning district to approximately 19.17 acres of Single Family - 7 (SF-7) zoning district, all with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office, and to amend conditions of development in the Seville Tract-T Planned Area Development (PAD) as follows: to modify minimum lot area and lot dimensions; minimum front and rear setbacks; front yard stagger requirements; front facing garage recess requirements and to allow one-story homes only. The effect of the rezoning will be to allow a residential development with approximately 61 home lots.

* The application is available for public review at the Town of Gilbert Development Services division Monday - Thursday 7 a.m. - 6 p.m. Staff reports are available the Monday prior to the meeting at http://www.gilbertaz.gov/departments/development-services/planning-development/planning-commission

SITE LOCATION:



APPLICANT: Weekley Homes, LLC ***TELEPHONE: (480) 820-0807***
CONTACT: Jay Rawson ***E-MAIL: jrawson@dwhomes.com***
ADDRESS: 850 W. Elliot Road, Suite 101
Tempe, AZ 85284

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE GILBERT GENERAL PLAN LAND USE MAP AS DESCRIBED IN CASE GP14-10, LEGACY AT SEVILLE (SEVILLE TRACT T), FOR THE REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD BY CHANGING THE LAND USE CLASSIFICATION OF APPROXIMATELY 19.17 ACRES OF RESIDENTIAL > 1-2 DU/ ACRE TO 19.17 ACRES OF RESIDENTIAL > 2-3.5 DU/ ACRE LAND USE CLASSIFICATION; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, The Town of Gilbert has solicited and received public input regarding the proposed amendment to the General Plan through notice and public hearings as required by law; and

WHEREAS, the Common Council of the Town of Gilbert has received a recommendation from the Town of Gilbert Planning Commission regarding the proposed land use map change;

NOW THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Land Use Map of the General Plan of the Town of Gilbert, Arizona, is hereby amended for approximately 19.17 acres of real property generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road, as described in the legal description, Exhibit 1, changing the land use classification from Residential > 1-2 DU/ Acre to Residential > 2-3.5 DU/ Acre, as shown on the General Plan (map), Exhibit 2, both of which are attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED that all resolutions and parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 2015.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
Michael Hamblin, Town Attorney
By _____

The following exhibits are attached hereto and incorporated herein:

1. Legal Description
2. General Plan Exhibit (map)

EPS GROUP

Legal Description
Seville T2

Job No. 13-327 March 13, 2014

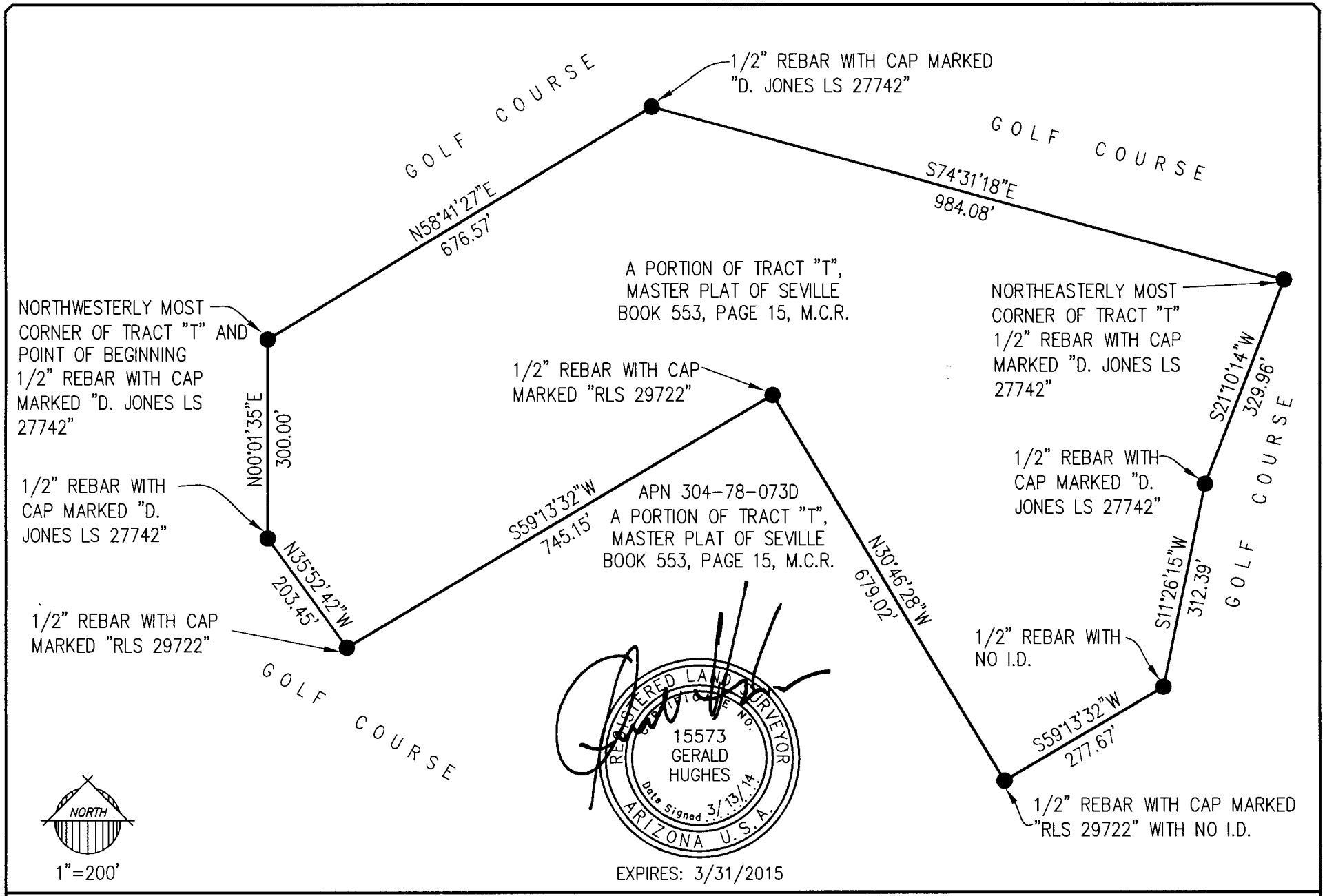
That portion of Tract "T", according to the Master Plat of Seville as recorded in Book 553, Page 15. Records of Maricopa County, Arizona, being a portion of the Northwest Quarter of Section 25 and a portion of the Northeast Quarter of Section 26, all located within Township 2 South, Range 6 East of The Gila And Salt River Base and Meridian, Maricopa County, described as follows:

BEGINNING at a ½" rebar with a cap marked "D. Jones LS 27742" at the northwesterly most corner of said Tract "T"; thence North 58 degrees 41 minutes 27 seconds East, along the north line of said Tract "T", 676.57 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at the northerly most corner of said Tract "T"; thence South 74 degrees 31 minutes 18 seconds East, along said north line, 984.08 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at the northeasterly most corner of said Tract "T"; thence South 21 degrees 10 minutes 14 seconds West, along the east line of said Tract "T", 329.96 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at an angle point in said east line; thence South 11 degrees 26 minutes 15 seconds West, along said east line, 312.39 feet to a ½" rebar with no identification; thence South 59 degrees 13 minutes 32 seconds West, 277.67 feet to a ½" rebar with a cap marked "RLS 29272"; thence North 30 degrees 46 minutes 28 seconds West, 679.02 feet to a ½" rebar with a cap marked "RLS 29272"; thence South 59 degrees 13 minutes 32 seconds West, 745.15 feet to a ½" rebar with a cap marked "RLS 29272" at a point on the west line of said Tract "T"; thence North 35 degrees 52 minutes 42 seconds West, along said west line, 203.45 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at an angle point in said west line; thence North 0 degrees 01 minutes 35 seconds East, along said west line, 300.00 feet to the POINT OF BEGINNING

Containing an area of 834,985 S.F. or 19.1686 acres, more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
15573
GERALD
HUGHES
Date Signed 3-13-14
ARIZONA U.S.A.
Expires: 03-31-2015

EPS Group, Inc. • 2045 S. Vineyard, Suite 101 • Mesa, AZ 85210
Tel (480) 503-2250 • Fax (480) 503-2258
S:\Projects\2013\13-327\Legal Survey\Legals\13327 LD BDRY.docx



13-327

SEVILLE T-2

EXHIBIT

EPS GROUP
2045 S. Vineyard Ave.
Ste. 101 Mesa, AZ 85210
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

14-198

PROJECT TEAM

DEVELOPER:
T.W. LEWIS BY DAVID WEEKLEY HOMES
850 W. ELLIOT ROAD, SUITE 101
TEMPE, AZ 85284
TEL: (480) 768-4955
CONTACT: JAY RAWSON

CONSULTANT:
EPS GROUP, INC.
2045 S. VINEYARD, SUITE 101
MESA, AZ 85210
TEL: (480)-503-2250
FAX: (480)-503-2258
CONTACT: JOSH HANNON

CONSULTANT:
ROSE LAW GROUP
7144 E. STETSON DR., SUITE 300
SCOTTSDALE, AZ 85251
TEL: (480)-240-5648
FAX: (480)-505-3925
CONTACT: CHRIS WEBB

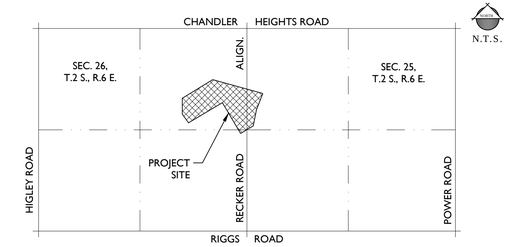
GENERAL PLAN EXHIBIT FOR LEGACY POINT at SEVILLE

A PORTION OF THE EAST HALF, SECTION 26, T.2 S., R.6 E., AND A PORTION OF THE NORTHWEST QUARTER, SECTION 25, T.2 S., R.6 E., GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

PROJECT DATA

A.P.N.	304-78-073A; 073C
EXISTING GENERAL PLAN:	RESIDENTIAL > 1 - 2 DU./AC.
PROPOSED GENERAL PLAN:	RESIDENTIAL > 2 - 3.5 DU./AC.
GROSS AREA:	+/- 19.17 ACRES
NET AREA:	+/- 19.17 ACRES

VICINITY MAP



EPS GROUP
2045 S. Vineyard Ave, Suite 101
Mesa, AZ 85210
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Project:
LEGACY POINT at SEVILLE
Gilbert, AZ
Exhibit B - General Plan Exhibit

Revisions:
DECEMBER 2014 - 1ST SUBMITTAL
FEBRUARY 2015 - 2ND SUBMITTAL

Call at least two full working days before you begin excavation
ARIZONA 811
Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)
In Maricopa County: (602)263-1100

Designer: DCH
Drawn by: DCH

Preliminary
Not For
Construction
Or
Recording

Job No.
14-198

GPA

Sheet No.
1

FINDING OF FACT
Z14-28: Seville Tract T PAD – Legacy Point at Seville

1. The proposed zoning amendment conforms to the General Plan and the Planned Area Development overlay zoning district.

2. All required public notice has been conducted in accordance with applicable state and local laws.

3. All required public meetings and hearings have been held in accordance with applicable state and local laws.

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF GILBERT BY AMENDING ORDINANCE NOS. 1264, 1398, 1414, 1489, AND 2188 PERTAINING TO THE SEVILLE TRACT-T PLANNED AREA DEVELOPMENT BY REZONING APPROXIMATELY 19.17 ACRES OF REAL PROPERTY GENERALLY LOCATED AT SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD, IN ZONING CASE Z14-28, FROM APPROXIMATELY 19.17 ACRES OF TOWN OF GILBERT SINGLE FAMILY 15 (SF-15) ZONING DISTRICT, ALL WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT TO 19.17 ACRES OF TOWN OF GILBERT SINGLE FAMILY 7 (SF-7) ZONING DISTRICT, ALL WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT; AND BY AMENDING CONDITIONS OF DEVELOPMENT AS FOLLOWS: MODIFYING MINIMUM LOT AREA AND LOT DIMENSIONS; MINIMUM FRONT AND REAR SETBACKS; FRONT YARD STAGGER REQUIREMENTS; FRONT FACING GARAGE RECESS REQUIREMENTS; AND TO ALLOW ONLY ONE-STORY HOMES; AND RESTATING AND INCORPORATING THE PROVISIONS OF ORDINANCE NOS. 1264, 1398, 1414, 1489, AND 2188 HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR NON-SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, by adoption of this Ordinance, the Town of Gilbert Town Council desires to rezone certain parcels and amend conditions of development relating to the development of certain parcels within the Seville Tract-T Planned Area Development (PAD) pursuant to the Town of Gilbert Zoning Code requirements for a Planned Area Development to modify base zoning district regulations to implement policies in the General Plan; and

WHEREAS, the Town Council has determined that this amendment to the Zoning Map and the Planned Area Development conditions of development conforms with the Town of Gilbert General Plan, as amended, any applicable Specific Area Plan, neighborhood, or other plan, and any overlay zoning district; and

WHEREAS, all required public notice was provided and all required public meetings and hearings were held in accordance with applicable state and local laws; and

WHEREAS, that certain document entitled Exhibit 3: Amended Development Plan of the Seville Tract-T Planned Area Development, dated April 30, 2015, is attached hereto and incorporated by this reference.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

1. The Official Zoning Map of the Town of Gilbert, Arizona is hereby amended by amending Ordinance Nos. 1264, 1398, 1414, 1489, and 2188 relating to the Seville Tract T PAD by changing the zoning classification of real property consisting of approximately 19.17 acres located south of the southeast corner of Clubhouse Drive and Chandler Heights Road (the "Property"), as described in the legal description, Exhibit 1 and shown on the Zoning Exhibit (map) in Exhibit 2, both attached hereto and incorporated by reference herein, from 19.17 acres of Town of Gilbert Single Family 15 (SF-15) zoning district all with a Planned Area Development Overlay Zoning District to 19.17 acres of Town of Gilbert Single Family 7 (SF-7) zoning districts all with a Planned Area Development Overlay zoning district.

2. Ordinance Nos. 1264, 1398, 1414, 1489, and 2188 relating to the Seville Tract T PAD are amended by adding new Exhibit 3, attached hereto and incorporated herein, and making that Exhibit part of the Development Plan for the Seville Tract-T PAD, as set forth in or attached to Ordinance No. 2188, to read as follows:

EXHIBIT 3: Amended Development Plan of the Seville Tract T PAD, dated April 30, 2015.

3. All dedications, development requirements and development conditions set forth in Ordinance Nos. 1264, 1398, 1414, 1489, and 2188 relating to the Seville Tract T PAD are incorporated herein and shall remain in full force and effect, except as amended by revising development conditions and adding new conditions to read as follows (additions shown in ALL CAPS, deletions shown in strikeout):

a. The Project shall be developed in conformance with the Town's zoning requirements for the Single Family-~~15~~ 7 (SF-~~15~~ 7) zoning district and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

~~Amended Development Conditions for Single Family – 15 (SF-15) District~~	~~Modified Standard~~
~~Maximum Building Height (ft./Stories)~~	~~**35/2**~~
~~Minimum Side Yard Setback (ft.)~~	~~**10/10**~~

~~Amended Development Conditions for Single Family – 15 (SF-15) District~~	~~Modifie~~
~~Maximum Lot Coverage (%) One/Two - Story~~	~~**40**~~

	PROPOSED DEVELOPMENT FOR SEVILLE TRACT T (Z14-28)
MAXIMUM NUMBER OF LOTS	61 RESIDENTIAL LOTS
MINIMUM LOT DIMENSIONS (FT.) WIDTH x DEPTH	70’ x 125’
MINIMUM LOT AREA	8,750 sq. ft.
MINIMUM BUILDING SETBACKS: FRONT	10’ (SIDE-LOADED GARAGE); 15’ (LIVABLE); AND 20’ (FRONT-LOADED GARAGE)
REAR SETBACK: ADJACENT TO NON-RESIDENTIAL USES	20’
LOT COVERAGE	45%
BUILDING HEIGHT	25’/ 1-STORY

b. The density and maximum number of dwelling units for the Seville Tract T PAD shall be conditioned upon and included in the calculations of density and number of dwelling units for the Seville Planned Area Development Plan, as set forth in Condition y of Ordinance No. 1264. The maximum number of dwelling units allowed within the Seville Planned area Development, including the number of dwelling units in the Seville Tract T Planned Area Development shall be 3,025 and maximum residential density shall be 2.33 dwelling units per gross residential acre.

c. Developer shall comply with and coordinate with the requirements for the Seville Planned Area Development Master Plan for water, sewer and drainage, trails and amenities, view walls on the golf course, parks, and

archeological features, as set forth in Ordinance No. 1264, as amended by Ordinances No. 1398, 1414, ~~and~~ 1489~~.~~, AND 2188.

d. Developer shall create a Homeowner's Association (HOA) OR BE PART OF THE SEVILLE HOA for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way. Maintenance responsibilities for common areas and open space areas shall be specified on the approved site plan or final plat.

E. DEVELOPER SHALL RECORD EASEMENT TO BE OWNED BY THE HOA FOR PEDESTRIAN, BICYCLE, MULTI-USE OR TRAIL SYSTEM PURPOSES AS DETERMINED BY THE FINAL PLAT RECORDATION, OR EARLIER IF REQUIRED BY THE TOWN ENGINEER.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Non-Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then this entire ordinance is invalid and shall have no force or effect.

Section IV. Providing for Penalties.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Sections 5.1205 and 5.1206 of the Gilbert Land Development Code. Each day a violation continues, or the failure to perform any act or duty required by this zoning ordinance, the Zoning Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 2015, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 2015.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney
By _____

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. _____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE ____ DAY OF _____, 2015, WAS POSTED IN FOUR PLACES ON THE _____ DAY OF _____, 2015.

_____
Catherine A. Templeton, Town Clerk

The following exhibits are attached hereto and incorporated herein:
1. Legal Description
2. Zoning Exhibit (Map)
3. Amended Development Plan of the Seville Tract T PAD, dated April 30, 2015

Legal Description
Seville T2

Job No. 13-327 March 13, 2014

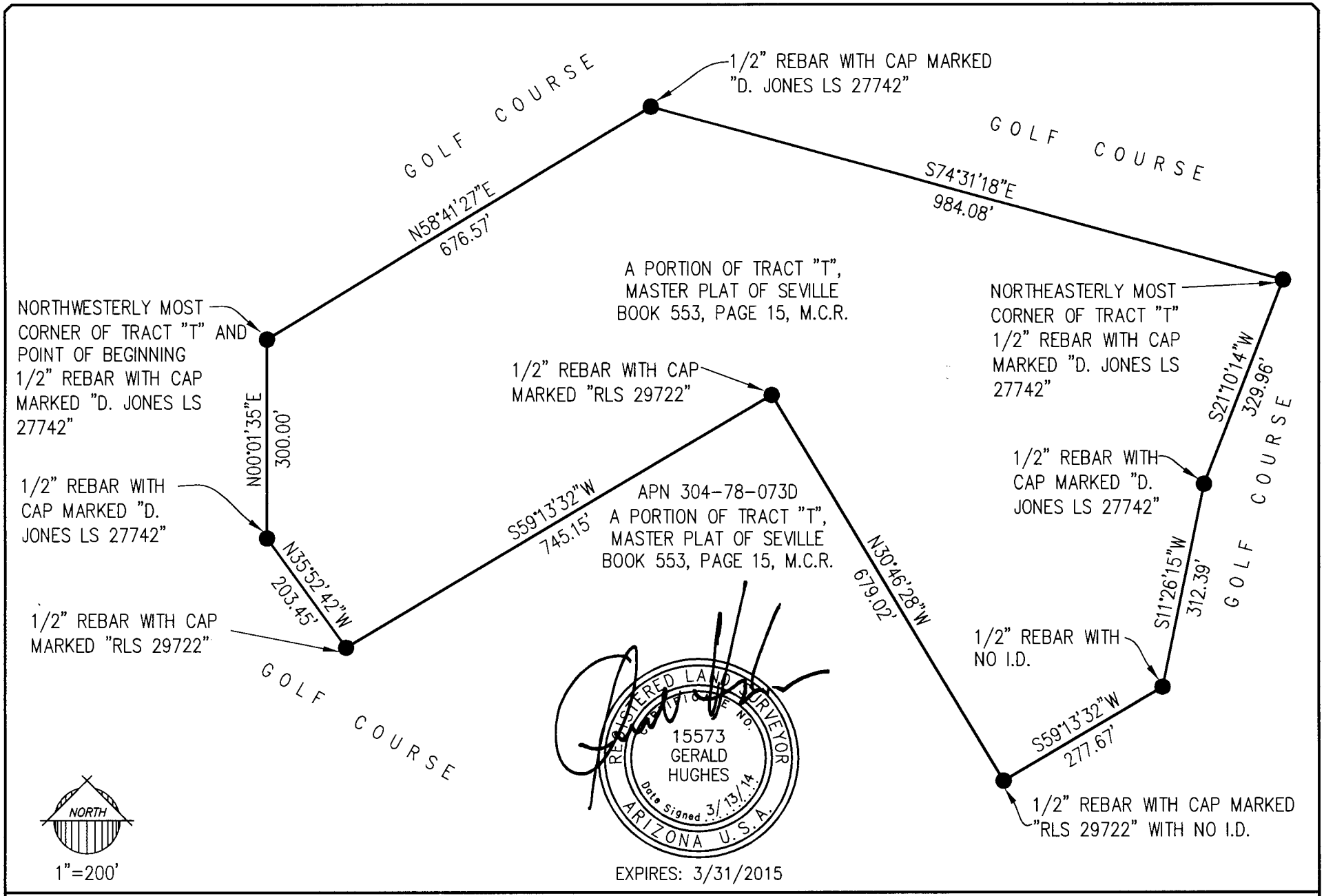
That portion of Tract "T", according to the Master Plat of Seville as recorded in Book 553, Page 15. Records of Maricopa County, Arizona, being a portion of the Northwest Quarter of Section 25 and a portion of the Northeast Quarter of Section 26, all located within Township 2 South, Range 6 East of The Gila And Salt River Base and Meridian, Maricopa County, described as follows:

BEGINNING at a ½" rebar with a cap marked "D. Jones LS 27742" at the northwesterly most corner of said Tract "T"; thence North 58 degrees 41 minutes 27 seconds East, along the north line of said Tract "T", 676.57 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at the northerly most corner of said Tract "T"; thence South 74 degrees 31 minutes 18 seconds East, along said north line, 984.08 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at the northeasterly most corner of said Tract "T"; thence South 21 degrees 10 minutes 14 seconds West, along the east line of said Tract "T", 329.96 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at an angle point in said east line; thence South 11 degrees 26 minutes 15 seconds West, along said east line, 312.39 feet to a ½" rebar with no identification; thence South 59 degrees 13 minutes 32 seconds West, 277.67 feet to a ½" rebar with a cap marked "RLS 29272"; thence North 30 degrees 46 minutes 28 seconds West, 679.02 feet to a ½" rebar with a cap marked "RLS 29272"; thence South 59 degrees 13 minutes 32 seconds West, 745.15 feet to a ½" rebar with a cap marked "RLS 29272" at a point on the west line of said Tract "T"; thence North 35 degrees 52 minutes 42 seconds West, along said west line, 203.45 feet to a ½" rebar with a cap marked "D. Jones LS 27742" at an angle point in said west line; thence North 0 degrees 01 minutes 35 seconds East, along said west line, 300.00 feet to the POINT OF BEGINNING

Containing an area of 834,985 S.F. or 19.1686 acres, more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
15573
GERALD
HUGHES
Date Signed 3-13-14
ARIZONA U.S.A.
Expires: 03-31-2015

EPS Group, Inc. • 2045 S. Vineyard, Suite 101 • Mesa, AZ 85210
Tel (480) 503-2250 • Fax (480) 503-2258
S:\Projects\2013\13-327\Legal Survey\Legals\13327 LD BDRY.docx



13-327

SEVILLE T-2

EXHIBIT

EPS GROUP
2045 S. Vineyard Ave.
Ste. 101 Mesa, AZ 85210
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

14-198

PROJECT TEAM

DEVELOPER:
T.W. LEWIS BY DAVID WEEKLEY HOMES
850 W. ELLIOT ROAD, SUITE 101
TEMPE, AZ 85284
TEL: (480) 768-4955
CONTACT: JAY RAWSON

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CONTACT: JOSH HANNON

CONSULTANT:
ROSE LAW GROUP
7144 E. STETSON DR., SUITE 300
SCOTTSDALE, AZ 85251
TEL: (480)-240-5648
FAX: (480)-505-3925
CONTACT: CHRIS WEBB

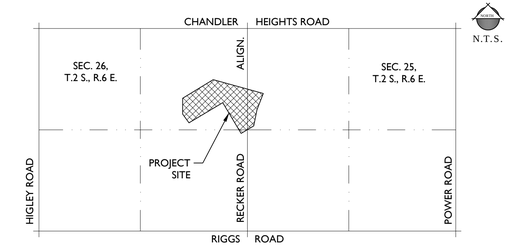
ZONING EXHIBIT FOR LEGACY POINT at SEVILLE

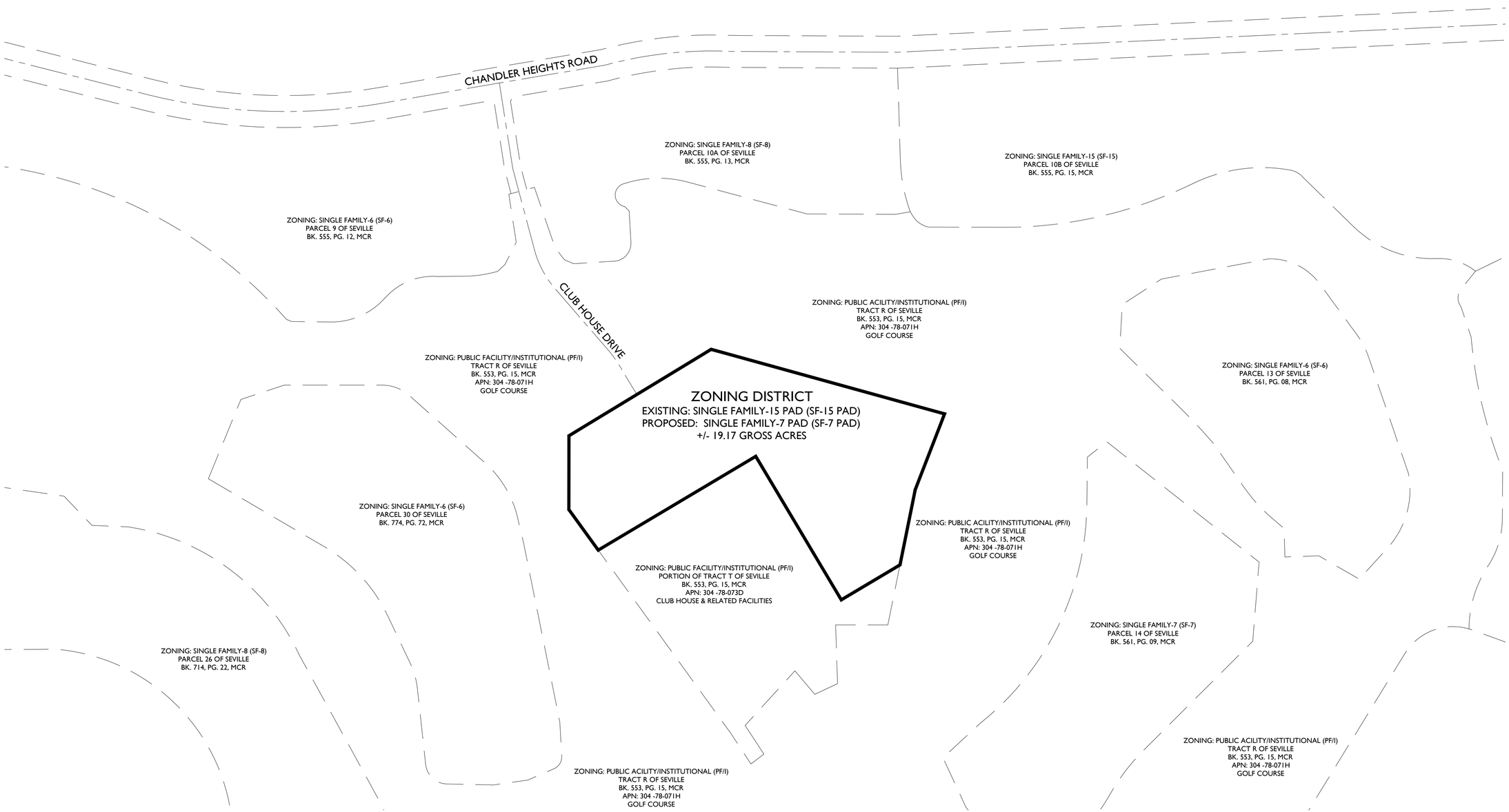
A PORTION OF THE EAST HALF, SECTION 26, T.2 S., R.6 E., AND A PORTION OF THE NORTHWEST QUARTER, SECTION 25, T.2 S., R.6 E., GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

PROJECT DATA

A.P.N.	304-78-073A; 073C
EXISTING ZONING:	SINGLE FAMILY-15 PAD (SF-15 PAD)
PROPOSED ZONING:	SINGLE FAMILY-7 PAD (SF-7 PAD)
NET AREA:	+/- 19.17 ACRES
GROSS AREA:	+/- 19.17 ACRES

VICINITY MAP





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Project:
LEGACY POINT at SEVILLE
Gilbert, AZ
Exhibit C - Zoning Exhibit

Revisions:
DECEMBER 2014 - 1ST SUBMITTAL
FEBRUARY 2015 - 2ND SUBMITTAL

Call at least two full working days before you begin excavation
ARIZONA 811
Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)
In Maricopa County: (602)263-1100

Designer: DCH
Drawn by: DCH

Preliminary
Not For
Construction
Or
Recording

Job No.
14-198

ZNG

Sheet No.
1

PLANT PALETTE

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE
TREES			
	Citrus species	Citrus species	24" Box
	Fraxinus velutina 'Fan Tex'	Fan Tex Ash	24" Box
	Parkinsonia x 'Desert Museum'	Desert Museum Palo Verde	24" Box
	Phoenix dactylifera	Date Palm	20' Tall
	Pisctacia chinensis	Chinese Pistache	24" Box
	Olea europaea 'Swan Hill'	'Swan Hill' Olive	24" Box
	Quercus virginiana 'Heritage'	'Heritage' Live Oak	24" Box
	Ulmus parvifolia	Chinese Evergreen Elm	24" Box

SHRUBS/ACCENTS	COMMON NAME	SIZE
Agave americana	Century Plant	5 Gal
Bougainvillea 'La Jolla'	Bush Bougainvillea	5 Gal
Hesperaloe funifera	Giant Hesperaloe	5 Gal
Leucophyllum frutescens	Texas Sage	5 Gal
Leucophyllum langmaniae 'Lynn's Legacy'	'Lynn's Legacy' Sage	5 Gal
Muhlenbergia rigens	Deer Grass	5 Gal
Nerium oleander 'Petite Pink'	Dwarf Pink Oleander	5 Gal
Ruellia peninsularis	Desert Ruellia	5 Gal
Tecoma stans 'Gold Star'	'Gold Star' Yellow Bells	5 Gal

GROUNDCOVERS	COMMON NAME	SIZE
Acacia redolens Desert Carpet	Prostrate Acacia	1 Gal
Callistemon x 'Little John'	Dwarf Callistemon	1 Gal
Lantana x 'New Gold'	New Gold Lantana	1 Gal
Lantana montevidensis	Trailing Purple Lantana	1 Gal

Vegetative Groundcover with 5/8"Screened Decomposed Granite, Santa Fe Brown or Equal

Cynodon dactylon 'Tifway 419' — Tifway 419 — Sod

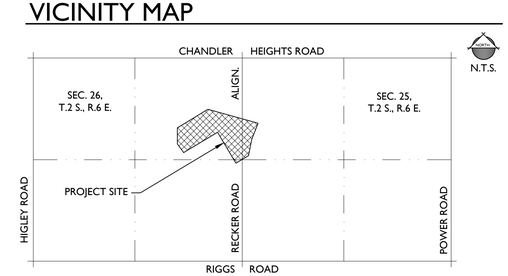
KEYNOTES

1. ENTRY
2. ENTRY MONUMENTATION SIGN
3. DECORATIVE PAVING
4. RAMADA
5. 5' CONCRETE SIDEWALK
6. THEMED STREETSCAPE
7. EMERGENCY ACCESS GATE
8. PEDESTRIAN CONNECTION
9. MAILBOX
10. COMPACTED DECOMPOSED GRANITE TRAIL
11. TURF
12. SEWER EASEMENT

PROJECT DATA

A.P.N.	304-78-073A; 073C
EXISTING GENERAL PLAN:	RESIDENTIAL > 1 - 2 DU./AC.
PROPOSED GENERAL PLAN:	RESIDENTIAL > 2 - 3.5 DU./AC
EXISTING ZONING:	SINGLE FAMILY-15 PAD (SF-15 PAD)
PROPOSED ZONING:	SINGLE FAMILY-7 PAD (SF-7 PAD)
CURRENT LAND USE:	VACANT
GROSS AREA:	+/- 19.17 ACRES
NET AREA:	+/- 19.17 ACRES
MIN. LOT AREA:	8,750 SQ. FT.
MIN. LOT SIZE:	70' x 125'
TOTAL NO. OF LOTS:	61 LOTS
DENSITY:	3.18 DU/AC.
OPEN SPACE:	1.98 ACRES (10.3% OF GROSS / NET)
TURF AREA:	3,060 SF (3.5% OF OPEN SPACE)

VICINITY MAP



NORTH

0' 30' 60' 120'

Scale: 1" = 60'-0"

14-198

T.W. LEWIS by David Weekley Homes

Legacy Point at Seville

Gilbert, Arizona

Illustrative Landscape Plan

L-0.01

03.19.2014

REGISTERED LANDSCAPE ARCHITECT CERTIFICATE NO. 45568 ALIZA E. SABIN Date Signed 3-19-14 ARIZONA, U.S.A. EXPIRES: 12/31/15

EPS GROUP

TOWN OF GILBERT
PLANNING COMMISSION REGULAR MEETING
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT ARIZONA
APRIL 1, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner Brent Mutti** **Commissioner Jennifer Wittmann** **Commissioner David Blaser** **Commissioner Carl Bloomfield**
COMMISSION ABSENT:	**Commissioner David Cavenee** **Alternate, Todd Hall**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Principal Planner Catherine Lorbeer** **Senior Planner Jordan Feld** **Senior Planner Amy Temes** **Senior Planner Bob Caravona** **Planner Nichole McCarty** **Planner Nathan Williams**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

PLANNER	CASE	PAGE	VOTE
NICHOLE MCCARTY	UP15-01	2	CONTINUED
BOB CARAVONA	S14-12	3	APPROVED
BOB CARAVONA	UP14-12	5	APPROVED
NICHOLE MCCARTY	UP15-04	6	CONTINUED
NATHAN WILLIAMS	UP15-02	10	APPROVED
NATHAN WILLIANS	GP14-10	11	APPROVED
NATHAN WILLIAMS	Z14-28	11	APPROVED
AMY TEMES	GP14-02	18	APPROVED

CALL TO ORDER:

Chairman Joshua Oehler called the meeting to order at 6:00 p.m.

ROLL CALL

Ms. Fry called roll and a quorum was determined to be present.

APPROVAL OF AGENDA

Chairman Oehler asked if there was a motion to approve the Agenda.

Planner Williams said that was correct.

Chairman Oehler closed the public hearing.

A motion was made by Commissioner Jennifer Wittmann and seconded by Commissioner David Blaser to make the findings of fact and approve UP15–02 East Valley Patient Wellness Center: a request for a Conditional Use Permit for approximately 1 acre of real property located at 952 S. 182nd Place, north and west of the northwest corner of 182nd Place and Nunneley Drive, to allow a Medical Marijuana Dispensary in the Light Industrial (LI) zoning district, subject to conditions related to public health, safety, and welfare.

Motion carried 6 – 0

Move to make the findings and approve UP15-02 East Valley Patient Wellness Center: a request for a Conditional Use Permit for approximately 1 acre of real property located at 952 S. 182nd Place, north and west of the northwest corner of 182nd Place and Nunneley Drive, to allow a Medical Marijuana Dispensary in the Light Industrial (LI) zoning district, subject to the following conditions:

1. The Medical Marijuana Dispensary shall be in substantial conformance with Attachment #3 Site Plan; Attachment #4 Floor Plan & Security Plan; Attachment #5 General Regulations; and Attachment #6 Security Plan Narrative, as approved by the Planning Commission at the April 1, 2015 Public Hearing.
2. Any later phase of development to modify, enlarge or expand the dispensary, shall require submittal of subsequent Use Permit application for review and approval by Planning Commission at a Public Hearing.
3. The Medical Marijuana Dispensary Use and the subject site shall comply with all Town of Gilbert codes as well as all requirements identified under Article 4.5014 of the Land Development Code or as amended, prior to Certificate of Occupancy for the Medical Marijuana Dispensary.
4. This Use Permit shall only remain valid so long as the Dispensary can provide proof that the Dispensary is State-approved, certified and registered with the Arizona Department of Health Services pursuant to Arizona Revised Statutes, Title 36, Chapter 28.1.
5. Prior to Design Review Board approval, the applicant shall provide documentation for legal access and a public utility easement that meet Town standards as required by the Town Engineer.

A. GP14-10: REQUEST FOR A MINOR GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE CLASSIFICATION OF APPROXIMATELY 19.17 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD FROM RESIDENTIAL > 1-2 DU/ACRE TO RESIDENTIAL >2-3.5 DU/AC LAND USE CLASSIFICATION; AND

B. Z14-28: REQUEST TO REZONE APPROXIMATELY 19.17 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD FROM APPROXIMATELY 19.17 ACRES OF SINGLE FAMILY - 15 (SF-15) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY TO SINGLE FAMILY - 7 (SF-7) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY.

Planner Nathan Williams stated that Seville Tract T, also known as Legacy Point at Seville, was just over 19 acres in the center of the Seville Master Plan and is the remaining parcel to be developed. It is surrounded by golf course and adjacent to the golf club. Seville's Master Plan is predominantly SF- 6, SF -7, SF- 8 and some SF -10. The applicant is asking for a General Plan Amendment from 1-2 to 2-3.5 per acre and rezoning from SF – 15 PAD to SF – 7 PAD. An aerial graphic was displayed and the project site was pointed out. The main access to the subject site is shown via Clubhouse Drive, with direct access from Chandler Heights Road. A secondary emergency access is proposed in the southeast corner of the subject site to the Seville Golf & Country Club (Seville G&CC) parking lot. There will be multiple pedestrian connections from the surrounding areas and trails through the subject site and will not be

gated but will remain open. The applicant has provided a development plan that shows the continuation of these existing pedestrian connections across the subject site to the adjacent and existing Seville Country Club as well as some internal trails, in addition to the proposed sidewalks. Planner Williams indicated a lot on the site map and noted that it had shifted to the northeast somewhat to make room for a sewer easement across the site and provide a more direct pedestrian route through the site. The site has some slope issues and putting in more turns and adjustments to the sewer line was not feasible so they needed to take the most direct route that they could across the site. There are 61 lots with an overall density of 3.18. Planner Williams referred to the following information from page 4 of the staff report:

Site Development Standards:

	Existing Seville Tract T PAD: SF-15 PAD (Z08-22)	**LDC Conventional SF-7**	**Seville Master Planned Community: SF-7 PAD (Z99-62)**	**Proposed Development for Seville Tract T PAD: SF-7 PAD (Z14-28)**
Zoning District:	SF-15 PAD	SF-7	SF-7 PAD	SF-7 PAD
Number of Lots/ Density	1-2 DU/ Acre	N/A	N/A	61 lots (3.18 DU/ Acre)
Minimum Lot Area (sq. ft.)	15,000 sq. ft.	7,000 sq. ft.	7,000 sq. ft.	**8,750 sq. ft.**
Minimum Lot Dimensions (ft.)	100’ x 150’	65’ x 100’	60’x110’	**70’ x 125’**
Maximum Height (ft.)/Stories	35’/ 2-stories	30’/ 2-stories	30’/ 2-stories	**25’/ 1-story only** (61 lots total)
Setbacks: Front Yard Side Yard Rear Yard	 25’ 10’/10’ 30’	 20’ 5’/10’ 20’	 18’ 5’/ 10’ 20’	 20’ 5’/10’ 20’
Lot Coverage	40% single story 35% two/ three- story	45% single story 40% two/ three-story	45% single story 40% two/ three-story	45% single story N/A two/ three-story
Front Setback: Staggering	3’ minimum stagger/ variation	3’ minimum stagger/ variation	3’ minimum stagger/ variation	3’ - minimum stagger/ variation
Front Setback: Livable (non-garage)	20’	15’ (20’ minimum recess for front facing garage to plane of livable area)	15’	15’
Front Setback: Side Entry Garage	20’	15’	10’	10’
Side Setback: Adjacent to Non-Residential Uses	N/A	15’	15’	15’
Rear Setback: Adjacent to Non-Residential Uses	25’ single story 35’ two story	25’ single story 30’ two story	25’ single story 35’ two story	**20’ single story** N/A two story

Based upon input from the Planning Commission and Town staff, the applicant has reduced the number of deviations requested from the Single Family-7 (SF-7) zoning district (see Site Development Standards Table) from the original request filed under Z14-28. The majority of the current deviations proposed under Z14-28 match or are less intense than the deviations that have been previously approved for SF-7 zoned parcels within the Seville PAD.

The applicant has revised the proposed deviation request to eliminate the required 3' stagger/ variation and will now provide the required 3' stagger/ variation throughout the subdivision per LDC requirements. This new proposal eliminates any need for additional language to require each dwelling unit having livable area as the most forward element of the home shall provide a 5-foot minimum setback variation between the facade of the front entry garage and the facade of the projecting livable area.

Staff believes that the proposed deviations do remain consistent with existing SF-7 portions of the Seville Master Planned Community. Additionally, the Seville Tract T site is unique in its size and shape and that it is surrounded by the Seville Golf Course and Country Club and staff agrees that the proposed minor deviations are justifiable and applicable for the subject site.

Chairman Oehler invited the applicant to come forward.

Cameron Carter, Rose Law Group, came forward on behalf of TW Lewis. Mr. Carter stated that the project was legacy point at Seville which was the last piece within the Seville Master Planned Community to develop. TW Lewis has history with Seville as they just built Siena. A site plan was displayed. TW Lewis is a high-end builder with price points consistent throughout the Seville community. Mr. Carter indicated Tract T2 on the site plan and noted that the parcel originally was planned to be developed commercial as a boutique hotel resort. This would be a much more intense use than what they planning currently. The hotel plan didn't pan out as the market was not there for that so this property has remained undeveloped for a number of years. What is being proposed is a gated community that will be consistent and fit within the existing Seville community. The current request is 1 – 2 dwelling units per acre. Most of the surrounding area has already been developed to 2-3.5 dwelling units per acre so the change that the applicant is requesting is completely consistent with everything else that surrounds it. The proposed rezoning request is for SF – 7, 7000 ft.^{2} minimum lots which they are actually exceeding. With the 61 lots proposed it will ensure that the total lot count stays within the maximum unit count for the Seville Master Planned Community and the maximum density for that community. The development plan map was displayed and the pedestrian access was pointed out. 10% open space will be provided which is consistent with Seville. The subject site has direct access to Chandler Boulevard via Clubhouse Drive which is a private road that is currently used to access the maintenance facility. It will be used as a straight shot North to Chandler Heights. TW Lewis will comply with the 3 foot stagger requirement. TW Lewis is proposing to exceed the minimums that they see within other communities within Seville, for example, the single-story limitation. They are actually lowering sightlines and retaining the site views from adjacent properties by 10 feet. Large backyard spaces have also been provided. Some preliminary conceptual sketches were displayed of the product type specifically designed for this particular parcel. TW Lewis expects that the values for this project will be 15% to 20% higher than the adjacent areas. In terms of the modification to stipulation D, this project is already incorporated into the Seville HOA. Mr. Carter said that they have been through an extensive citizen participation process and have held neighborhood meetings, talked with the HOA and worked with the golf course operator. In terms of the neighbors to the North's drainage concerns he noted that the Seville community was all designed to drain into the golf course and this project is part of that drainage system. A few years previous there was a flooding event and some of the neighbors expressed concern about the development of the site affecting drainage. Mr. Carter said that they have worked closely with the golf course operator to find out what caused that flooding and found that there were some pipe culverts that had not been maintained and attributed to the problem. Those have since been repaired and the HOA now maintains them. That means the flooding and draining issue is really a non-issue.

Chairman Oehler invited citizens from the public who wished to speak on the item to come forward.

William Dupuy, Gilbert AZ, came forward. Mr. Dupuy said that he realized that the golf courses were made to take care of rainwater in the project area. However, this is the highest point on the entire property; the clubhouse is built on a hill. Mr. Dupuy indicated the site plan and pointed out where water flows down from the clubhouse to the North. There are approximately 18 acres which does percolate currently to some extent. He said that he had lived on Meadowview since 2004 and had seen every rainstorm since and the water flows down off the hill and through a 20 foot deep gully that they have dug and that is supposed to be where the dry wells are. Every rain fills that area up and overflows into the golf course and onto the next fairway, because it's all downhill, and after the last big flood it overflowed into people's homes. Mr. Dupuy said that most developers must provide retention in their own areas and he realized that maybe there was an exception because this is a golf course but since it's on a hill and all the water is going to flow down why couldn't the developer take a couple of lots and recess them for water retention and put in a playground for the kids. Mr. Dupuy said that he had no problem with the development or the homes but asked for some neighborhood cooperation to put in some retention areas.

John Semon, Gilbert AZ, came forward in opposition to the item. Mr. Semon said that he was not against developing the property but requesting that the zoning remain at SF – 15 rather than be changed to SF – 7. When it was decided that they wouldn't move forward with the boutique hotel the builder requested that the zoning be changed as he wanted to put 200 townhomes on the property. It became a very contentious issue with the property owners. When that zoning change was denied by Town Council Shea homes sold the property and it was zoned SF – 15. Mr. Semon said that when they purchased their property 12 years prior they were told that the lot sizes and homes would vary but the tendency over the last few years was to develop smaller homes on smaller lots and larger homes were put on the smallest lots possible. Meadowview Drive is zoned SF 15 as well as the lots across the street. What they are now looking at is not 24 – 28 homes but 61 homes with minimal green space. Mr. Semon requested that the petition to change the zoning to SF – 7 be denied and that it remain at SF – 15.

Dennis Joannides, Gilbert AZ, came forward. Mr. Joannides said that he was happy that it was going to develop as it was somewhat as an eyesore in the community currently. What concerned him was the change in density. Going to a smaller density and making the housing more affordable you encourage more families to be in the area. As a result, looking at the proposed planning, there is no planning there for children without having to go on to the golf course which is not permitted to playing in the streets as the closest park is a minimum of ½ mile away. Mr. Joannides said that he would encourage the developer to put in some type of extended play area within the community that would be a place for children to play as well as help with water retention.

Chairman Oehler read the names of Gilbert citizens who were present and filled out comment cards that were opposed to the item but did not wish to speak:

Kevin Ramsey
Kristen Ramsey
Darlene Semon
Ruth and Brian German
Donna Joannides
Tom Fogg
Joyce Fogg

Chairman Oehler invited the applicant to come forward with any additional comments.

Cameron Carter said that in terms of the elevations TW Lewis has committed to build a single-story home with no two story homes in the area which drops the potential elevations for those homes by 10 feet automatically. Regarding the drainage, the community was designed as a master plan and there were drainage studies done. It was all designed to drain through the golf course and when they go through the process of approval at the Town they will have to show that the drainage works. They need to also remember that this was planned as commercial and the hotel that was originally planned for there was a multistory structure and the development that is now proposed is far less intense. The infrastructure actually remains so all of the retention for the site can be handled through the golf

course and through the infrastructure that exist today. The system was designed to accommodate that and this is a far less intense use. Mr. Carter commented that the flooding that was referred to earlier was not caused by Tract T2 and the development on this site will not cause any further flooding. The cause of that flooding was broken culverts and culverts that had been maintained improperly because the HOA didn't know they were supposed to maintain those. Mr. Carter said he could not think of a development that had more buffering or that has greater spacing that accommodates mixed of uses or has less impact on neighboring properties than this one. In terms of values this development is one half million dollar homes and will not be attracting the youngest families with small children. TW Lewis's market throughout the Valley is retirees, not start up families.

Commissioner Bloomfield said that in his recollection Seville was designed to be for all generations living, working and playing together. He said with that in mind he was not sure there was enough usable open space such as a small park for that community. He asked if in their experience in the adjacent parcel buyers tended to be retirees who wanted larger homes with lesser outside spaces to maintain.

Mr. Carter said that TW Lewis has a great deal of experience building in Seville and a great deal of market data there as they had just built in Siena. Their market was Empty Nesters rather than start up families. Seville does have amenities and just to the south of the property is the golf clubhouse as well as a pool facility with waterslides. It is a membership club as with these price points is to be expected. They have not considered providing tot lots and things of that sort because that is just not the market.

Chairman Oehler referred to lot 61 and 42 and noted that if taken out would make perfectly good open space tot lots. He said those spaces could also potentially take on some of the drainage issues if there were some. That would force the development to make sure that those types of issues are resolved. He asked if that had been an option that was looked at.

Mr. Carter said that this plan meets and exceeds the 10% open space that is required by the ordinance and is consistent with the open space that is provided in the community and is consistent with every other neighborhood. They have not looked at the need for additional amenity areas because the market says that isn't necessary and in terms of retention there is just no need for additional retention needs within this site because the Seville Master Plan and drainage plan already accommodates drainage from the site.

Chairman Oehler said that he looked at a lot of the projects green spaces as connecting point's not actual usable spaces

Mr. Carter said that when they polled the open spaces provided it exceeds the Towns requirements and the market is just not there for that type of open space.

Chairman Oehler said that he was looking for more useful spaces within the community.

Commissioner Bloomfield said that with the request from SF-15 to SF-7 he assumed that was market driven and not necessarily to get more density but that most of their clientele want a larger home on the smaller lot with less to take care of and more time to enjoy the amenities of Seville. He said that it sounded to him that that's what they were looking for because that is what the market wants.

Mr. Carter said that was exactly right. The Siena community right next door has almost zero open space within the community. He said that many of lots in question actually back up to the golf course and that is why they are buying in the golf community.

Town Development Engineer Tom Condit said that he knew that the neighbors have some concerns and that there has been some flooding issues in Seville, however, those particular issues were the result of storm drain maintenance problems. The flooding came down the streets and there was no way for it to get out into the golf course which is adequately sized for the drainage. If you look at the other parcels within Seville, none of them have standalone

drainage; the golf course itself is designed as the retention basin for the hundred year flood event. Mr. Condit said that they would certainly look at it closely when the plans come forward to be sure that all the drainage that is necessary is still maintained within the golf course.

Commissioner Brent Mutti asked if SF–7 and SF–15 both have 10% open space requirements.

Planner Williams said that it is based on density and they both will fall into that. It would be the same.

Chairman Oehler asked if there was a breakdown for the density in the area. He said the comment was made that there was an overall maximum density for Seville and he was assuming that with the development of the current project they would be under the maximum.

Planner Williams stated the applicant has provided an update to the overall Seville PAD dwelling units and density with the proposed project, which would now consist of 2,914 dwelling units (remaining under the 3,025 dwelling unit cap) and a residential density of 2.21 dwelling units per acre (remaining under the 2.33 DU/ acre cap). Additionally there will be the additional 8 total lots east of Recker Road would bring the new total to 687 dwelling units (remaining under the 690 residential dwelling unity cap).

Chairman Oehler closed the public hearing.

Commissioner Bloomfield said that since this is the last parcel that everyone should be grateful that it is finally going to development and meets all requirements. He was in favor the project and thought that it would be a great addition both to Seville and the Town.

Vice Chairman Sippel said that he was not concerned about open space and agreed with Commissioner Bloomfield. He said that he believed it did work well for the empty nesters at that price point. He was in support of the project and appreciated the applicant making the changes that were made.

Commissioner Blaser agreed with what had been said by the other Commissioners and thought that the applicant did a good job of reacting to the input from the study session. He said it would be a great project.

Commissioner Wittmann conferred with the other commissioners.

Chairman Oehler said that he thought lot 61 is kind of cramming it in by the perfect spot with the separation of the sewer easement that becomes an island to itself. You won’t quite notice it with the trail and it makes a canyon with the 2 fences that they saw in the diagram it becomes an alleyway. It’s a small enough parcel of land that it becomes a community to itself and everyone will get to know each other within this small part of Seville but in going with the density it would have been nice to have lot 61 as an open space that is in part of the clubhouse because you do pay special fees and don’t automatically get to go to the clubhouse. Overall the design is good except for that one point that would really resolve a lot of issues with the community and give a little more open space and maybe pick up a little extra drainage.

Commissioner Mutti said that he didn’t believe that all of those points would be addressed by the lot 61 area as it is not large enough to be functional for drainage and open space and a tot lot. It’s going to drain to the street and contribute to the drainage just as it does as a standalone lot. It won’t be a panacea for all of those issues.

Chairman Oehler said that it would be able to percolate differently than a hard scape and you would have some break in grade. Having a grassy area does percolate better than someone’s backyard with the pool or hard scape.

Commissioner Mutti said that was only if they grade the site for that to be a low focal point which may actually encourage flooding in that general area should those dry wells silt over or not be maintained. It may have a reverse impact or unintended consequence.

Chairman Oehler said that there would be overflow pipes going through the connection and tying to the drain but that is a design issue.

A motion was made by Commissioner Carl Bloomfield and seconded by Vice Chairman Kristofer Sippel to recommend to the Town Council approval of GP14-10, to change the land use classification of approximately 19.17 acres of real property generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road from Residential > 1-2 DU/ acre to Residential >2-3.5 DU/acre land use classification and for the reasons set forth in the amended staff report recommend approval of Z14–28 with the modified stipulations in the staff report.

Motion carried 5-1

Aye - Commissioner David Blaser
Aye- Commissioner Carl Bloomfield
Aye - Commissioner Brent Mutti
Aye - Commissioner Jennifer Wittmann
Aye – Vice Chairman Kristofer Sippel
Nay – Chairman Joshua Oehler

A. Recommend to the Town Council approval of GP14-10, to change the land use classification of approximately 19.17 acres of real property generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road from Residential > 1-2 DU/ acre to Residential >2-3.5 DU/acre land use classification; and

B. For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z14-28 rezoning of approximately 19.17 acres of real property, Seville Tract T Planned Area Development (PAD) and generally located south of the southeast corner of Clubhouse Drive and Chandler Heights Road from approximately 19.17 acres of Single Family - 15 (SF-15) zoning district with a Planned Area Development (PAD) overlay to Single Family - 7 (SF-7) zoning district with a Planned Area Development (PAD) overlay zoning district, subject to the following conditions:

   a. The Project shall be developed in conformance with the Town's zoning requirements for the Single Family 7 (SF-7) zoning district and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

	Proposed Development for Seville Tract T (Z14-28)
Maximum number of lots	61 residential lots
Minimum lot dimensions (ft.) width x depth	70' x 125'
Minimum lot area	8,750 sq. Ft.
Minimum building setbacks: Front Setbacks	 10' (side-loaded garage); 15' (livable) 20' (front-loaded garage)

	Proposed Development for Seville Tract T (Z14-28)
Rear setback: adjacent to non-residential uses	20’
Lot coverage	45%
Maximum building height	25’/ 1-story

b. The density and maximum number of dwelling units for the Seville Tract T PAD shall be conditioned upon and included in the calculations of density and number of dwelling units for the Seville Planned Area Development Plan, as set forth in Condition ‘y’ of Ordinance No. 1264. The maximum number of dwelling units allowed within the Seville Planned Area Development, including the number of dwelling units in the Seville Tract T Planned Area Development shall be 3,025 and maximum residential density shall be 2.33 dwelling units per gross residential acre.

c. Developer shall comply with and coordinate with the requirements for the Seville Planned Area Development Master Plan for water, sewer and drainage, trails and amenities, view walls on the golf course, parks, and archeological features, as set forth in Ordinance No. 1264, as amended by Ordinances No. 1398, 1414, ~~and~~ 1489~~.~~, AND 2188.

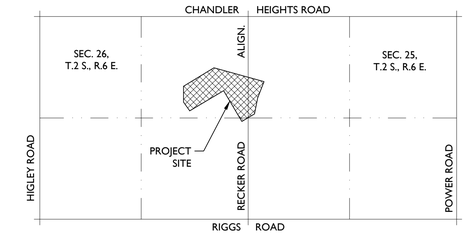
d. Developer shall create a Homeowner’s Association (HOA) OR BE PART OF THE SEVILLE HOA for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way. Maintenance responsibilities for common areas and open space areas shall be specified on the approved site plan or final plat.

e. Developer shall record easement to be owned by the HOA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat recordation, or earlier if required by the Town Engineer.

GP14-02: SANTAN CHARACTER AREA UPDATE

Senior Planner Amy Temes stated that approximately one year ago staff came before the Planning Commission and asked to move forward with an update to Chapter 10 of the General Plan and specifically the Santan Character Area (SCA). Gilbert has four Character Areas within the General Plan, including the Santan Character Area (SCA). Character Areas each have distinct visions, goals or features that make them special. The SCA is the largest in South Gilbert and the one that has been having a lot of activity with development. It’s been mentioned numerous times that perhaps they should revisit not only the SCA standalone plan but also Chapter 10. They started out holding open houses for the public and mailed out over 10,000 invitations and had two public meetings which were held last summer. They received a lot of input and comments. Planner Temes displayed an aerial which showed the development that has been happening in the area and that there was not much vacant land left. Many of the comments that were received from the public said to leave the General Plan the way it is and that they supported the General Plan as shown in the current land use category. An overall analysis of land uses in the area was done and a point of discussion in numerous discussions was whether there was commercial land and enough employment in the SCA and how the numbers looked. They did some number crunching and found that the SCA was substantially underserved both today and at build out and north Gilbert had substantially more services. That’s not surprising to find in employment considering the remainder of Gilbert has the Santan Freeway running through it and in some areas touches US 60 and there are also Williams Gateway Airport as well is the Chandler Airport. Finding employment at a higher level in the remainder of Gilbert is something that was to be expected and staff and the public thinks the 15 to 20 minute drive to some of those employment areas is still reasonable. There are over 75,000 people in South Gilbert that need services. The neighbors want support services and they want to keep the commercial that is planned and they want to support the commercial that exists and the numbers that were analyzed support those facts. Planner Temes said that staff also moved forward with updating and reviewing the documents that exist based on the existing SCA standalone plan they then reviewed what Chapter 10 said to make sure that it still coordinated and that there was nothing in Chapter 10 of the General Plan that was in conflict with existing

VICINITY MAP



PROJECT TEAM

DEVELOPER:
T.W. LEWIS BY
DAVID WEEKLEY HOMES
850 W. ELLIOT ROAD, SUITE 101
TEMPE, AZ 85284
TEL: (480) 768-4955
CONTACT: JAY RAWSON

CONSULTANT:
EPS GROUP, INC.
2045 S. VINEYARD, SUITE 101
MESA, AZ 85210
TEL: (480)-503-2250
FAX: (480)-503-2258
CONTACT: JOSH HANNON

CONSULTANT:
ROSE LAW GROUP
7144 E. STETSON DR.
SUITE 300
SCOTTSDALE, AZ 85251
TEL: (480)-240-5648
FAX: (480)-505-3925
CONTACT: CHRIS WEBB

PROJECT DATA

A.P.N.	304-78-073A; 073C
EXISTING GENERAL PLAN:	RESIDENTIAL > 1 - 2 DU/AC.
PROPOSED GENERAL PLAN:	RESIDENTIAL > 2 - 3.5 DU/AC
EXISTING ZONING:	SINGLE FAMILY-15 PAD (SF-15 PAD)
PROPOSED ZONING:	SINGLE FAMILY-7 PAD (SF-7 PAD)
CURRENT LAND USE:	VACANT
GROSS AREA:	+/- 19.17 ACRES
NET AREA:	+/- 19.17 ACRES
MIN. LOT AREA:	8,750 SQ. FT.
MIN. LOT SIZE:	70' x 125'
TOTAL NO. OF LOTS:	61 LOTS
DENSITY:	3.18 DU/AC.

SF-7 PAD STANDARDS

	Proposed Development for Legacy Point at Seville PAD: SF-7 PAD (Z14-28)
Zoning District	SF-7 PAD
Number of Lots / Density	61 Lots (3.18 DU/Ac)
Minimum Lot Area (sq. ft.)	8,750 sq. ft.
Minimum Lot Dimensions	
Width	70'
Depth	125'
Maximum Building Height/ Stories	25' / 1-story
Minimum Building Setbacks	
Front Yard – Side-Entry Garage	10'
Front Yard – Livable Area	15'
Front Yard – Front Loaded Garage	20'
Side Yard	5'/10'
Rear Yard	20'
Lot Coverage One Story	45% (*)
Staggering	Front setbacks shall be staggered, such that no more than 2 adjacent lots have the same setback. Minimum of a 3' variation is required.
Side Setback Adjacent to Non-Residential Uses	15' (1-Story)
Rear Setback Adjacent to Non-Residential Uses	20' (1-Story)

(*) ***ADDITIONAL LOT COVERAGE***. A 5% ADDITIONAL LOT COVERAGE IN EXCESS OF THE SF-7 PAD STANDARD IS PERMITTED FOR OPEN AIR ACCESSORY STRUCTURES, OPEN AIR ATTACHED PATIOS AND OPEN AIR PORCHES.

GENERAL NOTES

1. PRIMARY ACCESS TO THIS DEVELOPMENT IS PROVIDED FROM CHANDLER HEIGHTS ROAD VIA CLUBHOUSE DRIVE.
2. A MINIMUM 20' WIDE SECONDARY/ EMERGENCY ACCESS HAS BEEN SECURED BY VIRTUE OF AN EXISTING AGREEMENT AND EASEMENT WITH THE GOLF COURSE OWNER. THE SECONDARY / EMERGENCY ACCESS WILL PROVIDE A GATE.
3. ALL SEVILLE RESIDENTS LOCATED OUTSIDE OF THIS DEVELOPMENT WILL BE PROVIDED ACCESS TO THE SEVILLE CLUBHOUSE AMENITIES VIA PEDESTRIAN TRAIL CONNECTIVITY.
4. THIS DEVELOPMENT WILL RAISE THE TOTAL NUMBER OF PLATTED DWELLING UNITS IN THE SEVILLE MASTER PLANNED COMMUNITY FROM 2,853 TO 2,914, WHICH INCREASES THE OVERALL DENSITY TO 2.21 DWELLING UNITS PER ACRE BASED ON A NEW TOTAL RESIDENTIAL ACREAGE OF 1,313 ACRE. THIS DEVELOPMENT CONFORMS WITH ORDINANCE NO. 1264, WHICH PERMITS AN OVERALL MAXIMUM DENSITY OF 2.33 DWELLING UNITS PER ACRE FOR THE SEVILLE MASTER PLANNED COMMUNITY.
5. ORDINANCE NO. 1264 PERMITS A TOTAL OF 690 LOTS TO BE LOCATED EAST OF THE ALIGNMENT OF RECKER ROAD. THIS DEVELOPMENT CONFORMS TO ORDINANCE NO.1264 BY ADDING 8 LOTS EAST OF THE RECKER ROAD ALIGNMENT, INCREASING THE TOTAL NUMBER OF LOTS IN THE SEVILLE MASTER PLANNED COMMUNITY EAST OF THIS ALIGNMENT FROM 679 TO 687.

14-198

T.W. LEWIS by David Weekley Homes

Legacy Point at Seville

Gilbert, Arizona

Exhibit D
"Seville Tract T"
Conceptual Development Plan

03.24.2015

EPS GROUP

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jason Kerby, Project Manager, 503-6198

MEETING DATE: April 30, 2015

SUBJECT: Approve a resolution to acquire right of way (ROW) and easements on parcel 304-28-006A for the Higley and Warner improvement project, CIP Project No. 152, and authorize the mayor to execute the required documents.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it exspands the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approve a resolution authorizing the acquisition of ROW and easements on parcel No. 304-28-006A (Michelon) for the Higley and Warner improvement project, CIP Project No. ST152 and authorize the mayor to execute the required documents.

BACKGROUND/DISCUSSION

ST152 is identified in the 2015-19 Capital Improvement Program (CIP) and provides for the design and construction of full intersection configuration improvements of Higley and Warner which include three through lanes, raised medians, streetlights, irrigation, drainage facilities, traffic signals, dual left and right turn lanes on all approaches as justified by the traffic study. This project also includes interim improvements from this intersection to SR202 and to the Mesquite Street alignment, a half mile north of Warner Road.

The interim improvements from SR202 to the intersection of Warner and Higley will include four through lanes, raised median, streetlights, utility extensions, drainage facilities and curb openings at appropriate locations. North of the intersection, the interim improvements will include four travel lanes, utility extensions and drainage facilities. As future developments are proposed along this stretch of Higley Road, their development will complete the road to the Town’s major arterial standard.

This resolution will authorize Staff to purchase right of way, drainage, temporary construction easements and to compensate the property owner for incidental items, at fair market value, on the following parcel: 302-28-006A, (MICHELON). Staff has had appraisals prepared by a certified appraiser in preparation of this resolution and the appraisal is available upon request.

The resolution was reviewed for form by Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is included in the FY 2015-19 CIP as project number ST152 and is funded through General Obligation Bonds. The proposed acquisition is within the remaining Land (ROW) FY2015 budget. .

	Summary of Acquisition
Parcel No.: 302-28-006A	$1,334

Project Accounting Codes: ST152-7530-8022

The financial impact has been reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution.

Respectfully submitted,

Jason Kerby
Project Manager

Approved By	Approval Date
Eliana Hayes	4/16/2015 2:45 PM
Kenneth Morgan	4/16/2015 6:44 PM
Jack Vincent	4/20/2015 4:31 PM
Cris Parisot	4/20/2015 9:35 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 **ST152 HIGLEY AND WARNER ROADS IMPROVEMENTS**, 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. ST152 HIGLEY AND WARNER ROADS IMPROVEMENTS described in the Capital Improvements Plan approved by the Town Council ("Project"), which real property is generally described in Exhibit A ***(parcel number 302-28-006A, (MICHELON))***, 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 Exhibit 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 30th DAY OF APRIL, 2015.

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

_____
_____, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

EXHIBIT A

LEGAL DESCRIPTION
FOR
SRP ELECTRICAL EASEMENT
APN 304-28-006A

AN 8 FOOT WIDE STRIP OF LAND SITUATED IN A PORTION OF SECTION 23, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING FOUR FEET ON EITHER SIDE OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 23 BEARING SOUTH 89 DEGREES 28 MINUTES 33 SECONDS WEST, A DISTANCE OF 2605.62 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 23;

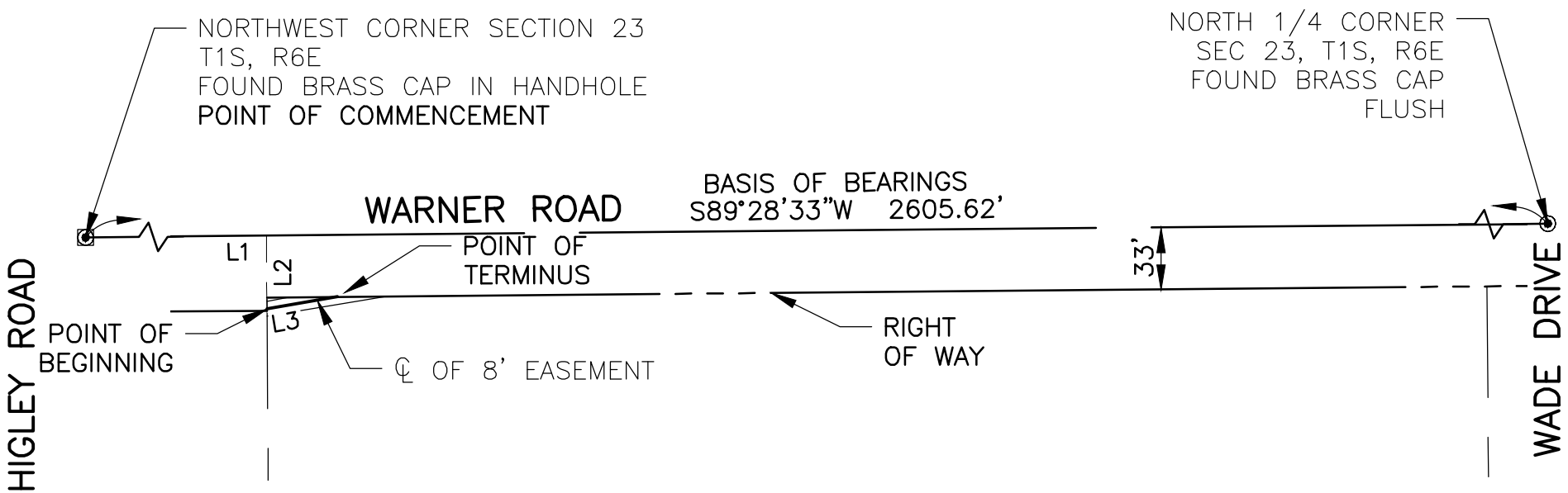
THENCE NORTH 89 DEGREES 28 MINUTES 33 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 23, A DISTANCE OF 1302.75 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 31 MINUTES 27 SECONDS EAST, A DISTANCE OF 38.98 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 80 DEGREES 26 MINUTES 47 SECONDS EAST, A DISTANCE OF 38.08 FEET TO THE POINT OF TERMINUS;

THE SIDELINES OF THE ABOVE DESCRIBED EASEMENT ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT THE SIDELINES OF A.P.N. 304-28-006A AND THE SOUTHERLY RIGHT OF WAY LINE OF WARNER ROAD AND CONTAINING A COMPUTED AREA OF 305 SQUARE FEET, OR 0.007 ACRES OF LAND MORE OR LESS.

THE ATTACHED EXHIBIT 'A' IS TO BE INCLUDED AND MADE PART OF THIS DESCRIPTION.



LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N89°28'33"E	1302.75'
L2	S00°31'27"E	38.98'
L3	N80°26'47"E	38.08'

MICHELON FAMILY AZ
LAND LLC
304-28-006A

EASEMENT AREA:
305 SF OR
0.007 ACRES

N

NTS

THIS IS NOT A PROPERTY BOUNDARY SURVEY.

Dibble Engineering

Dibble Engineering
Project No 101235

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31019
C. STEVE
DURYEA, JR.
Date Signed 7/15/14
ARIZONA, U.S.A.
Expires 3/31/15

EXHIBIT "A"
SRP ELECTRIC EASEMENT
A PORTION OF THE NW 1/4 SECTION 23,
TOWNSHIP 1 SOUTH, RANGE 6 EAST, GILA &
SALT RIVER MERIDIAN, MARICOPA COUNTY, AZ

DATE: JULY 2014
DRN: DBB
CHK: CSD

PAGE 2 OF 2

FILE:V:\PROJECTS\2012\101235 Higley - Warner Imp\CAD\APN 304-28-006A_SRP.dwg DATE:Jul, 15 2014 TIME: 09:02 am

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Melanie Dykstra, Management Support Analyst, 503-6330

MEETING DATE: April 30, 2015

SUBJECT: Public hearing on the proposed PKID budgets

STRATEGIC INITIATIVE: Financial Plan

This supports the Council's strategic initiative for a balanced five year financial plan by proactively managing government finances.

RECOMMENDED MOTION

A motion to adopt the preliminary budgets for Parkway Improvement Districts (PKID's) for the period July 1, 2015 to June 30, 2016; and to establish May 14, 2015 as the date of final public hearing and adopting of tax levy.

BACKGROUND/DISCUSSION

Gilbert has eleven subdivisions that use a Parkway Maintenance Improvement District (PKID) for maintenance of their drainage, retention and off-site improvements. The cost of each PKID is recovered through special assessments levied on a per lot basis each year after the Council reviews and adopts the annual budgets.

In the past, Gilbert has conducted an annual meeting with residents each year in order to determine what landscape and park improvements the neighborhood may be interested in completing. Although the Town is not required to host a meeting, it is important to receive input from residents in order to understand what projects are priorities for implementation.

At the last annual meeting, we did hear an interest in changing the process regarding meeting notification, opportunities for education, and voting processes. Consequently, staff worked diligently with residents from each PKID that volunteered to be part of a focus group. The focus

groups were convened to discuss how the current process and voting procedures could more adequately represent the property owners. The focus group identified the following interests that should be achieved:

- All property owners are given an opportunity to be represented
- Method where most or more, people would participate
- Communicate to property owners directly
- Educate property owners about the PKID process, structure of meetings, and details about possible improvements
- Discuss opportunities for phasing improvements/projects
- Provide additional education in order to build trust for the process

With these interests in mind, the focus group members discussed changes that could be made to the current process and identified a plan of action. The plan was implemented which included hosting an educational meeting in October for each PKID, mailing an assessment letter or voting ballot to each property owner per the Maricopa County Assessor during the month of December/January which identified required maintenance items, voting options and the proposed budget and per lot levy. In addition, an open house was held on Saturday, January 24th to answer any final questions prior to voting.

The improvements that were agreed upon at the meetings or during the voting process are included in the budgets before you this evening. The table below is a comparison of the current year budget and the proposed budget for FY2015-16. The variations in the amounts reflect specific improvements requested by a majority of the homeowners.

PKID Annual Budget Comparison

	No. of	2014-15		2015-16		$ Change
	Lots	Levy	Per Lot	Levy	Per Lot	Per Lot
Val Vista Park	231	$63,510	$274.94	$50,360	$218.01	(56.93)
Templeton Place	133	82,270	$618.57	37,350	280.83	(337.74)
Park Village	413	257,730	$624.04	261,000	631.96	7.92
Spring Meadows	227	90,750	$399.78	113,480	499.91	100.13
Circle G Meadows II	183	62,100	$339.34	45,530	248.80	(90.55)
Circle G Meadows III	143	80,650	$563.99	50,560	353.57	(210.42)
Circle G Ranches VI	35	18,400	$525.71	19,270	550.57	24.86
Circle G Ranches VII	81	23,070	$284.81	21,540	265.93	(18.89)
Morning Ridge	92	16,860	$183.26	73,870	802.93	619.67
Madera Parc	447	152,240	$340.58	94,330	211.03	(129.55)
Cassia Place	109	55,840	$512.29	92,480	848.44	336.15

The levy amount is based on three components: actual levies compared to requested levies, prior year actual expenditures compared to adopted budgets, and the proposed budget for FY2015-16.

Information regarding PKID's is easily assessable on the Gilbert website. The website for the PKID's includes minutes of all PKID meetings, assessment letters, and the approved landscape master plans. In addition, staff utilizes email listings to update residents about upcoming events and construction schedules.

FINANCIAL IMPACT

The Town has historically provided the level of service sought by the PKID homeowners. The Town budget assumes these assessments will be in place as a revenue source to cover the costs of maintenance and operations of these facilities.

The amount of the levy is added by Maricopa County to each lot, collected as property taxes, and remitted back to the Town along with other tax collections. Because of the per lot treatment, Maricopa County requests these levies be supplied well in advance of the third Monday of August when the overall levy is required to be set by statute.

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

STAFF RECOMMENDATION

Staff recommends approving the preliminary budgets as presented and setting May 14, 2015 as the date for final levy approval.

Respectfully submitted,

Melanie Dykstra
Management Support Analyst

Approved By	Approval Date
Rod Buchanan	4/20/2015 10:30 AM
Laura Lorenzen	4/20/2015 12:29 PM

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-01 VAL VISTA PARK	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	20,027	21,260	20,161	23,120	22,190
Landscape Architect Service	2,037	-	-	-	-
Other Professional Services	-	710	949	2,000	2,000
Legal	-	-	-	-	-
Advertising	-	-	-	-	-
Printing	-	12	22	100	100
Maintenance Landscape	14,384	14,858	15,156	20,360	20,970
Pest Control - Mosquito Fogging	2,002	1,862	1,870	3,300	3,300
Office Supplies	-	-	-	-	-
Postage	-	97	94	140	300
Chemical Supplies	149	292	149	350	500
Landscape Supplies	731	1,090	831	750	1,200
Fertilizer	957	1,083	961	1,200	1,200
Electrical Supplies	73	-	-	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	1,645	299	1,976	700	1,500
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	4	-	3,750	20	20
Recreation Equipment Maintenance	-	-	-	-	-
Dry Well Maintenance	-	-	-	1,000	1,000
Electricity	1,040	1,214	1,312	1,200	1,200
Water	12,421	11,899	11,933	12,500	12,500
Machinery & Equipment Rental	-	-	-	-	200
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	13,150	-	-	-	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 68,620**	**$ 54,676**	**$ 59,164**	**$ 66,740**	**$ 68,180**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (17,820)
NET ASSESSMENT:					**$ 50,360**
Total Lots in Plat					231
Average Cost Per Lot Per Month	**$ 24.75**	**$ 19.72**	**$ 21.34**	**$ 24.08**	**$ 18.17**
Assessment Per Lot Per Month	**$ 24.60**	**$ 19.09**	**$ 25.75**	**$ 22.91**	**$ 18.17**

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-02 TEMPLETON PLACE	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	11,530	12,241	13,944	13,950	12,780
Landscape Architect Service	4,144	2,477	2,518	1,000	5,000
Other Professional Services	-	190	250	600	1,700
Legal	-	-	89	-	-
Advertising	86	367	323	100	-
Printing	-	7	13	60	80
Maintenance Landscape	29,371	30,167	30,800	24,500	25,240
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	56	54	110	200
Chemical Supplies	43	302	180	300	500
Landscape Supplies	173	128	141	500	500
Fertilizer	606	686	681	800	800
Electrical Supplies	63	330	16	220	200
Painting Supplies	-	-	52	-	100
Irrigation Supplies	2,438	1,432	770	500	1,000
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	6	100	100
Other Supplies & Services	34	-	29	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	-	1,000
Electricity	1,278	1,463	1,595	1,500	1,500
Water	5,349	6,190	6,306	7,500	7,500
Machinery & Equipment Rental	-	-	-	-	300
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	-	44,244	55,338	24,700	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 55,115**	**$ 100,280**	**$ 113,105**	**$ 76,440**	**$ 58,500**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (21,150)
NET ASSESSMENT:					**$ 37,350**
Total Lots in Plat					133
Average Cost Per Lot Per Month	**$ 34.53**	**$ 62.83**	**$ 70.87**	**$ 47.89**	**$ 23.40**
Assessment Per Lot Per Month	**$ 60.16**	**$ 37.66**	**$ 77.04**	**$ 51.55**	**$ 23.40**
LANDSCAPE ONLY BUDGET	$ 1,470	$ 1,470	$ 1,470	$ -	$ -
Architectural Services	-	-	-	-	-
Plants and Trees	-	-	1,470	-	-
LANDSCAPE ONLY BALANCE	$ 1,470	$ 1,470	$ -	$ -	$ -

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-03 PARK VILLAGE	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	35,718	37,919	39,211	42,970	39,670
Landscape Architect Service	16,022	2,745	4,961	7,000	2,000
Other Professional Services	832	8,361	2,015	2,500	2,500
Legal	-	-	285	-	-
Advertising	263	928	889	350	500
Printing	-	22	40	200	170
Maintenance Landscape	48,894	50,278	51,334	45,330	46,690
Pest Control - Mosquito Fogging	125	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	173	-	50	260
Chemical Supply	63	635	299	400	600
Landscape Supplies	-	1,506	793	500	1,000
Fertilizer	1,845	2,265	2,001	2,500	2,500
Electrical Supplies	109	-	-	500	500
Painting Supplies	-	-	74,405	-	-
Irrigation Supplies	959	1,565	2,413	1,000	2,000
Signs & Materials	-	-	-	50	300
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	15	-	-	-
Recreation Equipment Repair	113	-	-	-	-
Dry Well Maintenance	-	-	-	1,000	1,000
Electricity	1,536	1,801	1,963	2,500	2,500
Water	21,856	23,433	22,297	23,000	23,000
Machinery & Equipment Rental	-	-	-	-	1,000
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	113,351	87,889	-	130,100	180,200
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 241,686**	**$ 219,535**	**$ 202,906**	**$ 259,950**	**$ 306,390**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (45,390)
NET ASSESSMENT:					**$ 261,000**
Total Lots in Plat					413
Average Cost Per Lot Per Month	**$ 48.77**	**$ 44.30**	**$ 40.94**	**$ 52.45**	**$ 52.66**
Assessment Per Lot Per Month	**$ 52.92**	**$ 46.37**	**$ 46.37**	**$ 52.00**	**$ 52.66**
LANDSCAPE ONLY BUDGET	$ 11,970	$ -	$ -	$ -	$ -
Architectural Services	-	-	-	-	-
Plants and Trees	11,970	-	-	-	-
LANDSCAPE ONLY BALANCE	$ -	$ -	$ -	$ -	$ -

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-04 SPRING MEADOWS	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	19,679	20,892	20,940	23,600	21,810
Landscape Architect Service	12,162	1,660	1,676	2,500	2,500
Other Professional Services	420	1,130	380	1,820	1,820
Legal	-	-	76	-	-
Advertising	86	375	323	500	500
Printing	-	12	22	100	100
Maintenance Landscape	21,959	22,625	23,100	17,400	17,920
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	95	259	200	250
Chemical Supplies	26	188	80	200	300
Landscape Supplies	-	135	612	750	1,000
Fertilizer	384	767	742	1,000	1,000
Electrical Supplies	-	11	17	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	865	350	1,916	700	1,500
Signs & Materials	-	-	-	-	300
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	27	-	-	-
Recreation Equipment Repair	178	-	97	-	-
Dry Well Maintenance	-	-	-	1,000	1,000
Electricity	3,555	3,849	3,893	4,000	4,000
Water	10,743	14,166	11,885	15,500	15,500
Machinery & Equipment Rental	-	-	-	-	-
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	109,525	25,870	25,833	34,500	61,500
Recreational Amenities Improvements	-	-	-	-	-
Total Expense	**$ 179,582**	**$ 92,152**	**$ 91,851**	**$ 103,770**	**$ 131,000**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (17,520)
NET ASSESSMENT:					**$ 113,480**
Total Lots in Plat					227
Average Cost Per Lot Per Month	**$ 65.93**	**$ 33.83**	**$ 33.72**	**$ 38.09**	**$ 41.66**
Assessment Per Lot Per Month	**$ 49.73**	**$ 35.43**	**$ 40.29**	**$ 33.31**	**$ 41.66**
LANDSCAPE ONLY BUDGET	$ 12,990	$ 7,020	$ 5,020	$ 4,020	$ 4,020
Plants and Trees	5,970	2,000	1,000	-	-
LANDSCAPE ONLY BALANCE	$ 7,020	$ 5,020	$ 4,020	$ 4,020	$ 4,020

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 88-05 CIRCLE G MEADOWS II	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	15,865	16,843	16,932	19,170	17,580
Landscape Architect Service	-	-	1,262	-	4,000
Other Professional Services	256	90	425	500	1,000
Legal	-	-	-	-	-
Advertising	-	-	-	-	-
Printing	-	10	18	100	100
Maintenance Landscape	24,006	24,798	25,295	23,200	23,900
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	77	155	150	150
Chemical Supplies	100	199	121	250	250
Landscape Supplies	-	295	27	50	500
Fertilizer	1,050	1,250	961	1,300	1,300
Electrical Supplies	-	-	-	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	1,276	919	456	800	2,000
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	172	-	-	50	50
Recreational Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	1,000	1,000
Electricity	779	895	973	900	900
Water	13,419	11,881	10,887	12,000	12,000
Machinery & Equipment Rental	-	-	-	-	250
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	-	-	-	-	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 56,923**	**$ 57,257**	**$ 57,512**	**$ 59,470**	**$ 64,980**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (19,450)
NET ASSESSMENT:					**$ 45,530**
Total Lots in Plat					183
Average Cost Per Lot Per Month	**$ 25.92**	**$ 26.07**	**$ 26.19**	**$ 27.08**	**$ 20.73**
Assessment Per Lot Per Month	**$ 29.11**	**$ 17.40**	**$ 26.97**	**$ 28.28**	**$ 20.73**
LANDSCAPE ONLY BUDGET	$ 8,210	$ 8,210	$ 8,210	$ 8,210	$ 8,210
Architectural Services	-	-	-	-	-
Plants and Trees	-	-	-	-	-
LANDSCAPE ONLY BALANCE	$ 8,210	$ 8,210	$ 8,210	$ 8,210	$ 8,210

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-06 CIRCLE G MEADOWS III	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	12,397	13,161	13,716	14,820	13,740
Landscape Architect Service	5,124	665	285	1,000	4,000
Other Professional Services	299	1,124	345	1,260	1,200
Legal	-	-	-	-	-
Advertising	263	114	338	-	-
Printing	-	8	14	100	100
Maintenance Landscape	23,632	24,754	24,846	23,700	24,410
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	60	58	100	100
Chemical Supplies	50	155	84	300	350
Landscape Supplies	602	398	340	300	1,000
Fertilizer	523	747	710	1,000	1,000
Electrical Supplies	39	-	-	-	-
Painting Supplies	-	-	-	27,600	-
Irrigation Supplies	423	718	448	500	700
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	2	-	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	-	-
Electricity	892	1,051	1,153	1,200	1,200
Water	9,217	8,603	8,648	9,000	9,000
Machinery & Equipment Rental	-	-	-	-	100
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	2,479	14,203	5,407	-	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 55,940**	**$ 65,763**	**$ 56,392**	**$ 80,880**	**$ 56,900**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (6,340)
NET ASSESSMENT:					**$ 50,560**
Total Lots in Plat					143
Average Cost Per Lot Per Month	**$ 32.60**	**$ 38.32**	**$ 32.86**	**$ 47.13**	**$ 29.46**
Assessment Per Lot Per Month	**$ 28.53**	**$ 41.35**	**$ 28.34**	**$ 47.00**	**$ 29.46**

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-07 CIRCLE G RANCHES VI	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	3,034	3,221	3,354	3,690	3,360
Landscape Architect Service	-	-	-	-	-
Other Professional Services	30	245	245	720	720
Legal	-	-	-	-	-
Advertising	-	-	-	-	-
Printing	-	2	3	20	20
Maintenance Landscape	9,090	9,335	9,522	10,610	10,930
Pest Control - Mosquito Fogging	-	-	-	-	-
Postage	-	15	14	20	20
Chemical Supplies	50	46	45	300	300
Landscape Supplies	455	244	295	500	800
Fertilizer	258	274	588	300	400
Electrical Supplies	-	-	-	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	399	369	875	300	500
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	-	-	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	-	-
Electricity	535	629	703	650	650
Water	2,940	2,119	2,716	2,600	2,600
Machinery & Equipment Rental	75	-	-	-	200
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	-	-	-	-	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 16,866**	**$ 16,499**	**$ 18,360**	**$ 19,710**	**$ 20,500**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (1,230)
NET ASSESSMENT:					**$ 19,270**
Total Lots in Plat					35
Average Cost Per Lot Per Month	**$ 40.16**	**$ 39.28**	**$ 43.71**	**$ 46.93**	**$ 45.88**
Assessment Per Lot Per Month	**$ 39.74**	**$ 39.33**	**$ 41.21**	**$ 43.81**	**$ 45.88**

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 88-08 CIRCLE G RANCHES VII	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	7,022	7,455	7,295	8,250	7,780
Landscape Architect Service	3,034	-	-	2,000	3,500
Other Professional Services	30	30	30	1,500	1,000
Legal	-	-	-	-	-
Advertising	-	-	-	-	-
Printing	-	4	8	50	50
Maintenance Landscape	11,863	12,254	12,500	11,700	12,050
Pest Control - Mosquito Fogging	-	-	-	-	-
Postage	-	34	33	50	100
Chemical Supplies	100	61	28	300	200
Landscape Supplies	367	211	183	500	500
Fertilizer	333	237	509	300	300
Electrical Supplies	2,221	9	50	-	-
Painting Supplies	22	-	-	-	-
Irrigation Supplies	1,030	951	948	1,500	1,200
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	-	16	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	-	-
Electricity	547	634	720	650	650
Water	2,736	3,100	3,003	3,000	3,000
Machinery & Equipment Rental	-	-	-	-	-
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	-	-	-	-	-
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 29,305**	**$ 24,980**	**$ 25,323**	**$ 29,800**	**$ 30,330**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (8,790)
NET ASSESSMENT:					**$ 21,540**
Total Lots in Plat					81
Average Cost Per Lot Per Month	**$ 30.15**	**$ 25.70**	**$ 26.05**	**$ 30.66**	**$ 22.16**
Assessment Per Lot Per Month	**$ 67.12**	**$ 24.31**	**$ 33.71**	**$ 23.73**	**$ 22.16**

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-09 MORNING RIDGE	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	7,976	8,467	8,261	9,570	8,840
Landscape Architect Service	3,570	505	285	2,000	3,000
Other Professional Services	300	1,456	336	250	500
Legal	-	-	-	-	-
Advertising	86	-	-	500	500
Printing	-	5	9	50	50
Maintenance Landscape	6,760	6,983	7,123	11,760	12,110
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	-	39	37	50	50
Chemical Supplies	100	47	89	200	200
Landscape Supplies	462	214	178	500	700
Fertilizer	165	236	491	300	500
Electrical Supplies	21	140	47	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	144	281	409	500	700
Signs & Materials	-	-	-	-	300
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	-	-	-	-
Recreation Equipment Repair	249	-	-	-	-
Dry Well Maintenance	-	-	-	-	1,000
Electricity	522	529	561	550	550
Water	3,102	4,016	3,320	4,300	4,300
Machinery & Equipment Rental	-	-	-	-	-
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	32,737	25,568	-	-	52,600
Recreational Amenities Improvements	-	-	-	-	-
Total Expense	**$ 56,194**	**$ 48,486**	**$ 21,146**	**$ 30,530**	**$ 85,900**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (12,030)
NET ASSESSMENT:					**$ 73,870**
Total Lots in Plat					92
Average Cost Per Lot Per Month	**$ 50.90**	**$ 43.92**	**$ 19.15**	**$ 27.65**	**$ 66.91**
Assessment Per Lot Per Month	**$ 62.68**	**$ 52.26**	**$ 26.02**	**$ 15.27**	**$ 66.91**

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-10 MADERA PARC	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	38,752	41,140	40,796	44,920	42,940
Landscape Architect Service	524	1,380	669	2,000	3,500
Other Professional Services	935	1,180	1,688	4,000	5,810
Legal	-	-	-	-	-
Advertising	262	982	322	-	-
Printing	-	24	43	200	200
Maintenance Landscape	43,676	43,321	46,020	44,100	45,420
Pest Control - Mosquito Fogging	2,002	1,862	1,870	3,300	3,300
Office Supplies	-	-	-	-	-
Postage	-	188	181	300	200
Chemical Supplies	249	282	244	500	600
Landscape Supplies	1,685	1,095	945	1,500	1,500
Fertilizer	1,431	1,700	1,383	1,700	1,700
Electrical Supplies	311	47	511	200	200
Painting Supplies	-	65,003	-	-	-
Irrigation Supplies	1,644	1,013	1,727	1,000	1,000
Signs & Materials	-	-	-	-	-
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	-	-	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	1,000	1,000
Electricity	1,404	1,418	1,422	1,500	1,500
Water	19,889	18,904	17,582	19,000	19,000
Machinery & Equipment Rental	-	-	-	-	100
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	-	-	-	6,100	-
Recreational Equipment Improvements	-	-	37,863	-	-
Total Expense	**$ 112,764**	**$ 179,539**	**$ 153,266**	**$ 131,320**	**$ 127,970**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (33,640)
NET ASSESSMENT:					**$ 94,330**
Total Lots in Plat					447
Average Cost Per Lot Per Month	**$ 21.02**	**$ 33.47**	**$ 28.57**	**$ 24.48**	**$ 17.59**
Assessment Per Lot Per Month	**$ 31.27**	**$ 26.79**	**$ 29.10**	**$ 28.38**	**$ 17.59**
LANDSCAPE ONLY BUDGET	$ 6,370	$ 4,340	$ -	$ -	$ -
Architectural Services	-	-	-	-	-
Plants and Trees	2,030	4,340	-	-	-
LANDSCAPE ONLY BALANCE	$ 4,340	$ -	$ -	$ -	$ -

2015-16 PARKWAY MAINTENANCE DISTRICTS
EXPENDITURE AND BUDGET REPORT

DRAFT

PKID 07-11 CASSIA PLACE	2011-12 Actual	2012-13 Actual	2013-14 Actual	2014-15 Projected	2015-16 Proposed
Operating:					
Staff Expenditures	9,449	10,032	9,705	11,140	10,470
Landscape Architect Service	6,510	285	285	1,700	3,000
Other Professional Services	120	1,149	415	2,300	2,300
Legal	-	-	-	-	-
Advertising	-	-	-	-	500
Printing	15	6	10	50	50
Maintenance Landscape	33,512	36,142	35,035	31,600	32,550
Pest Control - Mosquito Fogging	-	-	-	-	-
Office Supplies	-	-	-	-	-
Postage	18	46	44	80	80
Chemical Supplies	234	169	138	300	500
Landscape Supplies	123	1,325	752	1,000	1,000
Fertilizer	273	277	123	300	300
Electrical Supplies	-	-	64	-	-
Painting Supplies	-	-	-	-	-
Irrigation Supplies	644	2,411	510	400	1,000
Signs & Materials	-	-	-	-	300
Concrete Supplies	-	-	-	-	-
Other Supplies & Services	-	-	-	-	-
Recreation Equipment Repair	-	-	-	-	-
Dry Well Maintenance	-	-	-	-	-
Electricity	1,117	1,160	1,214	1,300	1,300
Water	7,300	6,369	6,111	7,000	7,000
Machinery & Equipment Rental	-	-	-	-	-
Capital:					
Advertising	-	-	-	-	-
Grounds Improvements	61,884	-	-	-	38,600
Recreational Equipment Improvements	-	-	-	-	-
Total Expense	**$ 121,199**	**$ 59,371**	**$ 54,406**	**$ 57,170**	**$ 98,950**
PRIOR YEAR'S ASSESSMENT ADJUSTMENT					$ (6,470)
NET ASSESSMENT:					**$ 92,480**
Total Lots in Plat					109
Average Cost Per Lot Per Month	**$ 92.66**	**$ 45.39**	**$ 41.59**	**$ 43.71**	**$ 70.70**
Assessment Per Lot Per Month	**$ 86.99**	**$ 44.22**	**$ 43.39**	**$ 42.69**	**$ 70.70**

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Florence Shultz, Accounting Manager, 503-6752

MEETING DATE: April 30, 2015

SUBJECT: Budgets for the 2015-2016 Street Light Improvement District (SLID) BUDGETS

STRATEGIC INITIATIVE: Financial Plan

This supports the Council's strategic initiative for balanced five year financial plan by proactively managing government finances.

RECOMMENDED MOTION

A motion to adopt the 2015-2016 budgets for Street Light Improvement Districts (SLID) and to establish May 14, 2015 as the date of final public hearing and adopting tax levy for the districts.

BACKGROUND/DISCUSSION

Street Light Improvement Districts (SLID) are established to recover the electric costs of street lights installed within subdivisions and business parks throughout the community. SLID's are part of the established policy of assuring that growth pays its own way as development occurs in the community.

The Maricopa County Assessor requests adoption of the tax levies for these special districts on or before July 1 of each year to allow them the time to place the levies on the tax roll.

Staff has prepared the attached budget estimates and levy requests for each of the Districts presently authorized by the Council. The total estimated budget for 2015-2016 will be $1,825,450, which consists of $1,725,450 in estimated charges to existing districts and an allowance of $100,000 for new districts to be formed during the budget year. Revenue of $1,731,680 in levies is proposed for the Districts.

The levy amount on each property is set by the County, based upon the relative value each parcel represents of the whole District, unlike Parkway Improvement District levies where each lot pays the same amount. The ad valorem approach is required for SLID's by State Statute.

The Town Council is requested to review the 2015-2016 projected expenditure and levy request columns, and after the public hearing, adopt the budget and establish the Council meeting of May 14, 2015 as the date of setting tax levies. The timing allows for additional public review and comment on the proposed budgets and levies.

FINANCIAL IMPACT

If Gilbert were unable to use these Districts to recover these costs, additional operating taxes or fees would be required across the community to pay for all street lighting, or other existing services eliminated to pay the electric costs of street lighting.

STAFF RECOMMENDATION

Staff recommends approval of the budget amounts, and setting the date of levy to allow for Maricopa County to input and include the levies in the 2015-2016 total tax bill.

Respectfully submitted,

Florence Shultz
Accounting Manager

Approved By	Approval Date
Laura Lorenzen	4/21/2015 8:12 AM

TOWN OF GILBERT
Street Light Improvement Districts
Schedule of Estimated Assessments
Fiscal Year 2015-2016

Co. Dist. Number	Town ID Number	Name	2015-2016 Projected Expenditures	2015-2016 Levy Request
13002	85-01	Lowe Estates	5,799	**2,900**
13007	85-02	Islands Patio Homes	3,110	**3,112**
13008	85-03	Tres Vistas	420	**411**
13108	85-04	Shores (Units 2,3,4)	673	**684**
13009	85-05	Bayview	2,101	**2,121**
13006	85-06	Summerfield Place	1,056	**1,037**
13011	85-07	Costain @ The Islands	1,345	**1,348**
13275	85-08	La Vida Serena	60	**72**
13030	85-09	Harbor Point	1,261	**1,287**
13033	85-10	KC Ranches	790	**815**
13038	85-13	Palasaides I	1,681	**1,678**
13300	85-14	Fiesta Ranch	2,269	**2,323**
13035	85-15	Circle G Ranches VI	1,852	**1,858**
13036	85-17	Circle G Meadows II	3,854	**3,924**
13034	85-20	Val Vista Park	4,908	**4,937**
13301	85-21	The Harbour	1,597	**1,589**
13152	85-22	Discovery Park	3,446	**3,423**
13092	85-23	Tanglewood Cove	2,773	**2,797**
13227	85-24	Windhaven	1,092	**1,102**
13039	86-01	Circle G Meadows 3	2,275	**1,138**
13207	86-02	Sierra Springs	1,513	**1,527**
13208	86-03	Lake Mirage	504	**504**
13209	86-04	Merit Homes/Islands	1,092	**1,090**
13211	86-05	Circle G Ranches 7	1,765	**1,776**
13213	86-06	Charter Point	925	**924**
13214	86-07	Shores I	168	**173**
13215	86-08	Stonecreek I	2,725	**2,715**
13216	86-09	Stonecreek 2	3,493	**3,478**
13304	86-10	Morning Ridge	1,368	**1,361**
13302	86-11	Township	3,025	**3,034**
13279	86-26	Spinnaker Bay	1,513	**1,507**
13091	87-01	Spring Meadows	2,773	**2,707**
13004	87-02	E Valley Commrc Ctr	2,774	**2,765**
13317	87-03	Harbor Cove 31	1,009	**1,020**
13327	87-04	Templeton Place	2,185	**2,172**
13366	87-05	Fiesta Tech II	1,261	**1,270**
13225	87-06	Windhaven II	1,513	**1,510**
13094	87-08	Seaport Village	504	**494**
13118	87-09	Madera Park	9,262	**8,306**

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13138	87-10	Key Harbor	1,261	**1,254**
13139	87-11	Tanglewood Cove II	2,185	**2,163**
13140	87-12	Stonebridge I & II	3,910	**2,649**
13149	87-13	Stonebrdge Lakes Estates	1,122	**1,120**
13186	87-14	Spring Meadows Commons	1,853	**1,870**
13180	87-15	Park Village III	1,406	**1,407**
13182	87-16	Park Village II	602	**314**
13170	87-17	Palisades II	1,429	**1,426**
13183	87-18	Circ G Meads II, 2	168	**84**
13920	87-19	Hidden Cove	1,513	**1,523**
13202	87-20	Tradewinds @ Islands	1,597	**1,597**
13187	87-21	Sunrise Bus Park	1,597	**1,612**
13218	87-22	Bayview II	2,773	**2,758**
13230	87-24	Anchor Point	1,681	**1,694**
13235	87-25	Windrift	3,274	**3,274**
13241	87-27	Landing	1,092	**1,077**
13259	88-01	Circle G Ranch III	1,105	**942**
13260	88-02	Village Unit V	268	**273**
13276	88-03	Esquire Village	1,345	**1,360**
13258	88-04	Islands, Parcel 30B	168	**168**
13289	88-05	Candlewood	2,185	**1,907**
13297	88-06	Windhaven III	3,933	**3,932**
13379	88-07	Park Village III-B	1,958	**1,950**
13313	88-08	Mission Bay @ VVL	1,597	**1,594**
23003	89-01	Stonecreek III	1,789	**1,786**
23007	90-01	Landing II	1,032	**1,033**
23004	90-02	Whisper Glen	2,149	**2,159**
23008	90-03	Whisper Grove	912	**912**
23009	90-04	Crystal Shores	1,680	**1,687**
23015	90-05	Stonebridge Lakes III	326	**298**
23017	91-01	Park Village IV	1,146	**669**
23016	91-02	Newport @ Islands	6,146	**6,200**
23022	91-03	Catalina Bay @ Islands	1,177	**1,186**
23023	91-04	Stonecreek IV	1,009	**1,017**
23025	91-05	Cantamar II	923	**913**
23024	91-06	Lago Estancia Parcel IV	459	**460**
23021	91-07	Lago Estancia, Parcel 3	925	**917**
23020	92-01	Martinique	1,155	**1,143**
23026	92-02	Cantamar Three	923	**713**

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23033	92-03	Park Village VI	1,623	**1,626**
23043	92-05	Lago Estancia Parcel VII	525	**419**
23048	92-06	Spring Creek	673	**679**
13328	92-07	Catalina Bay @ Islands II	673	**655**
13365	92-08	Settlers Point	2,658	**2,834**
13345	92-09	Catalina Bay @ Islands III	925	**928**
13368	93-01	Lago Estancia Parcl 8 & 9	1,653	**1,142**
13369	93-02	Martinique II	1,092	**1,069**
13384	93-03	Lago Estancia 11, 12 & 13	1,207	**1,207**
13491	93-04	Ridgewood	2,254	**2,216**
13511	93-05	Ridgewood Industrial Park	326	**163**
13385	93-06	Lago Estancia Parcel X	713	**715**
13388	93-07	Carriage Parc Estates	1,071	**1,052**
13389	93-08	Circle G Superstition	3,110	**3,073**
13513	93-10	Runaway Bay	1,261	**1,255**
13514	93-11	Catalina Bay Unit IV	840	**831**
13515	93-12	Estates @ North Shore	1,874	**1,877**
13516	93-13	Martinique III	756	**743**
13517	93-14	Dave Brown Unit V	3,012	**3,025**
13518	93-15	Madera Parc Estates	2,410	**2,416**
13534	93-16	Superstition Springs 26	1,345	**1,343**
13536	93-18	Sonoma Ranch	14,606	**14,637**
13542	93-20	Superstition Meadows	2,269	**2,268**
13540	94-01	Fulton Homes @ Manor	3,017	**3,006**
13541	94-02	El Dorado Lakes, Tract E	1,815	**1,872**
13557	94-03	Cooper Ranch	7,000	**7,019**
13544	94-04	Carriage Parc Estates II	1,271	**1,273**
13545	94-05	El Dorado Lakes, Tract H	402	**401**
13546	94-06	El Dorado Lakes, Tract D	1,623	**1,625**
13547	94-07	El Dorado Lakes, Tract C	1,338	**1,339**
13548	94-08	El Dorado Lakes, Tract J	1,807	**1,809**
13549	94-09	El Dorado Lakes, Tract G	553	**554**
13583	94-10	Juniper Place	193	**193**
13578	94-11	El Dorado Lakes, Tract I	870	**855**
13579	94-12	El Dorado Lakes, Tract K	1,330	**1,342**
13580	94-13	Desert Shores @ Islands	756	**746**
13564	94-14	Carriage Parc Estates 3	1,227	**1,184**
13565	94-15	Caymen Square II	1,941	**1,916**
13566	94-16	Settler's Meadow	4,548	**4,548**

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13562	94-17	Caymen Square I	4,196	**4,141**
13561	94-18	Western Skies Unit 2	1,764	**1,432**
13563	94-19	Western Skies I	2,665	**2,662**
13573	94-20	Val Vista	3,688	**3,688**
13572	94-21	Silverhawke	3,458	**2,070**
13571	94-22	Cobblecreek II	2,210	**2,208**
13570	94-23	Vista Estancia	2,736	**2,700**
13584	94-24	Rancho Cimmeron	6,279	**6,233**
13586	94-26	Villages @ North Shore	1,874	**1,876**
13587	94-28	Cottonwood Crossings Phase I	5,488	**5,464**
13588	94-29	Cottonwood Crossing II	7,433	**7,400**
13597	94-30	Rancho Verde Unit I	3,151	**3,177**
13598	94-31	Rancho Del Verde Unit II	6,276	**6,230**
13807	94-32	Rancho Del Verde Unit IV	3,530	**3,549**
13800	94-33	El Dorado Lakes Tract F	1,747	**826**
13805	94-34	El Dorado Lakes, Tract A	937	**930**
13806	94-35	El Dorado Lakes Tract B	803	**804**
13798	94-36	Patterson Point at Val Vista Lakes	1,597	**1,618**
13803	94-37	Estates at North Shore Unit II	3,642	**3,550**
13804	94-38	Neeley Ranch Estates	1,345	**2,271**
13799	95-01	The Manor at Finley Farms Unit I	2,185	**2,166**
13811	95-02	The Manor at Finley Farms Unit II	2,040	**2,064**
13814	95-03	Parkside Finley Farms Unit I	1,776	**1,740**
13815	95-04	Parkside Finley Farms Unit II	3,780	**3,768**
13818	95-05	Equestrian Estates at Finley Farms	840	**845**
13819	95-06	The Estates at Finley Farms	2,551	**2,547**
13822	95-07	Lindsay Ranch Unit I	3,049	**3,001**
13824	95-08	Lindsay Ranch Unit II	2,605	**2,589**
13826	95-09	Lindsay Ranch Unit III	2,522	**2,507**
13828	95-10	Lindsay Ranch Unit IV	4,741	**4,701**
13832	95-11	Dave Brown Country Estates I	4,570	**4,565**
13833	95-12	Dave Brown Country Estates II	2,142	**2,123**
13834	95-13	Settler's Point South	3,064	**3,055**
13845	95-14	Settler's Point Parcel B	3,589	**3,583**
13846	95-15	Carol Rae Ranch	8,871	**8,871**
13852	95-16	Highland Ranch	2,359	**2,360**
13856	95-17	Settler's Point South Phase II	3,278	**3,263**
13857	95-18	Rancho Del Verde Unit III	2,185	**2,190**
13858	95-19	Silverstone	4,520	**4,497**

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13860	95-20	Highland Corner	1,845	**1,842**
13867	95-21	Stonehenge	4,844	**4,788**
13887	95-22	Carriage Lane 10	7,395	**7,555**
13883	95-23	Val Vista Park Place	937	**934**
13914	95-24	Sonesta Estates Unit I	2,855	**2,875**
13915	95-25	Sonesta Estates Unit II	1,539	**1,533**
13918	95-26	Broadland Ranches Greenfield	1,790	**1,766**
13892	95-28	Country Lane	2,762	**2,769**
13898	95-29	Finley Farms South Parcel 9	1,177	**1,175**
13899	95-30	Finley Farms South Parcel 11	3,217	**3,212**
13900	95-31	Finley Farms South Parcel 12	1,812	**1,809**
13902	95-32	Finley Farms South Parcel 13	1,080	**1,080**
13903	95-33	Finley Farms South Parcel 14	3,194	**3,170**
13904	95-34	Finley Farms South Parcel 15	2,989	**3,028**
13906	95-35	Finley Farms South Parcel 16	1,645	**1,642**
13907	95-36	Finley Farms South Parcel 17	2,413	**2,408**
13910	95-37	Finley Farms South Parcel 18	1,849	**1,855**
13905	95-38	Circle G at the Highlands	6,422	**6,341**
13963	95-39	El Dorado at the Highlands	7,940	**7,941**
13946	95-40	Holliday Farms Unit I	3,401	**3,415**
13947	95-41	Towne Park at North Shore	1,958	**1,953**
13975	95-42	Westbank	3,722	**3,695**
13976	96-01	Bar J Ranches	1,381	**1,378**
23071	96-02	Farmhouse Meadows	3,910	**2,911**
23069	96-03	Silverhawk II	2,342	**2,342**
23072	96-04	Lindsay Meadows	4,282	**4,306**
23073	96-05	Mira Vista Place	2,438	**2,402**
23074	96-06	Dave Brown Estates III	2,602	**2,597**
23075	96-07	Dave Brown Country Estates IV	334	**334**
23083	96-08	Greenfield Lakes Parcel 5, Unit 1	2,652	**2,618**
23084	96-09	Greenfield Lakes Parcel 2, Unit 1	1,764	**1,784**
23085	96-10	Holliday Farms Unit IIB	670	**670**
23087	96-11	Arrowpoint I	3,577	**3,558**
23092	96-12	Neely Farms Unit I	1,261	**1,274**
23127	96-13	Neely Farms Unit II	1,178	**1,170**
23128	96-14	Neely Farms Unit III	4,371	**4,336**
23133	96-15	Neely Farms Unit IV	3,026	**3,028**
23103	96-16	SpringTree	6,581	**6,556**
23091	96-17	Arrowpoint II	2,773	**2,768**

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23122	96-19	Greenfield Lakes Parcel 2, Unit 2	1,177	**1,174**
23100	96-21	Greenfield Lakes Parcel 3, Unit 2	420	**420**
23105	96-22	Greenfield Lakes Parcel 5, Unit 2	1,513	**1,518**
23117	96-23	Superstition Highlands	4,882	**4,811**
23181	96-24	Greenfield Lakes Parcel 4, Unit 3	1,261	**1,248**
23106	96-25	Greenfield Lakes Parcel 4, Unit 1	840	**821**
23107	96-26	Greenfield Lakes Parcel 4, Unit 2	1,177	**1,159**
23182	96-27	Greenfield Lakes Parcel 3, Unit 1	3,446	**3,431**
23129	96-28	Highland Ranch Phase II	1,406	**1,363**
23108	96-29	Summer Meadows I	2,077	**2,082**
23109	96-30	Summer Meadows III	6,263	**6,242**
23113	96-31	Summer Meadows IV	2,610	**2,578**
23118	96-32	Greenfield Lakes Parcel 1 (Sonoran V)	7,588	**7,602**
23180	97-01	Greenfield Lakes Parcel 1	3,073	**3,069**
23120	97-02	Durango II	4,117	**4,105**
23223	97-03	Millett Ranch	6,639	**6,565**
23121	97-04	Greenfield Lakes Parcel 3, Unit 3	1,261	**1,260**
23130	97-05	Western Skies Estates Unit 5	3,917	**3,877**
23131	97-06	Western Skies Estates Unit 6	3,481	**3,472**
23126	97-08	Holiday Farms Unit 2A	535	**524**
23141	97-10	Holiday Farms Unit 3B	402	**402**
23140	97-11	Rancho Corona	11,285	**11,278**
23222	97-12	Lamoreaux Farms	7,898	**7,926**
23142	97-13	Western Skies Estates Unit IV	2,690	**2,715**
23154	97-14	Highland Groves	4,900	**4,850**
23155	97-15	Holiday Farms Unit 3A	1,071	**1,072**
23156	97-16	Triple D Ranches	2,601	**2,591**
23161	97-17	Baseline/Tone	6,829	**6,836**
23162	97-18	Mirador Estates, Phase I	4,875	**4,858**
23166	97-19	Neely Ranch	5,957	**6,002**
23164	97-20	Circle G at the Highlands West	3,446	**3,440**
23165	97-21	Highlands Ranch III	1,807	**1,779**
23260	98-01	San Tan Ranch	48,722	**48,676**
23169	98-03	Farmhouse Meadows II	990	**963**
23168	98-04	Val Vista Meadows	6,349	**6,332**
23171	98-05	Raven Ranch	7,599	**7,606**
23190	98-06	Ashland Ranch	31,677	**32,809**
23179	98-07	Gilbert Ranch Unit 1	5,318	**5,242**
23177	98-08	Gilbert Ranch Unit II	10,180	**10,270**

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23178	98-09	Gilbert Ranch Unit III	3,527	**3,464**
23273	98-11	Lindsay Estates	6,118	**6,389**
23173	98-12	Holliday Farms, Unit 4	937	**939**
23269	98-13	Gateway Ranch	11,945	**12,076**
23270	98-15	Neely Commons	15,187	**15,099**
23185	98-16	The Crossroads	8,921	**8,766**
23186	98-17	Crossings @ Crossroads Unit 1	10,109	**10,035**
23217	98-18	Higley Groves	16,269	**16,274**
23216	99-01	Settler's Crossing	2,962	**2,929**
23221	99-02	Coronado Ranch	36,173	**36,051**
23220	99-03	Kristin Manor	3,394	**3,388**
23265	99-04	Greenfield Park	2,269	**1,567**
23274	99-05	Lines Family Estates	756	**756**
23275	99-06	Serrano	6,009	**5,993**
23286	99-07	Higley Groves West	10,254	**10,202**
23290	99-08	Chaparral Estates (Parcels 1-4)	12,498	**12,124**
23294	00-01	Gilbert Estates	2,631	**2,602**
23295	00-02	Ashley Heights	17,754	**17,745**
23296	00-03	Power Ranch	119,106	**118,898**
23302	00-04	Allen Ranch	14,010	**13,948**
23303	00-05	Gilbert Commons	9,770	**9,703**
23306	00-06	Windmill Ranch	5,681	**5,711**
23307	00-07	Tone Ranch	4,790	**4,861**
23308	00-08	Fincher Farms	6,026	**6,060**
23309	00-09	Artemina	2,766	**2,764**
23310	00-10	Artemina II	3,942	**3,946**
23318	00-11	Fiesta Ranch Commerce Center	2,690	**2,781**
23320	00-12	Highland Ranch IV	830	**831**
23321	00-13	172nd St. & Guadalupe	8,237	**8,247**
23322	00-14	Chaparral Estates West	12,453	**12,429**
23331	01-01	Seville, Phase I	31,485	**31,486**
23332	01-02	Rancho Collene	3,446	**3,513**
23341	01-03	Pecos Park II	4,034	**3,986**
23346	01-04	Pecos Park	2,962	**2,936**
23350	01-05	The Gardens Parcels 1-4	3,026	**3,018**
23354	02-01	Vintage Ranch	11,919	**11,849**
23361	02-02	Bella Vista	10,298	**10,319**
23381	02-03	Highland 5	3,023	**2,971**
23382	02-04	Seville, Phase 2	6,724	**6,717**
23404	02-05	Chandler Ginning	5,691	**5,690**
23410	02-06	Gateway Village	13,920	**13,882**

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23420	03-01	The Gardens Parcels 6 & 7	3,817	**3,839**
23421	03-02	Agritopia	4,982	**4,990**
23422	03-03	Elliot Commerce Park	3,886	**3,712**
23437	03-04	The Spectrum at Val Vista	24,074	**22,128**
23436	03-05	Circle G @ Silver Creek	2,101	**2,153**
23441	03-06	Country Shadows	8,849	**8,884**
23443	03-07	Vista Dorada	8,631	**8,635**
23446	03-08	Higley Estates @ Morrison Ranch	12,730	**12,786**
23447	03-09	Estates @ The Spectrum	16,253	**16,253**
23451	03-10	Seville, Phase 3	24,368	**24,312**
23454	04-01	La Aldea	2,807	**2,779**
23490	04-02	Marbella Vineyard	12,628	**12,618**
23547	04-03	Vista Dorada II	3,050	**1,525**
23488	04-04	Vista Del Oro North	7,067	**7,028**
23489	04-05	Vista Del Oro South	1,933	**1,925**
23491	04-06	Pecos Manor	5,806	**5,807**
23508	04-08	Cooley Station	13,722	**13,587**
23515	05-01	Bella Lago	420	**420**
23518	05-02	Agritopia Phase 2B	3,446	**3,377**
23519	05-03	Agritopia Phase 4	1,009	**1,008**
23516	05-04	Shamrock Estates	18,330	**18,262**
23520	05-05	Agritopia Phase 2A	2,616	**2,611**
23526	05-06	Felty Farms	7,130	**7,097**
23538	05-07	Vincenz	12,161	**12,133**
23543	05-08	Fuller Commercial Center	6,045	**6,111**
23544	05-09	Highland Groves @ Morrison Ranch	14,452	**14,907**
23545	05-10	Freeman Farms, Parcel 1	6,951	**3,476**
23546	05-11	Freeman Farms, Parcel 2	7,711	**6,630**
23548	05-12	Shamrock Estates, Phase 2A	6,724	**6,730**
23551	06-01	Lyon's Gate Phase 1 & 2	8,499	**8,428**
23552	06-02	Eagle Glenn II	3,514	**3,521**
23553	06-03	Stratland Estates	17,178	**17,011**
23554	06-04	Copper Ranch	7,817	**6,875**
23559	06-05	Lyon's Gate Phase 3 & 4	10,023	**10,036**
23560	06-06	Cameron Ranch	6,388	**6,390**
23569	06-07	Higley Park	14,898	**14,870**
23561	06-08	Lyon's Gate Phase 5	5,883	**5,876**
23562	06-09	Lyon's Gate Phase 7	3,278	**500**
23564	06-10	Lyon's Gate Phase 8	5,664	**5,677**

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23570	06-11	Evans Ranch	4,973	**4,973**
23576	06-12	Cooley Station North	14,953	**12,371**
23577	06-13	Seville Phase 4	13,853	**13,800**
23593	06-14	The Willows	15,908	**15,770**
23599	06-15	Bridges at Gilbert, Phase 1	15,187	**7,593**
23606	06-16	Agritopia, Phase 3	3,781	**3,788**
23605	06-17	Shamrock Estates, Phase 2B	3,866	**3,858**
23607	07-01	Lyon's Gate Phase 6	5,667	**5,667**
23608	07-02	Stratland Shadows	6,304	**6,376**
23614	07-03	Freeman Farms Parcel 3	6,206	**1,000**
23615	07-04	Freeman Farms Parcel 4	3,110	**3,210**
23622	07-05	Layton Lakes, Phase 1	17,314	**17,231**
23623	07-07	Seville Parcel 35	2,690	**2,678**
23624	07-08	Vincenz Parcel B	1,933	**1,941**
23625	07-09	Casa Rica	1,177	**980**
23626	07-10	Lakeview Tr @ Morrison Ranch	27,400	**26,571**
23639	08-01	Cascade	925	**462**
23650	08-02	Lyons Gate Phase 10	756	**378**
23651	08-03	Lyons Gate Phase 9	7,692	**7,684**
23675	10-03	Mountainwood Parcels D & F	8,741	**8,794**
23685	11-01	Rockwell Residential Subdiv	673	**670**
23691	11-02	Villages at Val Vista Lakes	1,597	**1,613**
23701	11-03	Higley Manor Phase 1 and 2	4,502	**4,571**
23703	12-01	Elliot Groves at Morrison Ranch	12,931	**13,548**
23707	12-02	Villages at Val Vista Phase 2	2,353	**2,364**
23711	12-03	Estates at Velvendo Phase 1	2,962	**2,977**
23712	12-04	Adora Trails 2A, 2B, 3 & 4	8,655	**9,036**
23716	13-01	164th & Cloud	2,017	**4,588**
23717	13-02	Copperleaf	3,194	**7,140**
23718	13-03	Gilbert Commons Enclave	1,177	**1,198**
23721	13-04	Bridges North	8,175	**15,178**
23722	13-05	Villages at Val Vista Phase 3	1,286	**1,466**
23723	13-06	Marbella Vineyards Phase 2A	6,458	**6,863**
23724	13-12	Layton Lakes Phase 2 - Gilbert	12,650	**27,416**
23725	13-13	The Bridges East Parcel 3-4	2,484	**4,578**
23726	13-08	The Bridges East Parcel 3-2	2,749	**2,855**
23727	13-09	The Bridges East Parcel 3-3	1,933	**4,705**
23728	13-10	The Bridges East Parcel 3-5	2,197	**2,157**
23729	13-11	The Bridges East Parcel 3-6	2,617	**2,487**

TOWN OF GILBERT
Street Light Improvement Districts
Schedule of Estimated Assessments
Fiscal Year 2015-2016

Co. Dist. Number	Town ID Number	Name	2015-2016 Projected Expenditures	2015-2016 Levy Request
23730	13-07	The Bridges East Parcel 2-6	4,273	**4,444**
23732	13-14	Adora Trails Parcels 5 & 6	3,698	**8,618**
23731	13-15	The Bridges East Parcel 3-1	2,173	**2,254**
23734	13-16	Avalon Estates	0	**0**
23785	13-17	Legacy at Freeman Farms	666	**1,296**
23758	13-18	Estates at Velvendo Phase 2	3,494	**6,414**
23764	14-01	Estates at Morrison Ranch Phase 2	0	**0**
23765	14-02	Marbella Vineyards Phase 2B	4,094	**7,938**
23766	14-04	Adora Trails Parcel 7	0	**0**
23767	14-07	Adora Trails Parcel 13	1,898	**2,805**
23768	14-08	Montaverde	325	**567**
		Total all Districts	**1,724,815**	**1,731,556**