



# COUNCIL MEETING AGENDA

**December 1, 2016**

Members may attend in person or by telephone.

Jenn Daniels, *Mayor*  
Jared Taylor, *Vice Mayor*

James Candland  
Eddie Cook  
Victor Petersen

Brigette Peterson  
Jordan Ray

**Regular Meeting**  
**6:30 PM**

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

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

## **ADDENDUM**

15A. DEVELOPMENT AGREEMENT – consider adoption of a Resolution approving a Pre-annexation Development Agreement with Schoolhouse Higley, LLC for development of property located at the northwest corner of Higley Road and the SanTan Loop 202 Freeway and authorize the Mayor to execute the required documents.

***Modifications were made to Agenda Items 4 and 5.***

## **AGENDA ITEM**

### **CALL TO ORDER**

### **PRESENTATIONS; PROCLAMATIONS**

1. Presentation on the 12k's of Christmas Spirit of Giving Award.
2. Presentation to Rob Bishop, Renaissance Community Partners, in recognition for his management of the Neighborhood of the Year.

### **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 Velvet Jones Minister to Women at Evident Life Church.

## **ROLL CALL**

## **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.

3. ANNEXATION A16-03 – consider adoption of an Ordinance annexing approximately 5.87 acres of right-of-way on Williams Field Road between Power Road and Somerton Boulevard contingent upon approval by the Maricopa County Board of Supervisors.

4. AGREEMENT – consider:

a) adoption of a resolution approving amendment No. 6 to the Central Arizona Project Water Lease Agreement No. 2011-4108-0063 with the San Carlos Apache Tribe in an amount not to exceed \$5,398,744 for the lease as well as payment to Central Arizona Water Conservation District for the delivery and storage costs and extending the contract one additional year and authorize the Mayor to execute the required documents; and

b) authorization of a Capital Improvement Plan (CIP) contingency transfer in the amount of \$890,000.

5. AGREEMENT – consider approval of amendment No. 5 to the Central Arizona Project Water Lease Agreement No. 2011-4108-0105 with the Fort McDowell Yavapai Nation in an amount not to exceed \$2,452,208 for the lease as well as payment to the Central Arizona Water Conservation District for delivery and storage costs and extending the contract one additional year and authorize the Mayor to execute the required documents.

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

a) a Resolution approving a Development Agreement with Silent-Aire USA, Incorporated and Trammell Crow Development improvements to Mustang Road;

b) a Contingency Transfer from the Economic Development Reserve in the amount of \$440,000; and

c) a Contingency Transfer from the Capital Improvement Plan (CIP) Project Nos. ST095 and ST174 in the amount of \$820,000.

7. GRANT – consider application and acceptance of an Assistance to Firefighters Grant, Contract No. 2017-3002-0496, from the Federal Emergency Management Agency in the amount of \$43,765.22 for incident command training and authorize the Mayor to execute the required documents..

8. ABANDONMENT - consider adoption of a Resolution of abandonment of an Ingress and Egress Easement and a Public Utility Easement located along the 162nd Street alignment, north of Pecos Road.

9. PERMANENT EXTENSION OF PREMISES – consider approval of a permanent extension of premises for AZ Ice Gilbert located at 2305 East Knox Road.

10. PERMANENT EXTENSION OF PREMISES – consider approval of a permanent extension of premises for Grubstak located at 384 North Gilbert Road, Suite 106.

11. MINUTES - approval of the minutes of the Special Meeting of November 1, 2016; Special Meetings of November 17, 2016; and Regular Meeting of November 10, 2016.

## **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.

12. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Venezias Pizzeria located at 744 West Ray Road, Suite 101.

13. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Even Stevens Sandwiches located at 384 North Gilbert Road, Suite 104.

14. LIQUOR LICENSE – conduct hearing and consider approval of sampling privileges for an existing Series 9 Liquor Store Liquor License for Winco located at 1363 North Arizona Avenue.

15. ANNEXATION A16-02 – conduct hearing on the proposed annexation of approximately 41.6 acres located at American Leadership Academy at the northwest corner of Higley Road and the Santan 202 Freeway.

## **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.

16. BOARDS AND COMMISSIONS – consider appointment of two regular members to the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation with a term beginning December 31, 2016 and ending January 1, 2020.

17. BOARDS AND COMMISSIONS – consider appointment of one regular member to the Fire and Police Public Safety Retirement System Local Pension Boards with a term beginning December 1, 2016 and ending November 30, 2020.

18. 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) Regional Meetings
- d) Arts and Culture Board
- e) Environmental and Energy Conservation Advisory Board
- f) Human Relations Commission
- g) Industrial Development Authority
- h) Mayor's Youth Advisory Committee
- i) Parks, Recreation and Library Services Advisory Board
- j) Planning Commission
- k) Redevelopment Commission
- l) Town of Gilbert, AZ Public Facilities MPC
- m) Town of Gilbert, AZ Water Resources MPC
- n) Town of Gilbert, AZ Self-Insured Trust Fund for Health Benefits
- o) Utility Board

## **POLICY ITEMS**

## **FUTURE MEETINGS**

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

## **COMMUNICATIONS**

Report from the TOWN MANAGER on current events.

Report from the COUNCIL on current events.

Report from the MAYOR on current events.

## **ADJOURN**

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



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Jack A. Vincent, Assistant Town Attorney, 503-6109

**MEETING DATE:** December 1, 2016

**SUBJECT:** Pre-Annexation Development Agreement

<p><b>STRATEGIC INITIATIVE:</b> Community Livability</p>
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### RECOMMENDED MOTION

A motion to approve a resolution authorizing execution of pre-annexation development agreement for the property at the northwest corner of Higley Road and the SanTan Loop 202 Freeway.

### BACKGROUND/DISCUSSION

The proposed Pre-annexation Development Agreement (the "Agreement") will govern the development of a charter school campus planned for the vacant property at the northwest intersection of Higley Road and the SanTan Loop 202 Freeway. The property to be developed is a county island and is the subject of pending annexation and rezoning applications which, if approved, would bring the site within the Town limits with Town of Gilbert Business Park zoning.

State law limits the ability of municipalities to exercise zoning authority over other governmental entities, and state statutes extend that same status to charter schools. Charter schools may, however, consent to such regulation through contract. The Agreement provides that if the Town approves the proposed annexation of the property, the property owner is willing to comply with certain development standards. The standards addressed in the Agreement include building and landscape setbacks, landscape design, lighting, and screening.

The Agreement also clarifies the property owner's obligation to construct traffic safety infrastructure and off-site facilities. These improvements include the addition of an extra lane on southbound Higley Road, a traffic signal, and turning lanes. Additionally, the Owner will construct an extra lane and curb on northbound Higley Road concurrent with these projects.

Under the Agreement, the Town will reimburse the Owner for the work done to northbound Higley Road because the owner would not otherwise have an obligation to construct that improvement.

The contract and resolution were reviewed for form by Attorney Jack Vincent.

### **FINANCIAL IMPACT**

The owner of the property will incur the costs of water and sewer connections and system development fees, dedicated easements, and construct off-site improvements. The owner will also construct certain improvements to northbound Higley Road, for which the Town will reimburse the owner at a future date.

In order to best plan for traffic and circulation on Higley Road, the owner of the property will develop both sides of the roadway at the time the school is constructed. Typically, property owners on both sides of undeveloped land share in the costs of necessary infrastructure, like roadway construction; however, since the property on the east side of Higley is undeveloped and there are no plans for improvement in the immediate future, the Town will reimburse the owner for the cost of the improvements made to the east side of Higley Road.

The aforementioned improvements constitute roughly ½ mile of roadway. Reimbursement costs for construction are estimated to total about \$500,000, with \$1,300 needed for annual ongoing maintenance. When the property on the east side of Higley Road develops, that owner would be responsible for any additional improvements required to bring the roadway up to Town standards as well as improvements necessary to offset the impact of whatever development occurs on those parcels. Roadway construction is expected to be completed within the next 1-3 years, where Gilbert will be required to reimburse the developer for said improvements at the end of the one-year warranty period. Prior to the conclusion of the warranty period, funding sources will be identified for the reimbursement of the roadway construction costs.

### **STAFF RECOMMENDATION**

Staff recommends approval of resolution authorizing execution of the pre-annexation development agreement.

Respectfully submitted,

Jack A. Vincent  
Assistant Town Attorney

**Approved By**

**Approval Date**

Michael Hamblin  
Michael Hamblin  
Justine Bruno

11/29/2016 3:46 PM  
11/29/2016 3:46 PM  
11/30/2016 9:17 AM

When recorded mail to: |  
Town of Gilbert |  
Lisa Maxwell |  
Town Clerk |  
50 East Civic Center Drive |  
Gilbert, Arizona 85296 |

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**PRE-ANNEXATION DEVELOPMENT AGREEMENT**

This Pre-Annexation Development Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the Town of Gilbert, Arizona, an Arizona municipal corporation (“Gilbert”) and Schoolhouse Higley, LLC, an Arizona limited liability company. (“Owner”) (Gilbert and Owner are sometimes hereinafter collectively referred to as the “Parties” or individually as “Party”).

**RECITALS**

A. Owner plans to acquire approximately 42.7 acres of land (the “Property”), which is located northwest of the Higley Road and San Tan Loop 202 interchange, in Maricopa County, Arizona (“County”), and is more particularly described in Exhibit A attached hereto and made a part hereof.

B. The Property is located in unincorporated Maricopa County, but borders incorporated Gilbert.

C. Owner desires to construct a new charter school K-12 facility for approximately 2,400 students on the Property following the proposed annexation into Gilbert.

D. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of and entered into pursuant to A.R.S. § 9-500.05 to facilitate annexation of the Property and provide certain conditions of development which will apply to the Property upon annexation.

E. The terms of this Agreement are binding upon Gilbert and Owner and their successors and assigns and shall run with the land, subject to the limitations set forth in Paragraphs 2 and 19 herein and State law.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants herein set forth, Gilbert and Owner hereby agree as follows:

**AGREEMENT**

1. **Recitals.** The recitals stated above are incorporated herein by this reference.

**2. Conditions of Property.** The Parties understand that the Property is intended to be used as a charter school as described in A.R.S. § 15-181 *et. seq.* In the event that the proposed use for the Property changes to uses other than as a charter school or public school, then Gilbert may terminate this Agreement.

**3. Compliance with Laws, Regulations and Ordinances.** Except as set forth in this Agreement, Owner agrees to construct a new permanent structure(s) for the school and to otherwise develop the Property in conformance with all Gilbert Codes, requirements and regulations.

**4. Annexation – Initiation and Petition.** Owner agrees to initiate proceedings to annex the Property into Gilbert by completing an application for annexation and providing public notice pursuant to A.R.S. § 9-471. Gilbert agrees to process the application and the annexation in accordance with A.R.S. § 9-471. Owner agrees to sign and join in the annexation petition, all in accordance with the terms and conditions of this Agreement and in compliance with state law.

**5. Owner’s Obligation.** Owner agrees to:

**5.1** Complete a rezoning application for Town of Gilbert Business Park zoning of the Property concurrent with its application for annexation. Additionally, Owner shall submit any information or document Gilbert deems necessary to evaluate the application in a timely manner.

**5.2** Subject to the final and effective adoption of the proposed annexation, Owner agrees to develop the Property consistent with Site Plan attached as Exhibit B and Landscape Plans attached as Exhibit C. The Parties may amend the Site Plan through mutual agreement, but Owner specifically agrees to the following development standards:

5.2.1 All required building and landscape setbacks for the Business Park zoning district as identified in the Land Development Code, Article 2.6, Table 2.604. Additionally, street frontage landscape areas shall not contain parking areas, buildings, fences, parking screen walls or other permanent improvements other than sidewalks, permitted signs, and lighting.

5.2.2 Landscaping consistent with the attached Site Plan and Landscape Plans. Unless otherwise approved by the Town of Gilbert Planning Manager, the project shall meet all required Landscape and Parking requirements identified under Land Development Code Sections 4.303 and 4.2012 regarding parking areas, parking screen walls, perimeter landscaping, landscape islands, and quantity and type of landscaping materials. In addition, 36-inch box trees shall be provided as a perimeter buffer tree in the landscape areas adjacent to parking area in the northwestern portion of the site.

- 5.2.3 Town of Gilbert Municipal Code and Land Development Code Standards for ball field and site lighting (parking lots) and no lighting within 100' of residential zoning districts shall exceed 14' in mounting height.
- 5.2.4 Accessory structures such as bleachers, if adjacent to residential and within the landscape setback, shall not exceed the height of the existing perimeter solid separation fence.
- 5.2.5 Development shall meet off-street parking and loading requirements, including parking space and drive aisle width, landscaping, lighting and bicycle parking per Land Development Code Article 4.2.
- 5.2.6 Building drainage shall be internalized and have no external downspouts where visible from public view.
- 5.2.7 Screening of all roof-mounted and ground-mounted mechanical equipment.
- 5.2.8 Refuse enclosures shall be solidly screened.
- 5.2.9 Acknowledge that the Property falls within Airport Overflight Area 3 due to its proximity to the Phoenix-Mesa Gateway Airport and execute an avigation easement prior to or concurrently with the recordation of any final plat. The easement shall be in a form approved by the Gilbert Town Attorney.

**5.3** Complete the dedication of all necessary right of way adjacent to Higley Road extending 70' feet from the monument line along the entire length of the Property.

**5.4** Construct and fund the following traffic/circulation infrastructure on the west half of Higley Road and on the Property:

- 5.4.1 One full-motion traffic signal at the intersection of the Property's Access #1 and Higley Road.
- 5.4.2 Improvement of southbound Higley Road along the Property's frontage to meet the Town's and ADOT's standards. The Town's standards for 6 lanes of travel and the Gateway Streetscape ROW guidelines, include, but are not limited to curb lane, bike lane, curb, gutter, sidewalk, catch basins, streetlights, landscaping of the Higley Road median, and storm water retention basins.
- 5.4.3 Southbound right turn lane at the intersection of Higley Road and Access #1 with a storage length of at least 175'.

- 5.4.4 Eastbound left and right turn lanes at the intersection of the Property's Access #1 and Higley Road intersection with at least 100' of storage on the Property.
- 5.4.5 Restriping of southbound Higley Road from its intersection with Warner Road to the Property to create three lanes of southbound travel.
- 5.4.6 A looped water system with fire hydrants and water meters in a waterline easement.
- 5.4.7 Screen walls for parking lots along Higley Road frontage.

**5.5** Construct a third lane, curb, and drainage facilities for northbound Higley Road from State Route 202L ("SanTan Freeway") north to Warner Road, with reimbursement from the Town for such costs provided pursuant to Paragraphs 6.4 and 8, below. Should these improvements require the acquisition of temporary property rights, Gilbert shall assist Owner in obtaining such property through a purchase or by the exercise of its power of eminent domain.

**5.6** Owner shall perform traffic monitoring studies to ascertain whether excessive congestion, as determined by the Town of Gilbert Town Engineer, has occurred at the intersections included in owner's traffic studies submitted in support of its application. The traffic monitoring studies shall be conducted six months to one year after the ALA has reached at least 75% capacity, or sooner if required by the Town Engineer. Five years after this study, ALA shall complete a similar study to evaluate traffic conditions. These monitoring studies will include conducting turning movement counts at these intersections and analyzing the results for adequate storage lengths, LOS (Level of Service), delay and queue lengths. All results of the studies are to be submitted to Gilbert. If, as a result of the studies, Gilbert identifies congestion or safety problems that are directly attributed to Owner's use of the Property, then Gilbert will work with the Owner to determine appropriate mitigation measures to ameliorate the adverse condition. The Owner will be responsible for implementing such mitigation measures.

**5.7** Pay development fees calculated based upon the Property's impact to the water and wastewater systems.

**6. Gilbert's Obligation.** Gilbert agrees to:

**6.1** Expeditiously process Owner's annexation petition and zoning applications in accordance with applicable law and the terms and conditions of this Agreement.

**6.2** Use its best efforts to adopt Gilbert Zoning in accordance with A.R.S. § 9-471(L). Nothing in this Agreement, however, shall prevent Gilbert and Owner from agreeing to changes in Gilbert Zoning upon adoption by Gilbert of a final ordinance.

**6.3** Upon final and effective annexation, provide all Gilbert services to the Property, including but not limited to, water, sewer, trash collection, police and fire protection and all other services typically provided by Gilbert to its residents to the same extent and upon

the same terms and conditions as those services are provided to other properties throughout Gilbert. Extension of water and sewer mainlines shall be completed by Owner, at its sole expense.

**6.4** Reimburse Owner for the costs of those improvements described in Paragraph 5.5, above.

## **7. Construction of Off-site Improvements**

**7.1** Construction of all off-site improvements described herein shall be completed prior to issuance of a certificate of occupancy or final approval of any building constructed on the Property, or at the time requested by Gilbert, whichever is earlier. If Gilbert constructs the improvements for which Owner has ultimate financial responsibility under this agreement as part of its capital improvements program prior to development of the Property, Owner shall reimburse Gilbert for its reasonable costs of construction prior to issuance of a certificate of occupancy or final approval of any unit or building constructed on the Property.

**7.2** Design, management, and construction of all off-site improvements shall be done in compliance with all applicable public bidding and procurement laws, rules, and policies, including the guidelines found in Exhibit D.

**7.3** Owner shall comply with the requirements of Section 10-5 of the Gilbert Municipal Code regulating work performed in the public right-of-way. No work shall commence in the right-of-way until (i) the plans for the work are approved by Gilbert, (ii) Owner has obtained a permit pursuant to Section 10-5. Owner shall deposit with the Gilbert Development Services Department a warranty assurance in the amount of one hundred and ten percent (110%) of the cost of the work to be performed in the right-of-way, as determined by an approved Engineer's Estimate for the work. The deposit may be in one of the following forms:

- a. A letter of credit from a lending institution or surety company authorized to do business in the State of Arizona; or
- b. Cash or bond assurances as approved by the Town Engineer.

**7.4** Owner shall construct off-site improvements required herein in accordance with approved plans, the Public Works Procedural Manual, Design Standards and Details, and other applicable codes and ordinances of Gilbert ("Gilbert Standards"). Once commenced, said construction shall be carried forward to completion by Owner without delay and to the satisfaction of Gilbert inspectors. Said construction shall be subject to Gilbert inspection prior to covering up any work.

**7.5** Upon satisfactory completion of the off-site improvements by the Owner, Gilbert shall inspect the off-site improvements. If Gilbert's inspection shows said improvements are in compliance with Gilbert Standards, Gilbert shall initially accept said improvements. At the time of Initial Acceptance, the Town may refund the 110% warranty assurance in exchange for a ten percent (10%) warranty bond to be held until Final Acceptance. The warranty bond may be in one of the following forms:

- a. A letter of credit from a lending institution or surety company authorized to do business in the State of Arizona; or
- b. Cash or bond assurances as approved by the Town Engineer.

The warranty assurance shall remain in full force and effect until Final Acceptance of the work. Upon Final Acceptance, said 10% deposit shall be returned to Owner.

If required by Gilbert, Owner shall furnish satisfactory evidence as to the kind and quality of materials and equipment. At the time of Final Acceptance, said improvements shall, by virtue of this Agreement, become the property of Gilbert, free and clear of any and all encumbrances, claims or liens whatsoever. Owner covenants and agrees to remove any and all encumbrances, claims or liens which may exist on said improvements prior to Final Acceptance.

**7.6** Owner warrants to Gilbert that all materials and equipment furnished will be new and that all work will be of good quality, free from faults and defects and in conformance with Gilbert Standards. This warranty shall survive Final Acceptance of the Improvements. Owner shall promptly correct all damages resulting from materials and equipment furnished that fail to meet this warranty, whether or not Final Acceptance has been given. Owner shall bear all costs of correcting such work, including compensation for additional engineering services made necessary thereby. Owner shall correct the work promptly after receipt of a written notice from Gilbert to do so unless Gilbert has previously given Owner a written acceptance of such condition. Gilbert shall give such notice promptly after discovery of the condition. Owner 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** The Owner shall be responsible for the protection of new and existing off-site improvements from damage caused by any construction work performed by the Owner, or Owner's subcontractors or employees.

**7.8** Owner agrees to appear, defend, indemnify and save harmless Gilbert, and any jurisdiction or agency issuing permits for the construction of the off-site improvements, their officers, agents, employees and representatives from all suits, including attorney's fees and costs of litigation, actions, loss, damage, expense, cost or claims, of any character or any nature arising out of the work done in fulfillment of the construction of the Improvements (including work performed by any contractor of Owner working in the public right-of-way), amounts arising or recovered under the Worker's Compensation Law, or arising out of the failure of Owner or any contractor of Owner to conform to any statutes, ordinance, regulation law or court decree. It is the intent of the parties that Gilbert shall, in all instances, be indemnified against all liability losses and damages of any nature whatever for or on account of any injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the construction of the Improvements.

**7.9** Owner or any contractor of Owner doing work in the right-of-way shall provide and maintain minimum insurance limits as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Comprehensive General Liability Insurance	\$1,000,000. - Bodily Injury Combined Single Limit
Including:	\$100,000. Property Damage
Comprehensive Automobile Liability Insurance	\$1,000,000. - Bodily Injury Combined Single Limit
Including:	\$100,000. Property Damage
(a) Non-owned Vehicles	
(b) Leased Vehicles	
(c) Hired vehicles	

Certificates of Insurance acceptable to Gilbert and designating Gilbert as an additional insured shall be filed with Gilbert prior to commencement of this Contract. The policies shall contain a provision that the policy will not expire, be cancelled or materially changed to affect the coverage available without thirty (30) days advance written notice to Gilbert. In any incident or claim relating to the action or negligence of Owner or Owner's contractor, its employees or agents, Owner's or Owner's contractor insurance shall be primary of all other sources available.

**8. Reimbursement to Owner.** Gilbert shall reimburse Owner for those improvements described in Paragraph 5.5, above, no later than ninety days (90) after Final Acceptance of the improvements. The costs to be reimbursed shall include all soft costs, such as engineering design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor's fees paid or incurred to construct the improvements, and the costs to acquire temporary property rights, if any; provided, however, that financing costs will not be included in the reimbursement. All costs claimed for reimbursement must be fully documented. No reimbursement shall be made for costs that were not incurred in compliance with applicable public bidding and procurement laws, rules, and policies.

**9. Time Period.** Both parties agree to use their respective best efforts to complete the annexation of the Property as close as reasonably possible to the minimum time periods set forth in A.R.S. § 9-471.

**10. Good Standing; Authority.** Each Party represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of each respective Party is authorized and empowered to bind such Party on whose behalf each such individual is signing.

**11. Default and Remedies.** The parties acknowledge that failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement may cause severe hardship. Notice of such failure to perform or unreasonable delay shall be provided to the defaulting party. If such failure to perform or unreasonable delay is not immediately corrected, the non-defaulting party shall have all rights and remedies which may be available under law or equity, including without limitation the right to terminate this Agreement, the right to specifically enforce any term or provision hereof,

and/or the right to institute an action for damages, including, but not necessarily limited to, consequential damages.

**12. Governing Law.** This Agreement shall be governed by and constructed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

**13. Waiver.** No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

**14. Attorneys' Fees.** If any judicial proceeding is initiated by any Party hereto with respect to this Agreement, the prevailing Party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, its reasonable attorneys' fees.

**15. Notice.** All notices, demands or other communications given hereunder shall be personally delivered or sent by certified mail or by facsimile transmission, addressed as follows:

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

Owners:                      Schoolhouse Higley LLC  
Attn: Glenn L. Way  
19935 East Chandler Heights  
Queen Creek, Arizona 85142

With Copy to:              W. Ralph Pew  
Pew and Lake, PLC  
Mesa, Arizona 85204

Or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to a Party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that Party; (b) delivery to the address of the Party, addressed to the Party; (c) confirmation of the transmission of a facsimile copy to the facsimile number provided for the Party in this Agreement; or (d) if given by certified or registered U.S. mail, return receipt request, forty-eight (48) hours after deposit with the United States Postal Service, addressed to the Party.

**16. Covenant to Run with the Land.** Except as limited by Paragraph 2 above and Paragraph 19 below, it is intended by the Parties that the obligations set forth in this Agreement shall be covenants running with the land and as such are binding upon the Parties' successors and assigns.

17. **Time of Essence.** Time is of the essence for this Agreement.

18. **Effective Date.** This Agreement is entered into effective as of the date set forth on the first page of this Agreement (the "Effective Date").

19. **Termination.** This Agreement shall terminate on the 10 year anniversary of the Effective Date as defined herein or upon the satisfaction of all of the requirements for the Parties set forth herein and agreement in writing of the Parties to terminate this Agreement, whichever is first. If the annexation of the Property is not complete within one (1) year of the Effective Date, this Agreement shall automatically terminate unless extended by mutual agreement of the parties.

20. **Recordation.** This Agreement shall be recorded in the Official Records of Maricopa County, Arizona.

21. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

22. **Amendments.** This Agreement may be amended only by a written agreement fully executed by the Parties.

23. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF GILBERT

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin  
Town Attorneys  
By:

OWNERS:

\_\_\_\_\_  
By:

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT A



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### EXHIBIT 'A' Legal Description

A portion of the Northeast Quarter of Section 22, Township 1 South, Range 6 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the East Quarter corner of said Section 22, said point being a found Arizona Department of Transportation Brass Cap Flush, from which the Northeast Corner of said Section 22 bears North 00 degrees 26 minutes 31 seconds West, for a distance of 2634.00 feet, said point being a found Brass Cap in Handhole;

Thence South 89 degrees 26 minutes 21 seconds West, along the South line of the Northeast Quarter of Section 22, for a distance of 148.07 feet, to a point on the existing West Right-of-Way line of South Higley Road per Warranty Deed recorded as Document No. 2004-0257949, records of Maricopa County Arizona, said point being the **POINT OF BEGINNING**;

Thence continuing South 89 degrees 26 minutes 21 seconds West, along the South line of the Northeast Quarter of Section 22, for a distance of 1157.81 feet, to the Southwest corner of the Southeast Quarter of the Northeast Quarter of said Section 22, said point being a found half-inch rebar with Cap L.S. #44007;

Thence North 00 degrees 22 minutes 12 seconds West, along the West line of the East half of the Northeast Quarter of Section 22, for a distance of 1452.10 feet, to the Northwest corner of the South 135.38 feet of the Northeast Quarter of the Northeast Quarter of said Section 22;

Thence North 89 degrees 25 minutes 07 seconds East, along the North line of the South 135.38 feet of the Northeast Quarter of the Northeast Quarter of Section 22, for a distance of 1271.05 feet, to a point on the West 33 foot right-of-way line of Higley Road as recorded in Document No. 2015-0570279, records of Maricopa County, Arizona;

Thence South 00 degrees 26 minutes 31 seconds East, along said 33 foot West right-of-way line, for a distance of 541.17 feet, to a point on the North line of that certain described property conveyed to the Arizona Department of Transportation per Warranty Deed recorded as Document No. 2004-0257949, records of Maricopa County Arizona;

Thence South 00 degrees 59 minutes 24 seconds West, along the existing West right-of-way line of South Higley Road, for a distance of 397.72 feet;

Thence South 16 degrees 08 minutes 49 seconds West, along said existing West right-of-way line of South Higley Road, for a distance of 210.85 feet, to a found 3" Aluminum Cap Flush;

Thence South 00 degrees 26 minutes 01 seconds East, along said existing West right-of-way line of South Higley Road, for a distance of 246.45 feet, to a found 3" Aluminum Cap Flush;

Thence South 47 degrees 39 minutes 35 seconds West, along said existing West right-of-way line of South Higley Road, for a distance of 60.39 feet, to a found 3" Aluminum Cap Flush;

---

409 S. EL DORADO • MESA, ARIZONA 85202 • P (480) 892-8090 • F (480) 892-8545  
engineering@standageeng.com

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**LEGAL DESCRIPTION**  
**PAGE 2 OF 2**

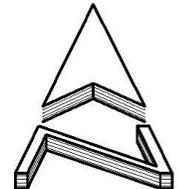
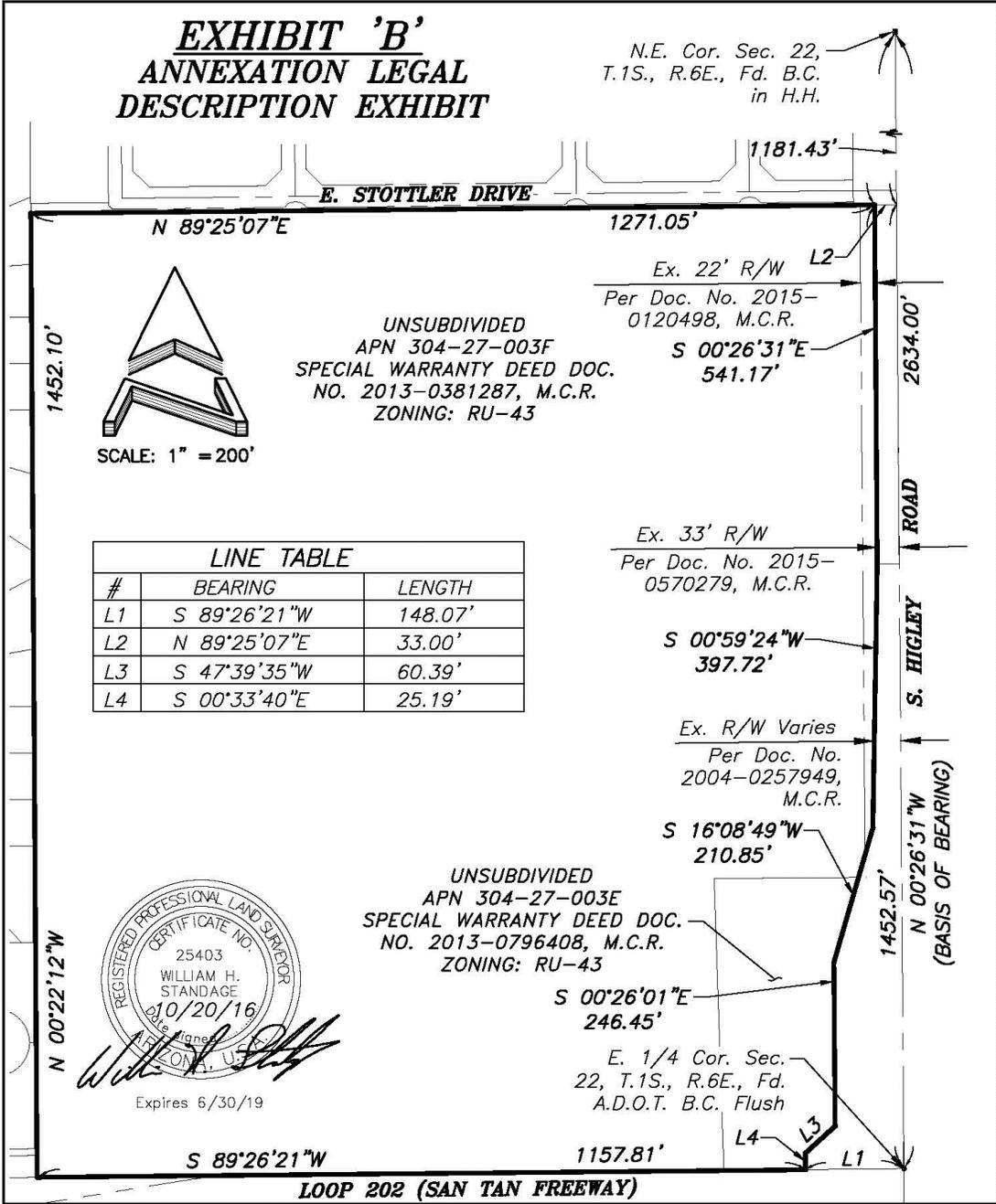
Thence South 00 degrees 33 minutes 40 seconds East, along the existing West right-of-way line of South Higley Road, for a distance of 25.19 feet, to the **POINT OF BEGINNING**.

Said property contains 41.628 Acres (1,813,328 S.F.) more or less.



# EXHIBIT 'B' ANNEXATION LEGAL DESCRIPTION EXHIBIT

N.E. Cor. Sec. 22,  
T.1S., R.6E., Fd. B.C.  
in H.H.



SCALE: 1" = 200'

LINE TABLE		
#	BEARING	LENGTH
L1	S 89°26'21"W	148.07'
L2	N 89°25'07"E	33.00'
L3	S 47°39'35"W	60.39'
L4	S 00°33'40"E	25.19'



S 89°26'21"W

**LOOP 202 (SAN TAN FREEWAY)**

AMERICAN LEADERSHIP ACADEMY

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**ANNEXATION LEGAL DESCRIPTION EXHIBIT**

**Standage & Associates, Ltd.**  
Consulting Engineers

409 S. El Dorado  
Mesa, Arizona 85202  
(480) 892-8080

SA Proj. #: 180800

1 / 1

EXHIBIT B

Site Plan

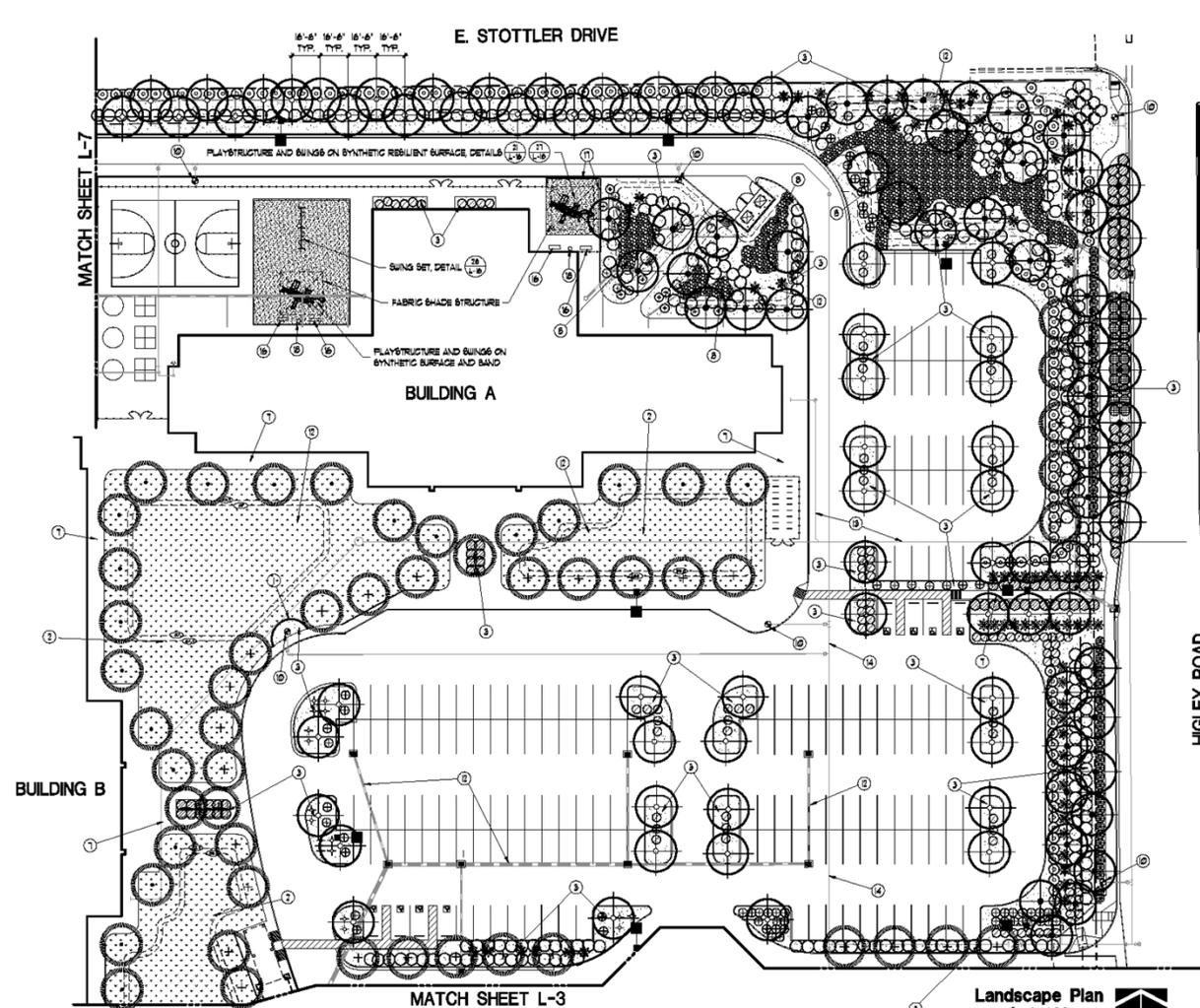
(See Attached)



EXHIBIT C

Landscape Plans

See Attached



**PLANT SCHEDULE:** (FOR THIS SHEET ONLY)

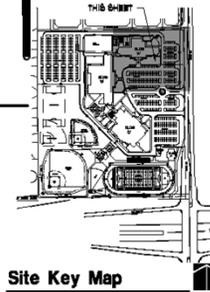
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	36" BOX MIN. 12' HT. & 8" DB. 3" GAL.	0 TOTAL
ULMUS PARVIFOLIA HYDRANGEA 'LIM'	24" BOX MIN. 10' HT. 4 1/2" DB. 1 1/2" GAL.	32 TOTAL
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	24" BOX MIN. 10' HT. 4 1/2" DB. 1 1/2" GAL.	61 TOTAL
FRAXINUS SHREVE ASH TREE	24" BOX MIN. 10' HT. 4 1/2" DB. 1 1/2" GAL.	22 TOTAL
PISTACHIA CHINENSIS CHINESE PISTACHE	24" BOX MIN. MATCHING 8' HT. 5" DB. 1 1/2" GAL.	48 TOTAL
CASUALPINA MEXICANA MEXICAN BIRD OF PARADISE	24" BOX TREE FORM	0 TOTAL
CALLISTEMON VIM. 'L.I.' LITTLE JOHN BUTTE BRUSH	5 GALLON FULL PAST GAN.	0 TOTAL
CASSIA SPURTI GREEN CASIA	5 GALLON FULL PAST GAN.	131 TOTAL
LEUCOPHYLLUM LAMBICATUM 'REI' RIO BRAVO BAGE	5 GALLON FULL PAST GAN.	102 TOTAL
BREITONIA GLABRA MINGENI 'OUTBACK SUNSET' OUTBACK SUNSET BRU	5 GALLON FULL PAST GAN.	63 TOTAL
SCAGIA RECOLENS 'D.G.' ROSEET GARRET	5 GALLON FULL PAST GAN.	365 TOTAL
CASUALPINA FULCHERIANA RED BIRD OF PARADISE	5 GALLON FULL PAST GAN.	13 TOTAL
HESPERALOE PARVIFLORA RED YUCCA	5 GALLON FULL PAST GAN.	17 TOTAL
RUELLIA BRITTONIANA RUELLIA	5 GALLON FULL PAST GAN.	16 TOTAL
LEUCOPHYLLUM LAMBICATUM CHIHUAHUA BAGE	5 GALLON FULL PAST GAN.	61 TOTAL
LANTANA BELLOSIANA 'TP1' TRAILING PURPLE LANTANA	1 GALLON FULL PAST GAN.	87 TOTAL
ROSMARINUS OFF. PROSTRATUS DWARF ROSEMARY	1 GALLON FULL PAST GAN.	14 TOTAL
DECOMPOSED GRANITE	3/4" SCREENED 'COOGA BROWN'	6436 SF.
GRANITE COBBLE	3/4" DIA. 'COOGA BROWN'	5396 SF.
LAWN BOD	MID-IRON TURF	5835 SF.
SYNTHETIC TURF		0 SF.
INFIELD MIX	3" DEEP	0 SF.
WARNING TRACK MIX	3" DEEP	0 SF.

**BOULDER SCHEDULE:**

4" X 4" X 3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 1')	
3" X 3" X 3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 1')	
2" X 2" X 2" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 1')	

**phillip r. ryan**  
 landscape architect p.c.  
 landscape architecture & planning  
 4815 E. QUINN WAY  
 GLEN ARBOR, MI 48156  
 (800) 899-5913 fax (480) 363-3874

- PLAN KEY NOTES:**
- 1 6" X 6" CONCRETE HEADER DETAIL 6, SHEET L-14
  - 2 6" X 6" CONCRETE CURB DETAIL 4, SHEET L-14
  - 3 2" DEEP 3/4" SCREENED 'COOGA BROWN' DECOMPOSED GRANITE DETAIL 3, SHEET L-14
  - 4 3" DEEP INFIELD MIX DETAIL 9, SHEET L-18
  - 5 3" DEEP WARNING TRACK MIX DETAIL 9, SHEET L-18
  - 6 AT-GRADE PLANTER
  - 7 CONCRETE SIDEWALK
  - 8 GRANITE COBBLE DETAIL 14, SHEET L-15
  - 9 2" DEEP 1/2" MINUS DECOMPOSED GRANITE DETAIL 3, SHEET L-14
  - 10 FIRE HYDRANT
  - 11 DRAINAGE PIPE PER CIVIL DUGS
  - 12 RETENTION BASIN PER CIVIL DUGS
  - 13 SANITARY SEWER LINE PER CIVIL DUGS
  - 14 WATER MAIN PER CIVIL DUGS
  - 15 TABLE DETAIL 13, SHEET L-13
  - 16 BENCH DETAIL 13, SHEET L-13



#	REVISIONS / SUBMISSIONS	DATE

ALA  
**AMERICAN LEADERSHIP ACADEMY**  
 SITE PACKAGE

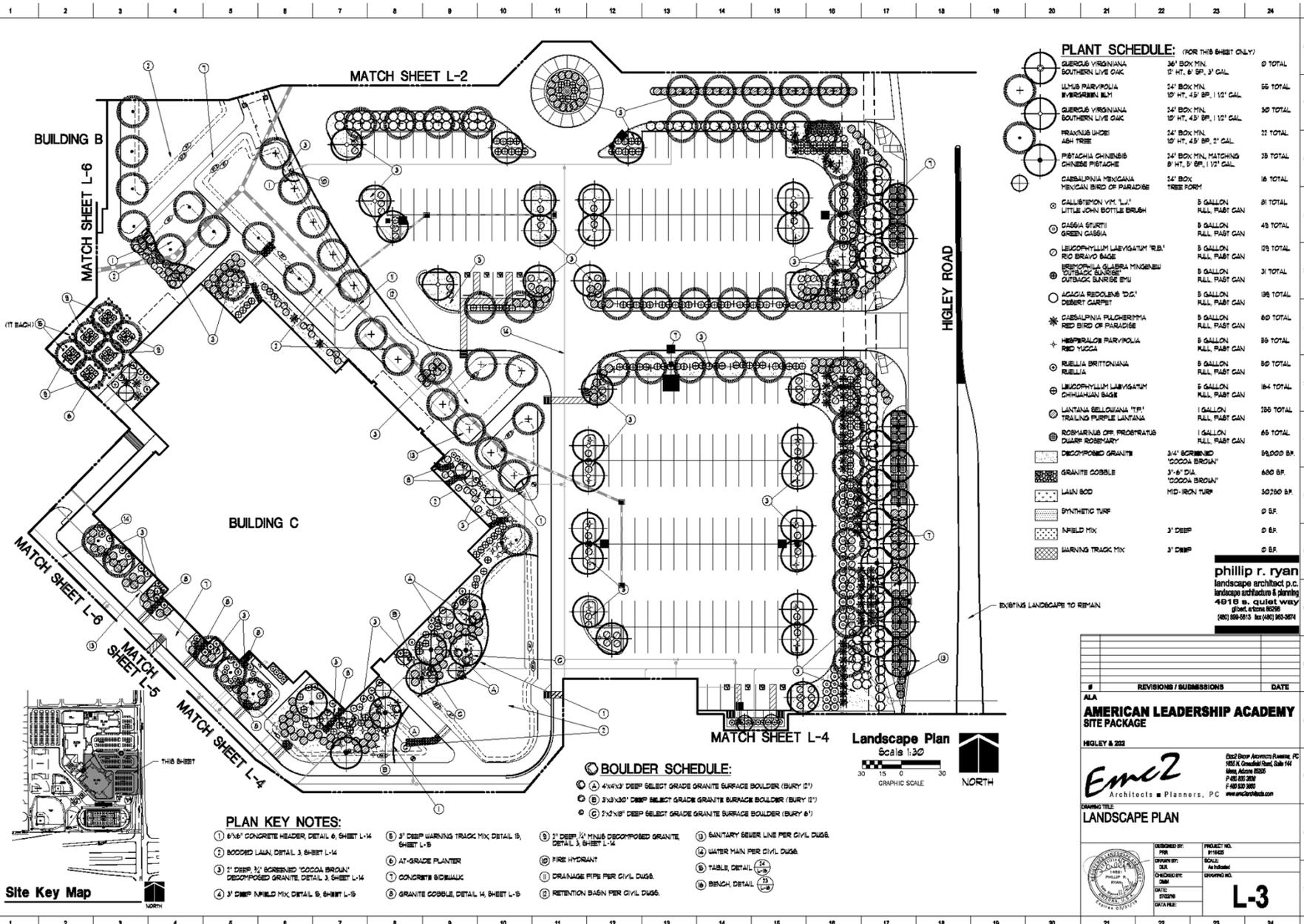
HIGLEY & 202

**Emc2**  
 Architects • Planners, P.C.

DRAWING TITLE:  
**LANDSCAPE PLAN**

DESIGNED BY: PRL	PROJECT NO. 171958
DRAWN BY: DJA	SCALE: As Indicated
CHECKED BY: DJA	DATE: 10/20/2010
DATE: 10/20/2010	DATE: 

**L-2**



**PLANT SCHEDULE:** (FOR THIS SHEET ONLY)

QUERCUS VIRGINIANA SOUTHERN LIVE OAK	36" BOX MIN. 12' HT. @ 8" SP. 3" GALL.	0 TOTAL
ULMUS PARVIFOLIA W. BERGAMINI BLM	24" BOX MIN. 10' HT. 45" BP. 1 1/2" GALL.	56 TOTAL
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	24" BOX MIN. 10' HT. 45" BP. 1 1/2" GALL.	30 TOTAL
FRAXINUS UHOBI ASH TREE	24" BOX MIN. 10' HT. 45" BP. 2" GALL.	22 TOTAL
PHYTOLACCA CHINENSIS CHINESE STRIFE	24" BOX MIN. MATCHING 8" HT. 9" BP. 1 1/2" GALL.	28 TOTAL
CASUALPINA MEXICANA MEXICAN BIRD OF PARADISE	24" BOX TREE FORM	16 TOTAL
CALLISTEMON VIM. L. LITTLE JOHN BOTTLE BRUSH	9 GALLON FULL PLANT CAN	81 TOTAL
CASSIA SPURTI GREEN CASSEA	9 GALLON FULL PLANT CAN	45 TOTAL
LEUCOPHYLLUM LAEVIGATUM 'R.B.' RIO BRAVO BAGE	9 GALLON FULL PLANT CAN	95 TOTAL
BESPOPHILA GLABRA MINORIS OUTBACK SANDS EBU	9 GALLON FULL PLANT CAN	31 TOTAL
ACACIA RECURRENS 'DQ.' DORSET CURPIT	9 GALLON FULL PLANT CAN	198 TOTAL
CASUALPINA PULCHERRIMA MEXICAN BIRD OF PARADISE	9 GALLON FULL PLANT CAN	60 TOTAL
HESPERALOE PARVIFOLIA RED YUCCA	9 GALLON FULL PLANT CAN	59 TOTAL
RUELLIA BRITTONIANA RUELLIA	9 GALLON FULL PLANT CAN	50 TOTAL
LEUCOPHYLLUM LAEVIGATUM CHIHUAHUA BAGE	9 GALLON FULL PLANT CAN	164 TOTAL
LANTANA BELLUANA 'TP' TRAILING PURPLE LANTANA	1 GALLON FULL PLANT CAN	288 TOTAL
ROSMARINUS OFF. PROSTRATUS DWARF ROSEMARY	1 GALLON FULL PLANT CAN	65 TOTAL
DECOMPOSED GRANITE	3/4" SCREENED 'COCOA BROU'	94000 SF.
GRANITE COBBLE	3"-8" DIA. 'COCOA BROU'	600 SF.
LAWN BOD	MID-RON TURF	30750 SF.
SYNTHETIC TURF		0 SF.
INFIELD MIX	3" DEEP	0 SF.
WARNING TRACK MIX	3" DEEP	0 SF.

**BOULDER SCHEDULE:**

(A) 4"x4"x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 2")	(D) 2" DEEP 1/2" PLUS DECOMPOSED GRANITE DETAIL 3, SHEET L-4
(B) 3"x3"x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 2")	(E) AT-GRADE PLANTER
(C) 2"x2"x8" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 6")	(F) CONCRETE SIDEWALK

**PLAN KEY NOTES:**

(1) 6"x6" CONCRETE HEADER, DETAIL 6, SHEET L-4	(7) 2" DEEP W/ 1/2" PLUS DECOMPOSED GRANITE DETAIL 3, SHEET L-4	(13) SANITARY SEWER LINE PER CIVIL DUGS.
(2) BOODED LAWN, DETAIL 3, SHEET L-4	(8) AT-GRADE PLANTER	(14) WATER MAIN PER CIVIL DUGS.
(3) 2" DEEP 1/2" SCREENED 'COCOA BROU' DECOMPOSED GRANITE, DETAIL 3, SHEET L-4	(9) CONCRETE SIDEWALK	(15) TABLE, DETAIL 12, SHEET L-4
(4) 3" DEEP INFIELD MIX, DETAIL 6, SHEET L-5	(10) GRANITE COBBLE, DETAIL 14, SHEET L-5	(16) BENCH, DETAIL 13, SHEET L-4
(5) 3" DEEP W/ 1/2" PLUS DECOMPOSED GRANITE DETAIL 3, SHEET L-4	(11) FIRE HYDRANT	(17) DRAINAGE PIPE PER CIVIL DUGS.
(6) 3" DEEP W/ 1/2" PLUS DECOMPOSED GRANITE DETAIL 3, SHEET L-4	(12) FIRE HYDRANT	(18) RETENTION BASIN PER CIVIL DUGS.



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#	REVISIONS / SUBMISSIONS	DATE
1	ALA	

**AMERICAN LEADERSHIP ACADEMY**  
SITE PACKAGE  
HIGLEY & 202

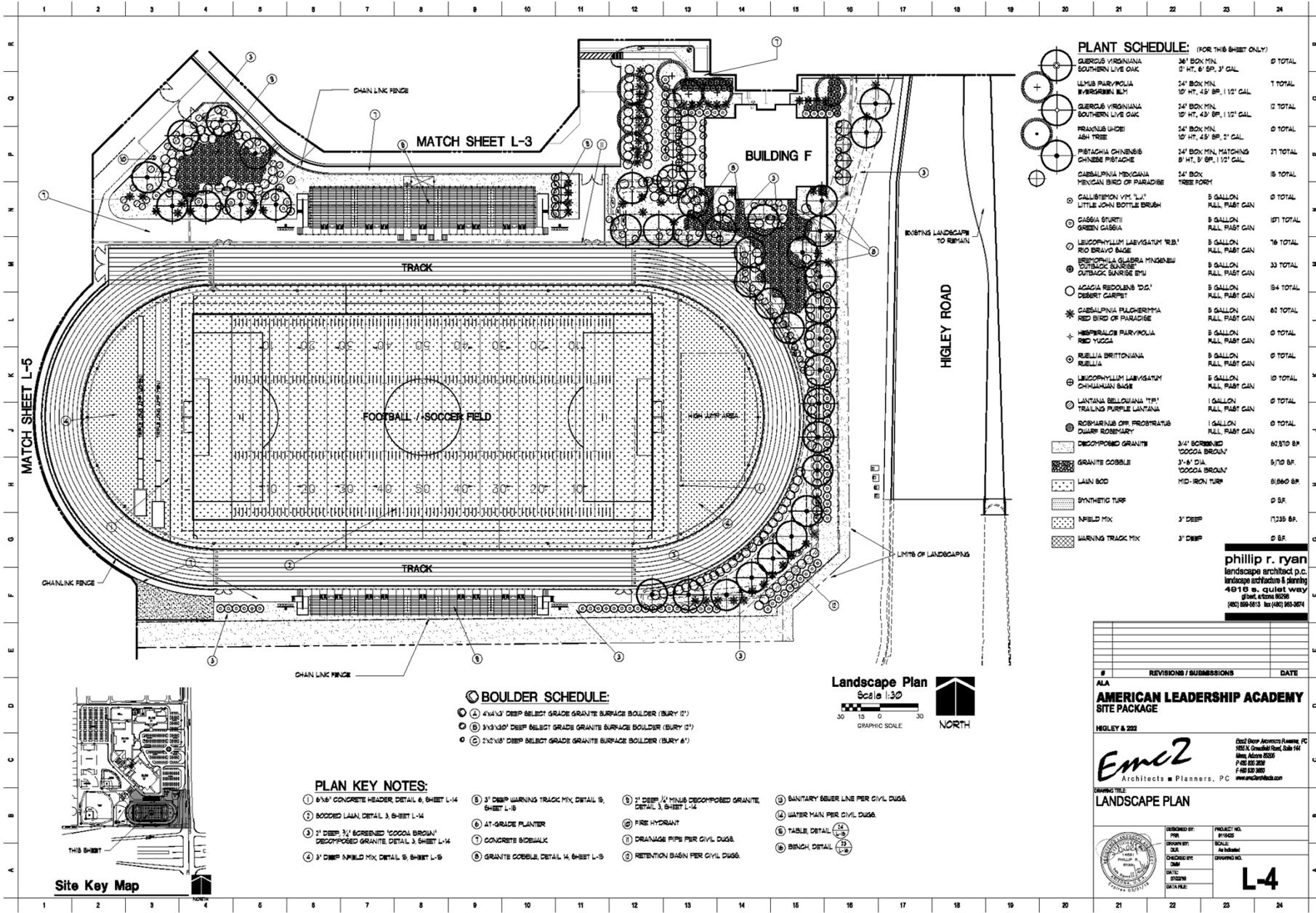
**Emc2**  
Architects • Planners, PC

2022 Deep Acmeys Avenue, PC  
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www.emc2pdx.com

**LANDSCAPE PLAN**

DESIGNED BY: PRR	PROJECT NO: 819455
DRAWN BY: SJA	SCALE: As Indicated
CHECKED BY: DM	DRAWING NO:
DATE: 07/20/22	
DATE: 07/20/22	

**L-3**



**PLANT SCHEDULE:** (FOR THIS SHEET ONLY)

QUERCUS VIRGINIANA SOUTHERN LIVE OAK	36" BOX MIN. 10' HT. 6" SP. 3" GAL.	0 TOTAL
LELISIA PARYVOLA HYPERICUM BLM	24" BOX MIN. 10' HT. 4.5" SP. 1 1/2" GAL.	1 TOTAL
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	24" BOX MIN. 10' HT. 4.5" SP. 1 1/2" GAL.	12 TOTAL
FRAXINUS UHOBI ASH TREE	24" BOX MIN. 10' HT. 4.5" SP. 2" GAL.	0 TOTAL
PISTACHIA CHINENSIS CHINESE PISTACHE	24" BOX MIN. MATCHING 8' HT. 5" SP. 1 1/2" GAL.	21 TOTAL
CASUALPYNIA MEXICANA MEXICAN BIRD OF PARADISE	24" BOX TREE FORM	15 TOTAL
CALLISTEMON VLM 'LJ'	3 GALLON LITTLE JOHN BOTTLE BRUSH	0 TOTAL
DISSOLA SPURTI GREENI GASSIA	3 GALLON ROLL PAST CAN	121 TOTAL
LEUCOPYLLUM LAEVIGATUM 'RBL'	3 GALLON RIO BRAVO BAGE	76 TOTAL
HESPERALYIA GLABRA HANGREU	3 GALLON OUTBACK SASSIE	33 TOTAL
ACACIA RECOURBIS 'DQ'	3 GALLON OUTBACK SASSIE BTU	54 TOTAL
CASUALPYNIA PALCHERRIMA RED BIRD OF PARADISE	3 GALLON ROLL PAST CAN	65 TOTAL
HESPERALYIA PARYVOLA RED YUCCA	3 GALLON ROLL PAST CAN	0 TOTAL
RUELLIA BRITTONIANA RUELLIA	3 GALLON ROLL PAST CAN	0 TOTAL
LEUCOPYLLUM LAEVIGATUM CHIHUAHUA BAGE	3 GALLON ROLL PAST CAN	10 TOTAL
LANTANA BELLUANA 'TF'	1 GALLON TRAILING PURPLE LANTANA	0 TOTAL
ROSEMARYS OFF PROSTRATUS DWARF ROSEMARY	1 GALLON ROLL PAST CAN	0 TOTAL

DECOMPOSED GRANITE	3/4" SCREENED 'COCOA BROWN'	60,510 SF
GRANITE COBBLE	3/4" DIA. 'COCOA BROWN'	9,710 SF
LAWN BOD	MID-IRON TURF	6,860 SF
SYNTHETIC TURF		0 SF
INFIELD MIX	3" DEEP	17,235 SF
WARNING TRACK MIX	3" DEEP	0 SF

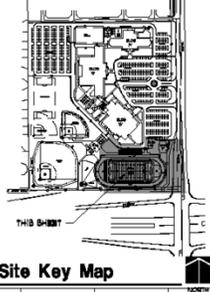
**phillip r. ryan**  
 landscape architect p.c.  
 landscape architecture & planning  
 4617 E. quiet way  
 GROUND LEVEL  
 (802) 889-8713 fax (802) 953-3074

**BOULDER SCHEDULE:**

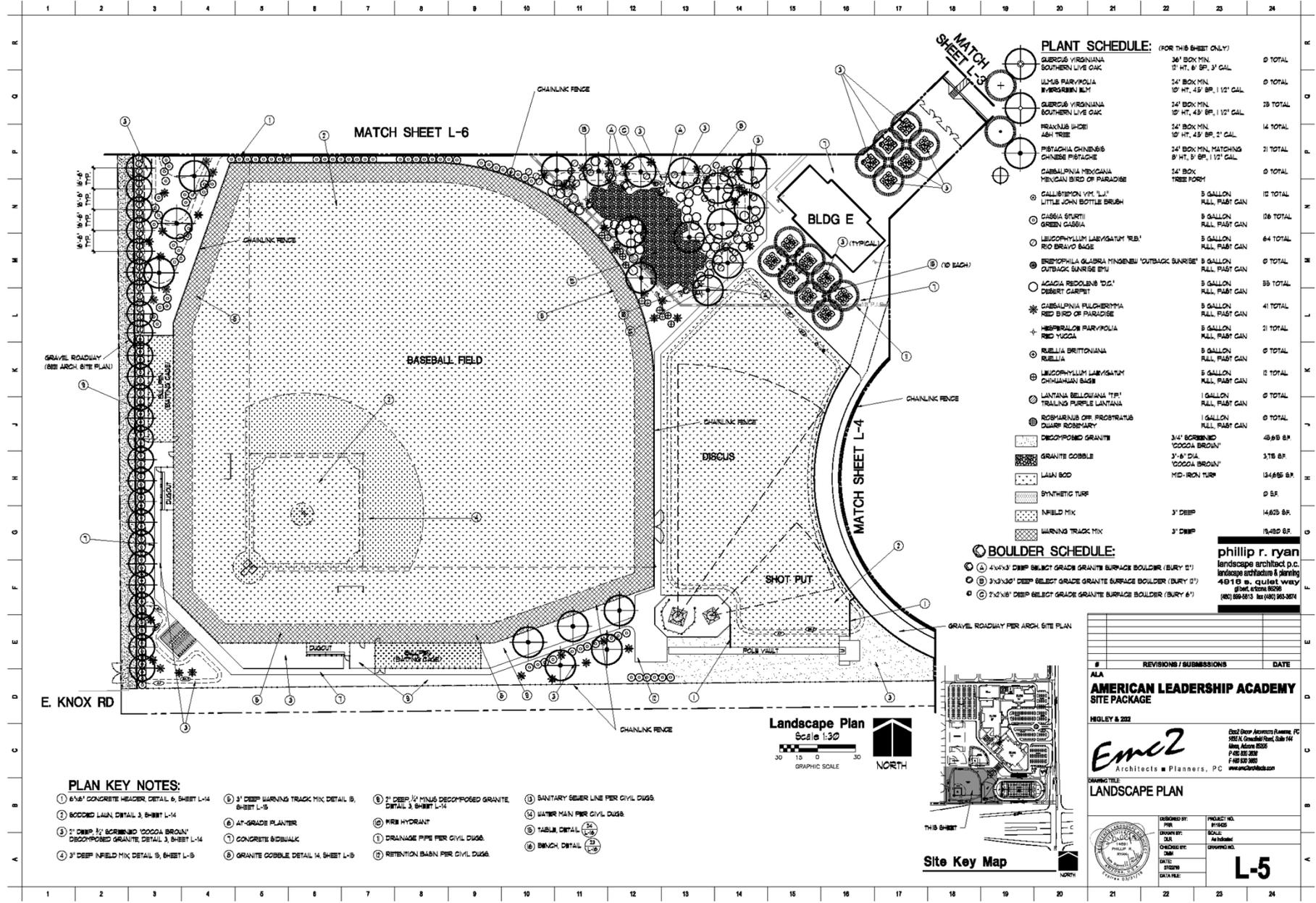
①	4'x4'x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 2")
②	3'x3'x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 2")
③	2'x2'x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 6")

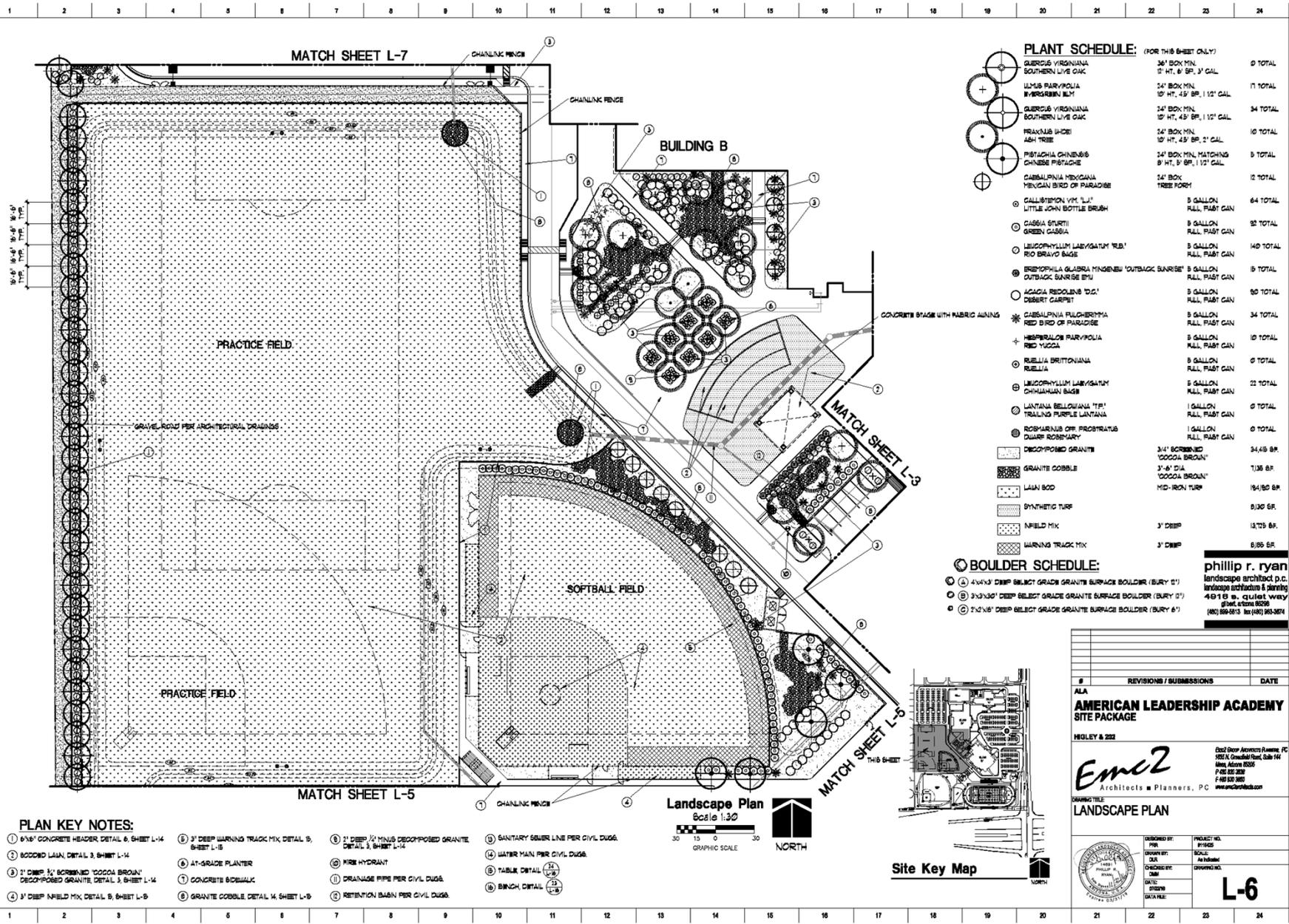
**PLAN KEY NOTES:**

①	6"x6" CONCRETE HEADER, DETAIL 6, SHEET L-14	⑤	3" DEEP WARNING TRACK MIX, DETAIL 9, SHEET L-15	⑨	2" DEEP 1/4" MINUS DECOMPOSED GRANITE, DETAIL 3, SHEET L-14
②	SCREENED LAWN, DETAIL 3, SHEET L-14	⑥	AT-GRADE PLANTER	⑩	FIRE HYDRANT
③	2" DEEP 3/4" SCREENED 'COCOA BROWN' DECOMPOSED GRANITE, DETAIL 3, SHEET L-14	⑦	CONCRETE SIDEWALK	⑪	DRAINAGE PIPE PER CIVIL DUGS.
④	3" DEEP INFIELD MIX, DETAIL 9, SHEET L-15	⑧	GRANITE COBBLE, DETAIL 14, SHEET L-15	⑫	RETENTION BASIN PER CIVIL DUGS.



#	REVISIONS / SUBMISSIONS	DATE
ALA		
<b>AMERICAN LEADERSHIP ACADEMY SITE PACKAGE</b>		
HIGLEY & 202		
<b>Emc2</b> Architects ■ Planners, P.C.		Exec: Deepa Arora-Ramirez, P.C. 1001 N. Grand Blvd., Suite 114 Alma, Arizona 85305 P: 480-333-3838 F: 480-333-3837 www.emc2arch.com
DRAWING TITLE: <b>LANDSCAPE PLAN</b>		
DESIGNED BY: PRR	PROJECT NO.: 171625	
DRAWN BY: SJA	SCALE: As Indicated	
CHECKED BY: PRR	DRAWING NO.:	
DATE: 07/20/14		
		<b>L-4</b>





**PLANT SCHEDULE:** (FOR THIS SHEET ONLY)

QUERCUS VIRGINIANA SOUTHERN LIVE OAK	36" BOX MIN. 12' HT. @ 8" SP. 3" GALL.	0 TOTAL
ULMUS PARVIFOLIA NIVERSGREEN BLM	24" BOX MIN. 10' HT. @ 8" SP. 11/2" GALL.	17 TOTAL
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	24" BOX MIN. 10' HT. @ 8" SP. 11/2" GALL.	34 TOTAL
FRAXINUS SP.1 ASH TREE	24" BOX MIN. 10' HT. @ 8" SP. 2" GALL.	10 TOTAL
PISTACHIA CHINENSIS CHINESE PISTACHE	24" BOX MIN. MATCHING 8' HT. @ 8" SP. 11/2" GALL.	5 TOTAL
CASUALPIA TEXICOLA RED BIRD OF PARADISE	24" BOX TREE FORM	12 TOTAL
CALLISTEMON VIV. 1.17 LITTLE JOHN BOTTLE BRUSH	8 GALLON FULL PLANT CAN	64 TOTAL
CASSIA SPURTI GREEN CASIA	8 GALLON FULL PLANT CAN	32 TOTAL
LEUCOPHYLLUM LAEYISGATUM 'R1' RIO BRAVO SAGE	8 GALLON FULL PLANT CAN	140 TOTAL
EREGOPHILA GLABRA MINGENSHI 'OUTBACK SUNRISE' OUTBACK SUNRISE BLM	8 GALLON FULL PLANT CAN	15 TOTAL
ACACIA REDOLENS 'D.C.' DESERT CARPET	8 GALLON FULL PLANT CAN	80 TOTAL
CASUALPIA FULCHERIANA RED BIRD OF PARADISE	8 GALLON FULL PLANT CAN	34 TOTAL
HESPERALOE PARVIFOLIA RED YUCCA	8 GALLON FULL PLANT CAN	10 TOTAL
RUELLIA BRITTONIANA RUELLIA	8 GALLON FULL PLANT CAN	0 TOTAL
LEUCOPHYLLUM LAEYISGATUM CHIHUAHUA SAGE	8 GALLON FULL PLANT CAN	22 TOTAL
LANTANA BELLOWIANA 'F1' TRAILING PURPLE LANTANA	1 GALLON FULL PLANT CAN	0 TOTAL
ROSMARINUS OFF. PROSTRATUS DUAR ROSEMARY	1 GALLON FULL PLANT CAN	0 TOTAL
DECOMPOSED GRANITE	3/4" SCREENED 'COCOA BROWN'	34.45 SF
GRANITE COBBLE	3"-4" DIA 'COCOA BROWN'	1.35 SF
LANA BOD	MID-IRON TURF	154.80 SF
SYNTHETIC TURF		5.90 SF
INFIELD MIX	3" DEEP	13.75 SF
WARNING TRACK MIX	3" DEEP	6.85 SF

**BOULDER SCHEDULE:**

- ① 4"X12" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 1")
- ② 3"X12" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 1")
- ③ 2"X12" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 6")

**philip r. ryan**  
 landscape architect p.c.  
 landscape architecture & planning  
 4815 S. quiet way  
 (shel. 4700) 8028  
 (802) 885-5815 fax (802) 885-3894

- PLAN KEY NOTES:**
- ① 6"x6" CONCRETE HEADER, DETAIL 6, SHEET L-14
  - ② SECOND LANA, DETAIL 3, SHEET L-14
  - ③ 3" DEEP 3/4" SCREENED 'COCOA BROWN' DECOMPOSED GRANITE, DETAIL 3, SHEET L-14
  - ④ 3" DEEP INFIELD MIX, DETAIL 5, SHEET L-5
  - ⑤ 3" DEEP WARNING TRACK MIX, DETAIL 5, SHEET L-5
  - ⑥ 41-GRADE PLANTER
  - ⑦ CONCRETE BOWLIAC
  - ⑧ GRANITE COBBLE, DETAIL 14, SHEET L-5
  - ⑨ 2" DEEP 1/2" MINGENSHI DECOMPOSED GRANITE, DETAIL 3, SHEET L-14
  - ⑩ FIRE HYDRANT
  - ⑪ DRAINAGE PIPE PER CIVIL DUGG.
  - ⑫ RETENTION BASIN PER CIVIL DUGG.
  - ⑬ SANITARY SEWER LINE PER CIVIL DUGG.
  - ⑭ WATER MAIN PER CIVIL DUGG.
  - ⑮ TABLE, DETAIL 11, SHEET L-14
  - ⑯ BENCH, DETAIL 12, SHEET L-14



#	REVISIONS / SUBMISSIONS	DATE

ALA  
**AMERICAN LEADERSHIP ACADEMY**  
 SITE PACKAGE

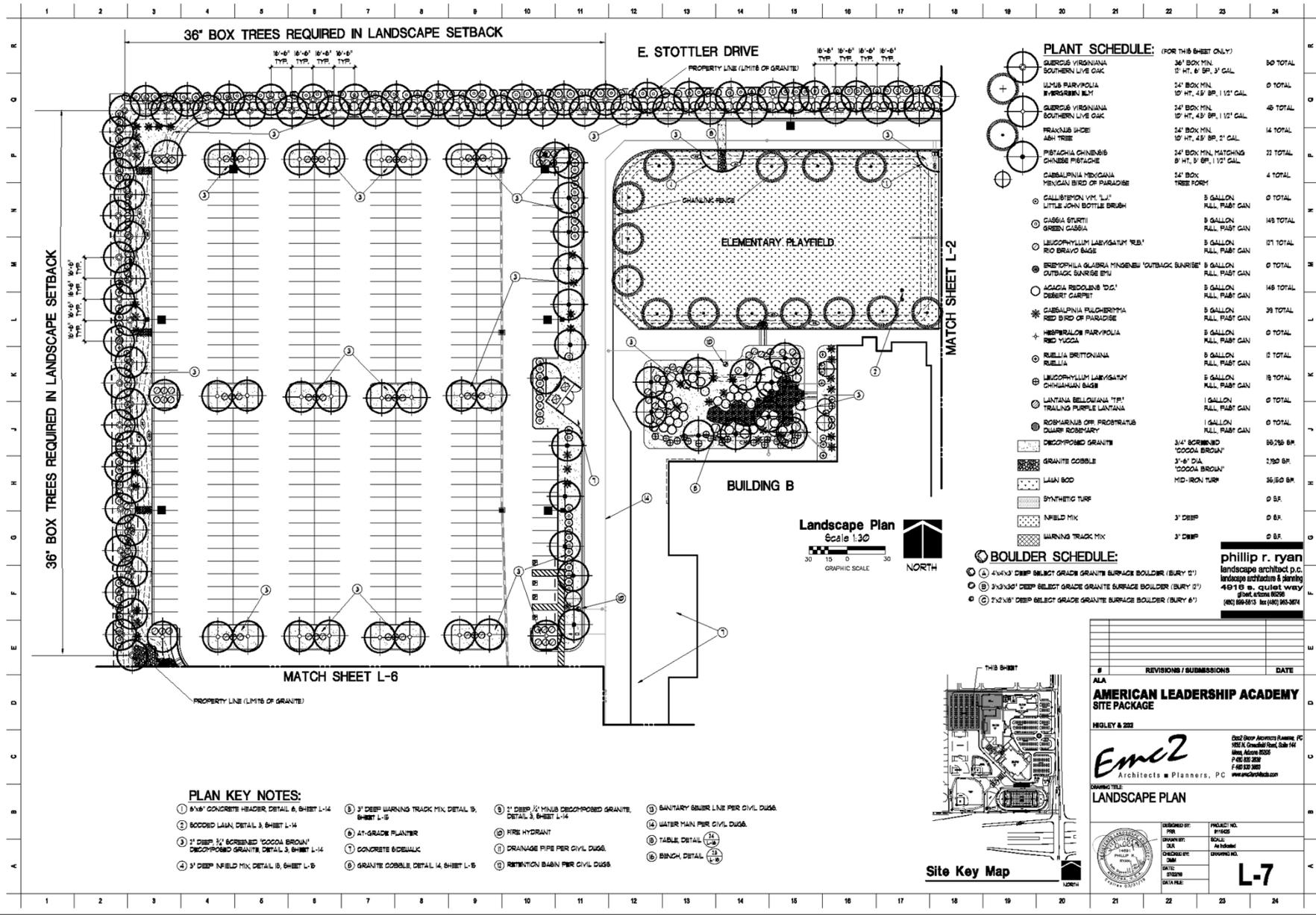
MILEY & 2022

**Emc2**  
 Architects • Planners, P.C.

Emc2 Group Architects Review, PC  
 1501 N. Crossfield Road, Suite 114  
 Mableton, GA 30126  
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 F: 404.252.3885  
 www.emc2arch.com

DESIGNED BY: PROJECT NO.  
 DRAWN BY: SCALE  
 CHECKED BY: AS NOTED  
 DATE: DATE  
 DATA FILE: DRAWING NO.

**L-6**



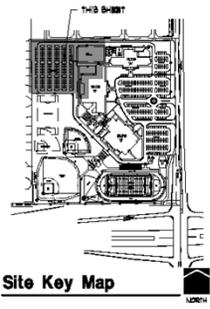
- PLAN KEY NOTES:**
- ① 8"x8" CONCRETE HEADER, DETAIL 6, SHEET L-14
  - ② BOCDED LAWN, DETAIL 3, SHEET L-14
  - ③ 1" DEEP 3/2" SCREENED "COCOA BROWN" DECOPOBOMO GRANITE, DETAIL 3, SHEET L-14
  - ④ 1/2" DEEP INFIELD MIX, DETAIL 9, SHEET L-5
  - ⑤ 1/2" DEEP WARNING TRACK MIX, DETAIL 9, SHEET L-5
  - ⑥ A1-GRADE PLANTER
  - ⑦ CONCRETE SIDEWALK
  - ⑧ GRANITE COBBLE, DETAIL 14, SHEET L-5
  - ⑨ 1/2" DEEP 1/2" HULLS DECOPOBOMO GRANITE, DETAIL 3, SHEET L-14
  - ⑩ FIRE HYDRANT
  - ⑪ DRAINAGE PIPE PER CIVIL DUGS
  - ⑫ RETENTION BASIN PER CIVIL DUGS
  - ⑬ SANITARY SEWER LINE PER CIVIL DUGS
  - ⑭ WATER MAIN PER CIVIL DUGS
  - ⑮ TABLE, DETAIL 14, SHEET L-5
  - ⑯ BENCH, DETAIL 14, SHEET L-5

**PLANT SCHEDULE:** (FOR THIS SHEET ONLY)

QUERCUS VIRGINIANA SOUTHERN LIVE OAK	36" BOX MIN. 12' HT. @ 8' SP.	3' GALL.	80 TOTAL
LEUCIS PARVIFOLIA BURGESSIAN MY	24" BOX MIN. 10' HT. @ 8' SP.	1 1/2" GALL.	0 TOTAL
QUERCUS VIRGINIANA SOUTHERN LIVE OAK	24" BOX MIN. 10' HT. @ 8' SP.	1 1/2" GALL.	48 TOTAL
FRAXINUS SHOES ASH TREE	24" BOX MIN. 10' HT. @ 8' SP.	2" GALL.	14 TOTAL
PISTACHIA CHINENSIS CHINESE PISTACHE	24" BOX MIN. MATCHING 8' HT. @ 8' SP.	1 1/2" GALL.	22 TOTAL
CASBAUPINIA MEXICANA MEXICAN BIRD OF PARADISE	24" BOX TREE FORM		4 TOTAL
GALLIERTHON VIM. 'LJ'	5 GALLON		0 TOTAL
LITTLE JOHN BOTTLE BRUSH	RALL PAST CAN		
CASBA STURTI GREEN CASBA	5 GALLON		148 TOTAL
LEUCOPHYLLUM LAEVIGATUM 'RED BRAVO' BAGE	5 GALLON		071 TOTAL
BREYOFIOLA GLABRA MINGENIEU 'OUTBACK SUNRISE' OUTBACK SUNRISE BFM	5 GALLON		0 TOTAL
SCAGIA REBOLENS 'D.C.' DORSET GARDEN	5 GALLON		148 TOTAL
CASBAUPINIA PUGHERSTIMA RED BIRD OF PARADISE	5 GALLON		39 TOTAL
WESTRALLON PARVIFOLIA RED YUCCA	5 GALLON		0 TOTAL
RUELLIA BRITTONIANA RUELLIA	5 GALLON		0 TOTAL
LEUCOPHYLLUM LAEVIGATUM CHIHUAHUA BELL	5 GALLON		18 TOTAL
LANTANA BELLOWIANA 'TIP' TRAILING PURPLE LANTANA	1 GALLON		0 TOTAL
ROSBARBUS OFF. PROSTRATUS DWARF ROSEMARY	1 GALLON		0 TOTAL
DECOPOBOMO GRANITE	3/4" SCREENED "COCOA BROWN"		86,788 SF
GRANITE COBBLE	3'-4" DIA "COCOA BROWN"		2,300 SF
LAWN BOD	MID-IRON TURF		36,150 SF
SYNTHETIC TURF			0 SF
INFIELD MIX	3" DEEP		0 SF
WARNING TRACK MIX	3" DEEP		0 SF

- BOULDER SCHEDULE:**
- ① 4"x4"x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 0')
  - ② 3"x3"x3" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 0')
  - ③ 2"x2"x8" DEEP SELECT GRADE GRANITE SURFACE BOULDER (BURY 6')

**phillip r. ryan**  
 landscape architect, p.c.  
 4915 S. Quiet way  
 glen, arizona 85206  
 (480) 984-9131 fax (480) 984-3074



#	REVISIONS / SUBMISSIONS	DATE

**ALA**  
**AMERICAN LEADERSHIP ACADEMY**  
 SITE PACKAGE  
 HIGLEY & 252

**Emc2**  
 Architects • Planners, PC

2525 Deep Avonway, Phoenix, AZ 85024  
 480.984.9131  
 www.emc2arch.com

DESIGNED BY: [Signature]  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 DATE: 07/20/19  
 DRAWING TITLE: LANDSCAPE PLAN

PROJECT NO. 19183  
 SCALE: As Shown  
 SHEET NO. L-7

## EXHIBIT D

### REIMBURSEMENT REQUIREMENTS

Section 8.0 of the Agreement provides that Gilbert shall reimburse Owner for improvements defined in the Agreement as “all soft costs, such as engineering, design and inspection fees, costs of any requirement payment and performance or other bonds, and all hard costs, including cost of labor and materials and contractor’s fees paid or incurred to construct improvements; provided, however, that the cost of acquiring the land dedicated for any improvement and financing costs will not be included in the reimbursement”.

Gilbert is limited by law in how it can spend public monies and therefore establishes conditions precedent to Gilbert’s reimbursement obligations, and Owner accepts the following conditions precedent to its right to reimbursement for the cost of improvements:

1. The plans and specifications must be reviewed and approved by the Town Engineer prior to bidding the construction work for the improvements.
2. The work shall be publicly bid pursuant to the requirements of A.R.S. Title 34 for public works projects. Such bids shall be obtained in conformity with procedures prescribed by Gilbert and all bids must be reviewed and approved by Town Engineer prior to commencement of construction.
3. Prior to commencing any construction, Owner or its contractor shall provide Gilbert with dual obligee payment and performance bonds in amounts equal to the full amount of the written construction contracts for such improvements.
4. All construction work must be completed in compliance with the Applicable Rules (as defined in the Agreement) and in accordance with the plans approved by the Town Engineer and must be completed in a workmanlike manner. Gilbert has no obligation to reimburse Owner until such time as the work is accepted by Gilbert.
5. Owner shall submit to Gilbert an assignment of its contractor warranties, which shall comply with Gilbert’s ordinance requirements, and in addition, Owner shall warrant the improvements as required by the Applicable Rules.
6. All required dedications, free and clear of liens and encumbrances not acceptable to Gilbert, must be complete and in a form acceptable to Gilbert.
7. Upon completion of any improvements, Owner will provide to Gilbert for review and approval a detailed statement and certification of the applicable costs of improvements that sets forth a description of each construction contract, any change orders issued related to each construction contract, the total costs of improvements for which

reimbursement is sought, and a certification that the cost of improvements are stated accurately. Upon request of Gilbert, Owner shall provide to Gilbert a copy of all construction contracts and change orders described in the certification.

The reimbursement requirements set forth in this Exhibit D are in addition to and not in limitation of any other conditions or requirements of the Agreement applicable to reimbursement of the cost of improvements. Any actions to be taken by Gilbert or any of its officers, including the Town Engineer, pursuant to this Exhibit D shall be subject to the Applicable Rules.



**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO A PRE-ANNEXATION DEVELOPMENT AGREEMENT WITH SCHOOLHOUSE HIGLEY, LLC RELATED TO THE ANNEXATION AND DEVELOPMENT OF PROPERTY IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

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

WHEREAS, the property subject to the Pre-Annexation Development Agreement attached as Exhibit A may be annexed into the Town; and

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

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Pre-Annexation Development Agreement between the Town of Gilbert and Schoolhouse Higley LLC attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Pre-Annexation Development Agreement; and

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

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

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

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF  
GILBERT, ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, 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 \_\_\_\_\_, 20\_\_, and that quorum  
was present thereat and that the vote thereon was \_\_\_ ayes and \_\_\_ nays and \_\_\_ abstentions.  
\_\_\_ Council members were absent or excused.

\_\_\_\_\_  
Lisa Maxwell, Town Clerk  
Town of Gilbert

The following exhibits are attached hereto and incorporated herein:

1. Pre-Annexation and Development Agreement (with attachments)



## Council Communication

**TO:** Honorable Mayor and Councilmembers

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

**MEETING DATE:** December 1, 2016

**SUBJECT:** A16-03: Approval of an Ordinance for the annexation of right-of-way along Williams Field Road between Power Road and Somerton Boulevard (Contract 2011-7003-0111)

**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 defining jurisdictional responsibilities along this roadway corridor. It is also a requirement under our Intergovernmental Agreement with Maricopa County.

### RECOMMENDED MOTION

A motion to approve an Ordinance annexing approximately 5.87 acres of right-of-way along Williams Field Road between Power Road and Somerton Boulevard, contingent upon approval by the Maricopa County Board of Supervisors.

### BACKGROUND/DISCUSSION

This annexation includes approximately 1,950 linear feet of right-of-way along Williams Field Road between Power Road and Somerton Boulevard. The Ordinance under consideration impacts only right-of-way and does not include the annexation of private property.

Intergovernmental Agreement C-91-11-130-M-00, approved by the Town and Maricopa County in February 2012, requires the Town to annex the portion of Williams Field Road between Power Road and Somerton Boulevard. This action has been coordinated between Town of Gilbert and Maricopa County staffs.

The Ordinance was reviewed for form by Attorney Jack Vincent.

## **FINANCIAL IMPACT**

In FY 2011, the Town entered into an Intergovernmental Agreement (IGA) with Maricopa County to improve one-third of a mile on Williams Field Road, immediately west of Power Road, which is under the jurisdiction of Maricopa County. At the time the IGA was executed, Maricopa County pledged \$250,000 to Gilbert for the Williams Field roadway improvements, with the understanding that upon completion of the project, Gilbert shall annex the improved roadways into its corporate limits.

This annexation represents a minor increase in the roadway inventory for the Town along Williams Field Road between Power Road and Somerton Boulevard. With an estimated street maintenance cost of \$0.50 per square yard of pavement per year, it is anticipated that the increase in roadway inventory will result in an ongoing cost of \$10,300 annually. These additional roadway maintenance costs were considered prior to approval of the IGA, requiring Town of Gilbert annexation.

The financial impact was reviewed by Justine Bruno, Management and Budget Analyst.

## **STAFF RECOMMENDATION**

Town staff has reviewed the Annexation Ordinance and recommend approval.

Respectfully submitted,

Tom Condit, PE  
Development Engineer

**Approved By**

Kyle Mieras  
Jack Vincent  
Justine Bruno

**Approval Date**

11/17/2016 6:05 PM  
11/21/2016 12:03 PM  
11/22/2016 9:36 AM

**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 5.87 ACRES OF WILLIAMS FIELD ROAD RIGHT-OF-WAY, GENERALLY LOCATED BETWEEN POWER ROAD TO SOMERTON BOULEVARD, 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. In General.

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 A-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 A-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: 1) General Office (GO), 0.58 acres (**Exhibits B-1 and B-2**); 2) Multi-Family / Medium (MF/M), 0.85 acres (**Exhibits C-1 and C-2**); and 3) Shopping Center (SC), 4.44 acres (**Exhibits D-1 and D-2**). These densities and uses are 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 1<sup>st</sup> day of December, 2016.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin, Town Attorney

I, LISA MAXWELL, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 1<sup>st</sup> DAY OF DECEMBER, 2016, 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. Exhibits A-1, B-1, C-1 and D-1 - Legal Descriptions
2. Exhibits A-2, B-2, C-2 and D-2 - Maps

**EXHIBIT "A-1"**  
**WILLIAMSFIELD ROAD ANNEXATION**

THAT PORTION OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25 AND THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTH QUARTER CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 2623.91 FEET;

THENCE NORTH 00 DEGREES 52 MINUTES 41 SECONDS WEST, ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, 65.00 FEET TO THE NORTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2014-070843, M.C.R.;

THENCE DEPARTING SAID NORTH-SOUTH MID-SECTION LINE, AND RUNNING ALONG SAID RIGHT OF WAY LINE, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 1429.33 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, NORTH 00 DEGREES 52 MINUTES 41 SECONDS EAST, 5.00 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE AND ITS EASTERLY PROLONGATION, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 516.19 FEET TO THE WESTERN LIMITS OF TOWN OF GILBERT ANNEXATION ORDINANCE NUMBER 2128 BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EASTERLY, WHOSE RADIUS BEARS SOUTH 79 DEGREES 44 MINUTES 31 SECONDS EAST, 1029.78 FEET;

THENCE DEPARTING THE EASTERLY PROLONGATION OF SAID RIGHT OF WAY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 07 DEGREES 51 MINUTES 08 SECONDS, A DISTANCE OF 141.13 FEET TO A LINE 70.00 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER, SAID LINE BEING THE EASTERLY PROLONGATION OF THE SOUTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2012-0883096, M.C.R.;

THENCE ALONG SAID EASTERLY PROLONGATION AND SAID RIGHT OF WAY LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 269.50 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE NORTH 00 DEGREES 33 MINUTES 05 SECONDS WEST, 5.00 FEET;

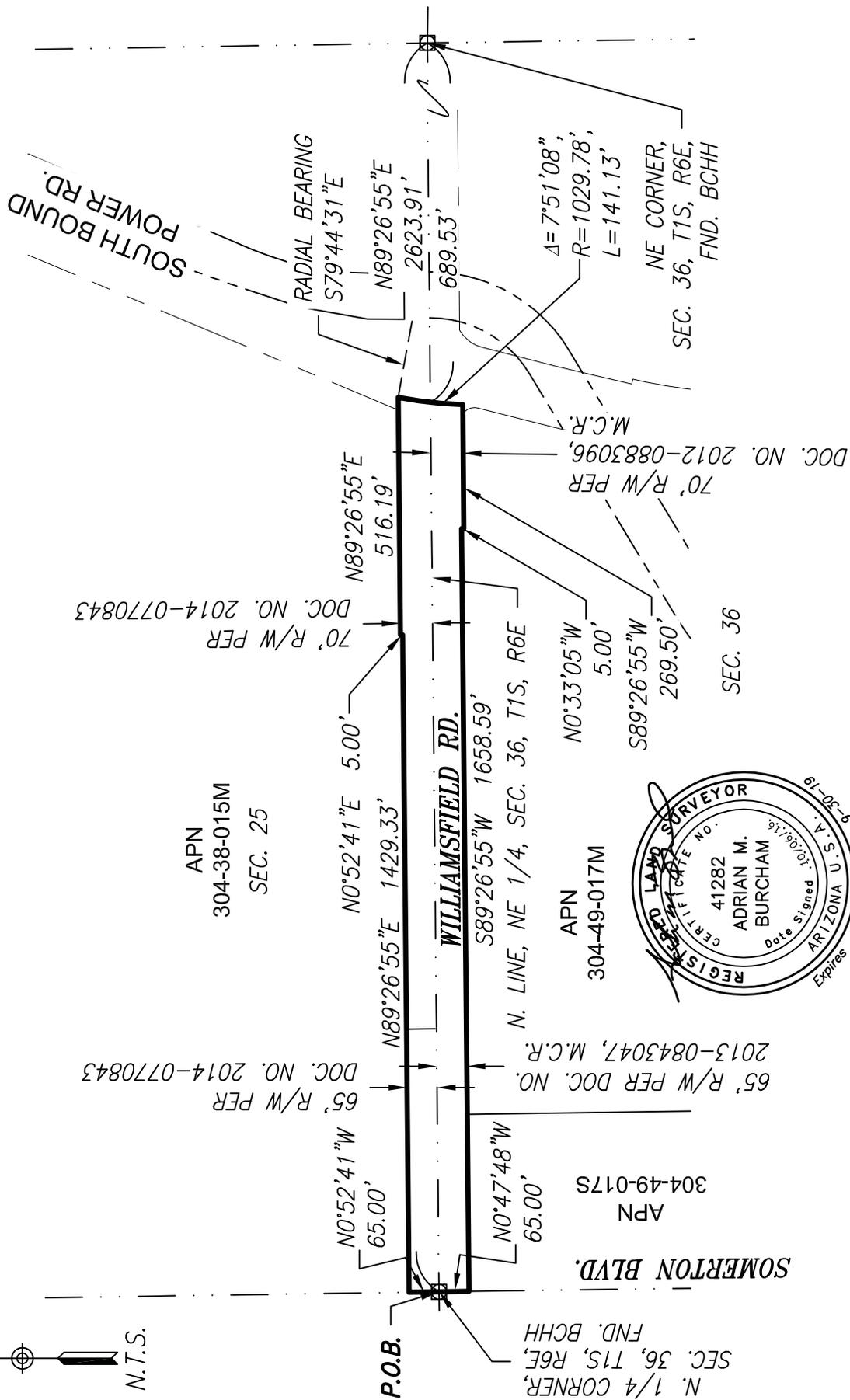
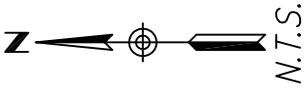
THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 1658.59 FEET TO THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 36;

THENCE DEPARTING SAID RIGHT OF WAY LINE, AND RUNNING ALONG SAID MID-SECTION LINE NORTH 00 DEGREES 47 MINUTES 48 SECONDS WEST, 65.00 FEET TO THE **POINT OF BEGINNING**.

EXCEPT ANY PORTION OF LAND ALREADY ANNEXED BY THE TOWN OF GILBERT AS PART OF ANNEXATION ORDINANCE NUMBER 174 AND ANNEXATION ORDINANCE NUMBER 2128.

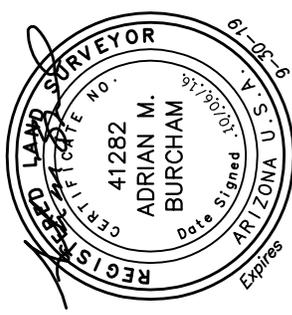
SAID PARCEL CONTAINS 255,491 SQUARE FEET OR 5.8653 ACRES, MORE OR LESS.





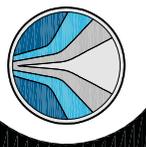
APN  
304-38-015M  
SEC. 25

APN  
304-49-017M



1201 S. Alma School Rd.  
Suite 12000  
Mesa, AZ 85210  
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WILLIAMSFIELD ROAD ANNEXATION  
ANNEXATION EXHIBIT  
EXHIBIT "A-2"  
Town of Gilbert, Maricopa County, Arizona

Project No. 16148	Date 10/6/16
Project Manager J. HAWS	Sheet 1 of 1

**EXHIBIT B-1  
GENERAL OFFICE LEGAL DESCRIPTION**

THE NORTH 65.00 FEET OF THE WEST 385.00 FEET OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTH QUARTER CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 2623.91 FEET;

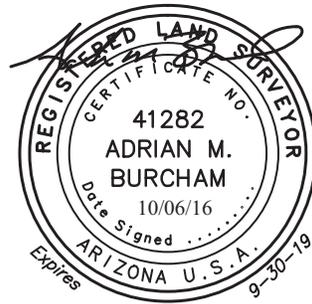
THENCE ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 385.00 FEET;

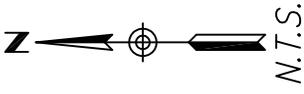
THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 47 MINUTES 48 SECONDS EAST, 65.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2013-0843047, M.C.R.;

THENCE ALONG SAID RIGHT OF WAY LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 385.00 FEET TO THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 31;

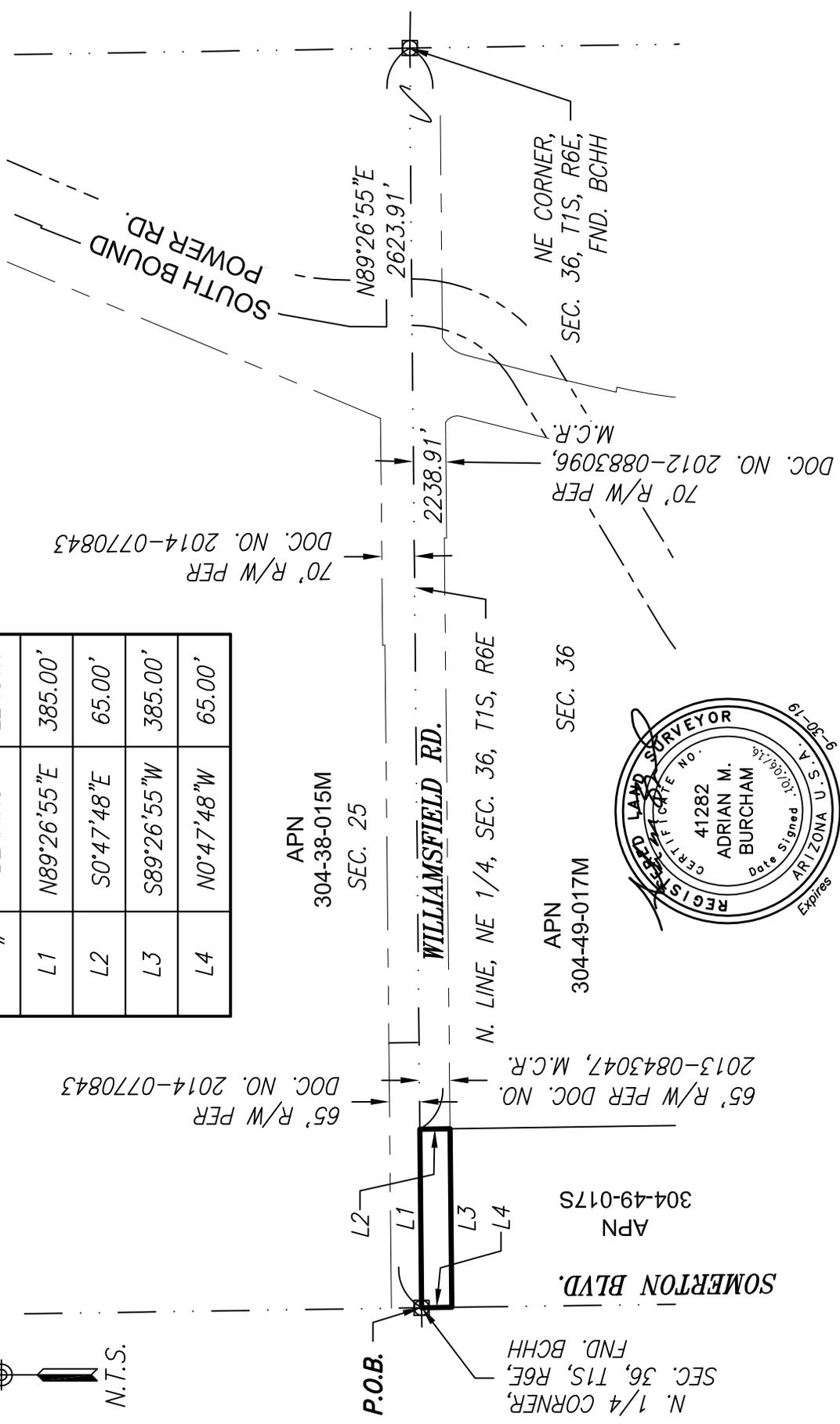
THENCE DEPARTING SAID RIGHT OF WAY LINE, AND RUNNING ALONG SAID MID-SECTION LINE NORTH 00 DEGREES 47 MINUTES 48 SECONDS WEST, 65.00 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 25,025 SQUARE FEET OR 0.5745 ACRES, MORE OR LESS.





LINE TABLE		BEARING	LENGTH
L1		N89°26'55"E	385.00'
L2		S0°47'48"E	65.00'
L3		S89°26'55"W	385.00'
L4		N0°47'48"W	65.00'

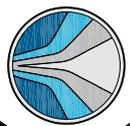


Project No. 16148		Date 10/6/16
Project Manager J. HAWS		Sht: 1 of 1

**WILLIAMSFIELD ROAD ANNEXATION**  
**GENERAL OFFICE (GO) EXHIBIT**  
**EXHIBIT B-2**

Town of Gilbert, Maricopa County, Arizona

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**HUBBARD**  
ENGINEERING

www.hubbardengineering.com

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

**EXHIBIT C-1  
MULTI-FAMILY MEDIUM LEGAL DESCRIPTION**

THE SOUTH 65.00 FEET OF THE WEST 572.00 FEET OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTH QUARTER CORNER OF SAID SECTION 25, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 25, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 2623.91 FEET;

THENCE NORTH 00 DEGREES 52 MINUTES 41 SECONDS WEST, ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, 65.00 FEET TO THE NORTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2014-070843, M.C.R.;

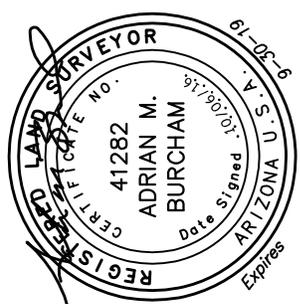
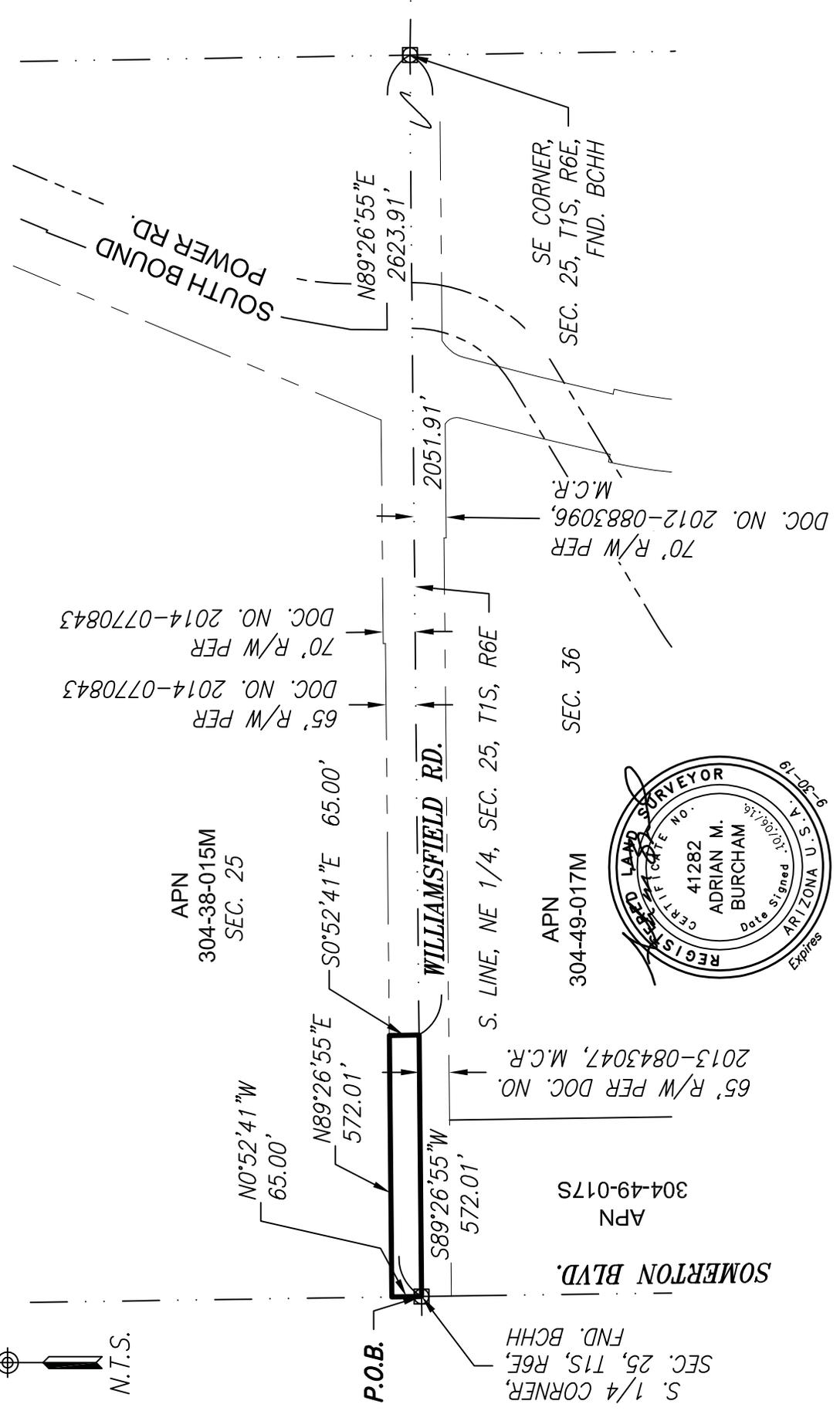
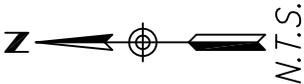
THENCE DEPARTING SAID NORTH-SOUTH MID-SECTION LINE, AND RUNNING ALONG SAID RIGHT OF WAY LINE, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 572.01 FEET;

THENCE DEPARTING SAID RIGHT OF WAY LINE, SOUTH 00 DEGREES 52 MINUTES 41 SECONDS EAST, 65.00 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER;

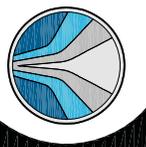
THENCE ALONG SAID SOUTH LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 572.01 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 37,181 SQUARE FEET OR 0.8536 ACRES, MORE OR LESS.





WILLIAMSFIELD ROAD ANNEXATION MULTI-FAMILY MEDIUM (MF/M) EXHIBIT EXHIBIT C-2 Town of Gilbert, Maricopa County, Arizona		Project No. 16148	Date 10/6/16
		Project Manager J. HAWS	Sht: 1 of 1



**HUBBARD**  
**ENGINEERING**  
[www.hubbardengineering.com](http://www.hubbardengineering.com)

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

**EXHIBIT D-1**  
**SHOPPING CENTER LEGAL DESCRIPTION**

THAT PORTION OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25 AND THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 36, BEING MARKED BY A BRASS CAP IN HAND HOLE, BEARS NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 2623.91 FEET;

THENCE ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 385.00 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 187.01 FEET TO THE EAST LINE OF THE WEST 572.00 FEET OF SAID SOUTHEAST QUARTER;

THENCE DEPARTING SAID NORTH LINE, AND RUNNING ALONG SAID EAST LINE, NORTH 00 DEGREES 52 MINUTES 41 SECONDS WEST, 65.00 FEET TO THE NORTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2014-070843, M.C.R.;

THENCE DEPARTING SAID EAST LINE, AND RUNNING ALONG SAID RIGHT OF WAY LINE, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 857.32 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, NORTH 00 DEGREES 52 MINUTES 41 SECONDS EAST, 5.00 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE AND ITS EASTERLY PROLONGATION, NORTH 89 DEGREES 26 MINUTES 55 SECONDS EAST, 516.19 FEET TO THE WESTERN LIMITS OF TOWN OF GILBERT ANNEXATION ORDINANCE NUMBER 2128 BEING THE BEGINNING OF A NON-TANGENT CURVE , CONCAVE EASTERLY, WHOSE RADIUS BEARS SOUTH 79 DEGREES 44 MINUTES 31 SECONDS EAST, 1029.78 FEET;

THENCE DEPARTING THE EASTERLY PROLONGATION OF SAID RIGHT OF WAY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 07 DEGREES 51 MINUTES 08 SECONDS, A DISTANCE OF 141.13 FEET TO A LINE 70.00 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER, SAID LINE BEING THE EASTERLY PROLONGATION OF THE SOUTH RIGHT OF WAY LINE OF WILLIAMSFIELD ROAD AS RECORDED IN DOCUMENT NUMBER 2012-0883096, M.C.R.;

THENCE ALONG SAID EASTERLY PROLONGATION AND SAID RIGHT OF WAY LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 269.50 FEET;

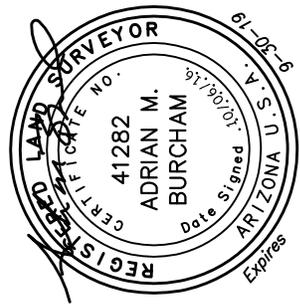
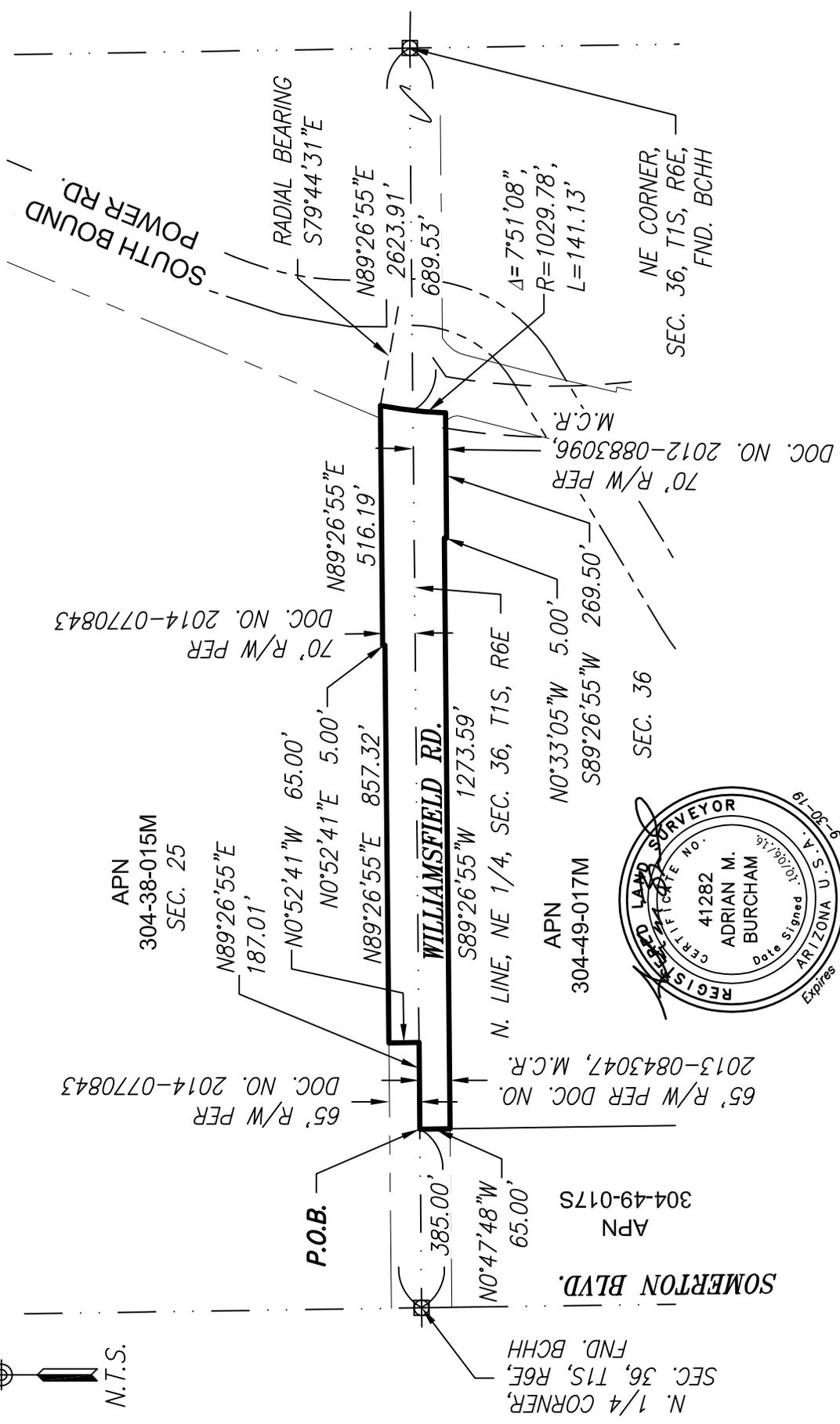
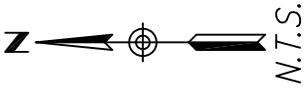
THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE NORTH 00 DEGREES 33 MINUTES 05 SECONDS WEST, 5.00 FEET;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, SOUTH 89 DEGREES 26 MINUTES 55 SECONDS WEST, 1273.59 FEET TO THE EAST LINE OF THE WEST 385.00 FEET OF SAID NORTHEAST QUARTER;

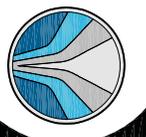
THENCE DEPARTING SAID RIGHT OF WAY LINE AND RUNNING ALONG SAID EAST LINE, NORTH 00 DEGREES 47 MINUTES 48 SECONDS WEST, 65.00 FEET TO SAID NORTH LINE OF THE NORTHEAST QUARTER AND THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 193,285 SQUARE FEET OR 4.4372 ACRES, MORE OR LESS.





WILLIAMSFIELD ROAD ANNEXATION SHOPPING CENTER (SC) EXHIBIT EXHIBIT D-2 Town of Gilbert, Maricopa County, Arizona		Project No. 16148	Date 10/6/16
		Project Manager J. HAWS	Sht: 1 of 1



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**ENGINEERING**  
[www.hubbardengineering.com](http://www.hubbardengineering.com)

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



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Eric Braun, Water Resources Manager, 503-6892

**MEETING DATE:** December 1, 2016

**SUBJECT:** Amendment No. 6 to the one year Central Arizona Project water lease among the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, Arizona, Contract #2011-4108-0063; and CIP contingency transfer of \$890,000 for WA094

**STRATEGIC INITIATIVE:** Infrastructure

Lease of a one-time volume of up to 29,341 acre feet of water for use and storage for future use.

### RECOMMENDED MOTION

A motion to

- Approve Resolution no. \_\_\_\_ allowing the Amendment No. 6 to the Central Arizona Project water lease among the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, extending the lease one additional year for the use of up to 29,341 acre feet of water; and
- Approve CIP contingency in the amount of \$890,000, for project WA094; with the Water Resource Fee as the designated funding source; and

Authorize the Mayor to execute the necessary documents.

### BACKGROUND/DISCUSSION

Council originally approved the Central Arizona Project (“CAP”) One Year water lease with the San Carlos Apache Tribe (“Tribe”) at the July 27, 2010 Council meeting, and then again approved the Lease renewal in 2011, 2012, 2013, 2014 and 2015. Amendment No. 6 to the lease provides Gilbert up to 29,341 acre feet of CAP water between the Effective Date and the end of 2017 and encompasses the 5,925 acre feet of water that Gilbert and the Tribe have agreed to a 100-Year Lease for, but which is still pending United States approval.

Amendment No. 6 increases the volume of water leased by Gilbert from the 20,000 acre feet that traditionally was available to 29,341 acre feet. Because of pending shortage on the Colorado River and Gilbert's desire to accrue long term storage credits to offset groundwater pumping, staff pursued this increased volume of water while it is available. The increased volume of water requires a corresponding increase of \$890,000 in funds for CIP WA094.

Gilbert will store the leased water with Groundwater Savings Facility partners and earn long term storage credits which will be included in Gilbert's Assured Water Supply Designation as a long term supply committed to future growth. This mechanism allows Gilbert to turn a limited, one year water supply into a long term supply.

Gilbert, the United States and the San Carlos Apache Tribe have agreed upon the terms of the agreement, including pricing, quantity and timing of the lease execution. The final draft will be substantially similar to the draft included in this communication.

The contract and resolution was reviewed for form by Attorney Bill Sullivan, special counsel.

### **FINANCIAL IMPACT**

Gilbert will pay \$20 per acre foot to the San Carlos Apache Tribe for the lease, totaling \$586,820. Gilbert will also pay delivery charges to the Central Arizona Water Conservation District of \$164 per acre foot, totaling \$4,811,924.

The increased water volume included in this lease requires a CIP contingency transfer in the amount of \$890,000 for WA094.

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

### **STAFF RECOMMENDATION**

Staff recommends approval of Resolution no. \_\_\_\_ allowing the Amendment No. 6 to the Central Arizona Project water lease among the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, extending the lease one additional year for the use of up to 29,341 acre feet of water; and

Approval of a CIP contingency transfer of \$890,000 for WA094

And authorize the Mayor to execute the necessary documents.

Respectfully submitted,

Eric Braun  
Water Resources Manager

**Approved By**

**Approval Date**

Hakon Johanson  
Marc Skocypec  
Michael Hamblin  
Laura Lorenzen  
Douglas Boyer

11/21/2016 8:38 AM  
11/21/2016 4:17 PM  
11/22/2016 2:48 PM  
11/22/2016 11:59 AM  
11/21/2016 6:14 PM

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT NO. 6 TO CENTRAL ARIZONA PROJECT WATER LEASE AMONG THE UNITED STATES OF AMERICA, THE SAN CARLOS APACHE TRIBE, AND THE TOWN OF GILBERT, EXTENDING THE LEASE ONE ADDITIONAL YEAR.

WHEREAS, The United States, The Town of Gilbert and the San Carlos Apache Tribe entered into a lease agreement for the use of the Tribe's Central Arizona Project water for 2011; and

WHEREAS, The United States, the Town of Gilbert and the San Carlos Apache Tribe have renewed the lease for 2012, 2013, 2014, 2015 and 2016; and

WHEREAS, The United States, the Town of Gilbert and the San Carlos Apache Tribe agree on the terms of a lease extension for 2017, allowing the Town of Gilbert use of up to 29,341 acre feet of the Tribe's water; and

WHEREAS, it is appropriate and proper and in the best interests of the residents and businesses of Gilbert for the Town Council to authorize execution of Amendment No.6 to the Central Arizona Project water lease among the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, extending the lease one additional year

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA:

That the Town Council hereby approves an Amendment No. 6 to the Central Arizona Project water lease among the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, extending the lease one additional year for the use of up to 29,341 acre feet of water, at a cost payable to the San Carlos Apache Tribe not to exceed \$586,820, and a cost payable to the Central Arizona Water Conservation District not to exceed \$4,811,924 and authorizes the Mayor to execute said lease on behalf of Gilbert.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF  
GILBERT, ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
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 \_\_\_\_\_, 20\_\_, and that quorum  
was present thereat and that the vote thereon was \_\_\_\_\_ ayes and \_\_\_\_\_ nays and \_\_\_\_\_ abstentions.  
\_\_\_\_\_ Council members were absent or excused.

\_\_\_\_\_  
Lisa Maxwell, Town Clerk  
Town of Gilbert

**AMENDMENT NO. 6**

**TO**

**CENTRAL ARIZONA PROJECT WATER LEASE**

**AMONG**

**THE UNITED STATES OF AMERICA,**

**THE SAN CARLOS APACHE TRIBE,**

**AND**

**THE TOWN OF GILBERT, ARIZONA**

**AMENDMENT NO. 6  
TO  
CENTRAL ARIZONA PROJECT WATER LEASE  
AMONG  
THE UNITED STATES OF AMERICA,  
THE SAN CARLOS APACHE TRIBE,  
AND  
THE TOWN OF GILBERT, ARIZONA**

1. **PREAMBLE**

This Central Arizona Project Water Lease Amendment No. 6 (“Lease Amendment No. 6”) is entered into among the United States of America, the San Carlos Apache Tribe (“Tribe”), and the Town of Gilbert, Arizona (“Gilbert”) (collectively referred to as the “Parties”).

2. **RECITALS**

2.1. WHEREAS, the Parties to this Lease Amendment No. 6 are also Parties to the San Carlos Apache Tribe Water Rights Settlement Agreement, dated March 30, 1999 (“San Carlos Apache Agreement”);

2.2. WHEREAS, pursuant to Section 3710(c) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Title XXXVII of Public Law 102-575, as amended (the “Act”), the United States confirmed the San Carlos Apache Agreement;

2.3. WHEREAS, pursuant to Section 3706(b) of the Act, the Secretary was directed to amend the CAP water delivery contract between the Tribe and the United States dated December 11, 1980 (“Tribal CAP Delivery Contract”), to authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract to various entities, including Gilbert;

2.4. WHEREAS, pursuant to Section 3706(b) of the Act, and the San Carlos Apache Agreement, the United States and the Tribe have executed Amendment No. 3 to the Tribe’s CAP Delivery Contract, which authorizes the Tribe to lease its CAP water under specified terms and

conditions;

2.5. WHEREAS, the Parties entered into a Central Arizona Project Water Lease on November 4, 2010, hereinafter referred to as “Lease” in which the Tribe leased to Gilbert the right to the delivery of not to exceed 20,000 acre-feet of the Tribe’s CAP Water;

2.6. WHEREAS, the Parties entered into an Amendment No. 1 to the Lease on June 28, 2012, in which the Parties increased the maximum annual quantity being leased in 2011 from 20,000 acre-feet to 25,925 acre-feet, and continued the Lease arrangements for a lease of 20,000 acre-feet for another year from January 1, 2012 to December 31, 2012;

2.7. WHEREAS, the Parties entered into an Amendment No. 2 to the Lease on November 16, 2012, and continued the Lease arrangements for 20,000 acre-feet for another year from January 1, 2013 to December 31, 2013;

2.8. WHEREAS, the Parties entered into an Amendment No. 3 to the Lease on December 26, 2013, and continued the Lease arrangements for 20,000 acre-feet for another year from January 1, 2014 to December 31, 2014;

2.9. WHEREAS, the Parties entered into an Amendment No. 4 to the Lease on December 29, 2014, and continued the Lease arrangements for 20,000 acre-feet for another year from January 1, 2015 to December 31, 2015;

2.10. WHEREAS, the Parties entered into an Amendment No. 5 to the Lease on March 23, 2016, and continued the Lease arrangements for 20,000 acre-feet for another year from January 1, 2016 to December 31, 2016;

2.11. WHEREAS, the Parties desire to continue the Lease arrangements but increase the amount to 29,341 acre-feet (which is the total amount the Bureau of Reclamation calculates to be available to the Tribe after consideration of leases previously entered into) to be leased for the year

beginning January 1, 2017 and ending December 31, 2017;

2.12. WHEREAS, the City of Scottsdale, by letter dated \_\_\_\_\_, 2016, provided notice that it does not wish to exercise its right of first refusal for the year 2017 only;

2.13. WHEREAS, the City of Globe, by letter dated \_\_\_\_\_, 2016, provided notice that it does not intend to exercise its right of first refusal to the leasing of San Carlos Apache Tribe's CAP water for the 2017 calendar year;

2.14. WHEREAS, the Parties acknowledge that the covenants and benefits under this Lease Amendment No. 6 represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

**NOW, THEREFORE, the Parties agree as follows:**

3. **AMENDMENT NO. 5** Amendment No. 5 is hereby superseded and replaced in its entirety by this Lease Amendment No. 6.

4. **AMENDED PROVISIONS OF LEASE**

4.1. Article 3.10 defining "**Lease Water**" is hereby superseded and replaced in its entirety with the following:

"3.10 "**Lease Water**" under this Lease shall mean not to exceed 25,925 acre-feet in 2011, 20,000 acre-feet in 2012, 20,000 acre-feet in 2013, 20,000 acre-feet in 2014, 20,000 acre-feet in 2015, 20,000 acre-feet in 2016, and 29,341 acre-feet in 2017 of the Tribe's CAP Water subject to the Tribe's CAP Delivery Contract."

4.2. Article 4.2 **Subject of Lease** is hereby amended by:

4.2.1. Deleting "20,000 acre-feet" and replacing that amount with "25,925 acre-feet in 2011, 20,000 acre-feet in 2012, 20,000 acre-feet in 2013, 20,000 acre-feet in 2014, 20,000 acre-feet in 2015, 20,000 acre-feet in 2016 and 29,341 acre-feet in 2017"; and

4.2.2 Deleting “in calendar year 2010 if possible, but no later than the term of the Lease” and replacing same with “by December 31, 2017”.

4.3. Article 4.3 **Term of Lease** is hereby amended by deleting “one year after the Effective Date. Nothing in this Lease shall be construed as extending the term of this Lease beyond 12 consecutive months after the Effective Date” and replacing same with “December 31, 2017”.

4.4. Article 4.10 **Consideration for Lease** is hereby deleted in its entirety and replaced with the following:

“4.10 **Consideration for Lease.** Gilbert shall pay directly to the Tribe the sum of Nineteen Dollars (\$19.00) per acre-foot for CAP Water delivered pursuant to this Lease, up to 25,925 acre-feet in 2011, 20,000 acre-feet in 2012, 20,000 acre-feet in 2013, 20,000 acre-feet in 2014, 20,000 acre-feet in 2015, and 20,000 acre-feet in 2016. The amount of \$380,000.00 was paid to the Tribe by Gilbert for 20,000 acre-feet of CAP Water for the lease year 2011. The amount of \$492,575.00 was paid to the Tribe by Gilbert and that \$492,575.00 payment was comprised of the following components: (1) \$112,575.00 for an additional 5,925 acre-feet of CAP Water which had been delivered for the lease year 2011; and (2) \$380,000.00 for 20,000 acre-feet of CAP Water for the lease year 2012. The amount of \$380,000.00 was paid to the Tribe by Gilbert for 20,000 acre-feet of CAP Water for the lease year 2013. The amount of \$380,000.00 was paid to the Tribe by Gilbert for 20,000 acre-feet of CAP Water for the lease year 2014. The amount of \$380,000.00 was paid to the Tribe by Gilbert for 20,000 acre-feet of CAP Water for the lease year 2015. The amount of \$380,000.00 was paid to the Tribe by Gilbert for 20,000 acre-feet of CAP Water for the lease year 2016. Gilbert shall pay directly to the Tribe the sum of twenty Dollars (\$20.00) per acre-foot for all CAP Water delivered pursuant to this Lease, up to 29,341 acre-feet in 2017. The amount of \$586,820.00 for 29,341 acre-feet of CAP Water for the lease year 2017 shall be paid to

the Tribe within 30 days of execution of this Lease Amendment No. 6, representing the amount of Tribal CAP Water available to be leased for 2017 after taking into account previously executed Tribal leases. The amount timely paid to the Tribe by Gilbert for CAP Water not delivered during the applicable lease year for any reason unrelated to Gilbert's performance obligations or default under the terms of this Lease shall be subject to adjustment and refund as soon as reasonably practicable after the end of the applicable lease year using the unit price set forth in this Subsection 4.10, without additional credit for interest or earnings on the pre-paid amount.”

5. **OTHER PROVISIONS OF LEASE UNAFFECTED** Except as specifically amended by this Lease Amendment No. 6, the Lease dated November 4, 2010, among the Parties, remains unchanged and in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Lease Amendment No. 6 on the dates shown below.

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**THE UNITED STATES OF AMERICA**

**BUREAU OF RECLAMATION**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

*Signatures continued on the next page.*

**SAN CARLOS APACHE TRIBE**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Joe P. Sparks, Esq.  
Its: Special Counsel

*Signatures continued on the next page.*

**TOWN OF GILBERT**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

# **DUPLICATE ORIGINAL**

**CENTRAL ARIZONA PROJECT WATER LEASE**

**AMONG**

**THE UNITED STATES OF AMERICA,**

**THE SAN CARLOS APACHE TRIBE,**

**AND**

**THE TOWN OF GILBERT, ARIZONA**

**CENTRAL ARIZONA PROJECT WATER LEASE  
 AMONG  
 THE UNITED STATES OF AMERICA,  
 THE SAN CARLOS APACHE TRIBE,  
 AND  
 THE TOWN OF GILBERT, ARIZONA**

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**CENTRAL ARIZONA PROJECT WATER LEASE  
AMONG  
THE UNITED STATES OF AMERICA,  
THE SAN CARLOS APACHE TRIBE,  
AND  
THE TOWN OF GILBERT, ARIZONA**

1. **PREAMBLE** This Central Arizona Project Water Lease (“Lease”) is entered into between the United States of America, the San Carlos Apache Tribe, and the Town of Gilbert, Arizona (collectively referred to as the “Parties”).

2. **RECITALS**

2.1 The Parties to this Lease are also parties to the San Carlos Apache Tribe Water Rights Settlement Agreement, dated March 30, 1999 (“San Carlos Apache Agreement”).

2.2 Pursuant to Section 3710(c) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Title XXXVII of Public Law 102-575, as amended (the “Act”), the United States confirmed the San Carlos Apache Agreement.

2.3 Pursuant to Section 3706(b) of the Act, the Secretary was directed to amend the CAP water delivery contract between the Tribe and the United States dated December 11, 1980 (“Tribal CAP Delivery Contract”), to authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract to various entities, including the Town of Gilbert.

2.4 Pursuant to Section 3706(b) of the Act, and the San Carlos Apache Agreement, the United States and the Tribe have executed Amendment No. 3 to the Tribe’s CAP Delivery Contract, which authorizes the Tribe to enter into this Lease.

2.5 The Parties acknowledge that the covenants and benefits under this Lease represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

**NOW, THEREFORE, the Parties agree as follows:**

3. **DEFINITIONS**

3.1 Any capitalized terms which are not defined in this Section 3 or elsewhere in this Lease shall have the meanings ascribed to them in the Tribe's CAP Delivery Contract, the CAP Master Repayment Contract or both.

3.2 "CAP" shall mean the Central Arizona Project, a reclamation project authorized under Title 3 of the Colorado River Basin Act of 1968 (43 U.S.C. § 1521 *et seq*).

3.3 "CAP Master Repayment Contract" shall mean the contract between the United States and the Central Arizona Water Conservation District for delivery of water and repayment of costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

3.4 "CAP Water" shall mean Project Water of the Central Arizona Project.

3.5 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the contractor under the CAP Master Repayment Contract.

3.6 "Effective Date" shall mean that date after the expiration or waiver of the right of first refusal contained in Subsection 4.8 or the date on which this Lease is signed by the Secretary of the Interior or his authorized delegates, whichever is later.

3.7 **Intentionally Left Blank.**

3.8 “**Gilbert**” shall mean the Town of Gilbert, an Arizona municipality, its successors and assigns.

3.9 “**Lease**” shall mean this Central Arizona Project Water Lease.

3.10 “**Lease Water**” under this Lease shall mean not to exceed 20,000 acre-feet of the Tribe’s CAP Water subject to the Tribe’s CAP Delivery Contract.

3.11 “**Main System**” shall mean those principal works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tucson Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and right-of-way for such works and appurtenances.

3.12 “**OM&R**” shall mean the care, operation, maintenance and replacement of the Main System, or any part thereof.

3.13 “**Operating Agency**” shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer. Currently this entity is the CAWCD.

3.14 “**Reservation**” shall mean the San Carlos Apache Reservation authorized by the Treaty with the Apache Nation, dated July 1, 1852 (10 Stat. 979), established by the Executive Orders of November 9, 1871, and December 14, 1872 and recognized by Congress in, *inter alia*, Pub. L. No. 102-575 § 3703(6), 106 Stat. 4742 (1992).

3.15 “**Secretary**” shall mean the Secretary of the Interior or the Secretary’s lawful delegates.

3.16 “**Tribe**” shall mean the San Carlos Apache Tribe, a Tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476), and duly recognized by the Secretary.

3.17 “**Tribe’s CAP Delivery Contract**” shall mean the Central Arizona Project Indian Water Delivery Contract between the Tribe and the United States dated December 11, 1980, as amended by Amendment No. 3 to that contract, and as may be amended from time to time.

3.18 “**Tribe’s CAP Water**” shall mean the CAP Water to which the Tribe is entitled pursuant to the Tribe’s CAP Delivery Contract.

3.19 “**United States**” shall mean the United States of America in its capacity as trustee for the Tribe and of the Reservation and in all other capacities necessary to effectuate the terms of this Lease.

3.20 “**Water Supply System**” shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

#### 4. **LEASE OF CENTRAL ARIZONA PROJECT WATER**

4.1 **Tribe’s CAP Delivery Contract.** This Lease is subject to the provisions of the Tribe’s CAP Delivery Contract, which is defined in Subsection 3.17 of this Lease, and which is incorporated into and made a part of this Lease. In the event the Tribe’s CAP Delivery Contract and this Lease are construed to be inconsistent, the terms of the Tribe’s CAP Delivery Contract shall govern unless the Parties otherwise agree in writing at such time.

4.2 **Subject of Lease.** The Tribe leases to Gilbert the right to the delivery of not to

exceed 20,000 acre-feet of the Tribe's CAP Water, subject to the terms and conditions of the Tribe's CAP Delivery Contract and this Lease, with delivery beginning as soon as practicable following the Effective Date and concluding in calendar year 2010 if possible, but no later than the term of the Lease. The quantity of water leased to Gilbert shall be reduced by any quantity leased by the City of Globe in accordance with Subsection 4.9 of this Lease.

4.3 **Term of Lease.** The term of this Lease ("Lease Term") shall begin on the Effective Date of this Lease, and shall end one year after the Effective Date. Nothing in this Lease shall be construed as extending the term of this Lease beyond 12 consecutive months after the Effective Date.

4.4 **Intentionally Left Blank.**

4.5 **Intentionally Left Blank.**

4.6 **Lease of Water Only.** This Lease shall never be construed to be a sale or assignment of the Tribe's right or interest in the Lease Water. The allocation of the Lease Water to the Tribe shall always be deemed to be the property of the Tribe, to which Gilbert has acquired only a leasehold interest for the Lease Term, but not thereafter. Gilbert shall never assert a permanent or perpetual right to the Lease Water, whether during the Lease Term or thereafter. The Tribe reserves to itself all rights to use the Lease Water in its total discretion upon expiration or termination of this Lease.

4.7 **Intentionally Left Blank**

4.8 **Subject to the Right of First Refusal by the City of Scottsdale.** Gilbert acknowledges that pursuant to Subsection 4.7 of the Central Arizona Project Water Lease among

the United States of America, the Tribe, and the City of Scottsdale, dated December 17, 1999, prior to entering into a final lease of CAP Water to a municipality for use in Maricopa, Pinal or Pima Counties, during a twenty (20) year period beginning December 17, 1999, the Tribe must first offer said CAP Water to the City of Scottsdale in writing on the same terms and conditions as offered to or by Gilbert, and the City of Scottsdale shall have ninety (90) days from receipt to accept such offer, or such additional time as the Parties may agree to in writing.

4.9 **Subject to the Right of First Refusal by the City of Globe.** Gilbert acknowledges that pursuant to Paragraph 7.0(f) of Amendment No. 3 to the San Carlos Apache Water Settlement Agreement dated March 30, 1999, prior to entering into a final lease of CAP Water to a municipality for use in Maricopa, Pinal or Pima Counties, during a twenty (20) year period beginning December 16, 1999, the Tribe must first offer 980 acre-feet of said water to the City of Globe in writing on the same terms and conditions as offered to or by Gilbert. Globe shall have ninety (90) days from receipt in which to accept any such offer, or such additional time as the Parties may agree to in writing.

4.10 **Consideration for Lease.** In consideration for the Lease Water which is the subject of this Lease, Gilbert shall pay to the Tribe the sum of Nineteen Dollars (\$19.00) per acre-foot for all CAP Water delivered pursuant to this Lease, up to 20,000 acre feet. The amount of \$380,000.00 shall be paid to the Tribe on or before the Effective Date. **Provided, however,** should the City of Globe exercise its right of first refusal for 980 acre-feet, Gilbert shall pay the sum of \$19.00 per acre-foot for CAP Water delivered out of the remaining 19,020 acre-feet, in which event \$361,380 shall be paid to the Tribe on or before the Effective Date. The amount

paid on or before the Effective Date for CAP Water not delivered during the Lease Term for any reason unrelated to Gilbert's performance obligations or default under the terms of this Lease shall be subject to adjustment and refund as soon as reasonably practicable after the end of the Lease Term using the unit price set forth in this Subsection 4.10, without additional credit for interest or earnings on the pre-paid amount.

4.11 **Application of Settlement Agreement.** Pursuant to Paragraph 3 of Amendment 1, dated December 16, 1999 (Amendment 1), to the San Carlos Apache Water Rights Settlement Agreement dated March 30, 1999, Subsections 4.15 through 4.28, 6.1, 7.15 and 7.16 are included in this Lease.

4.12 **Operation, Maintenance and Replacement Costs.**

(a) **OM&R.** Gilbert shall pay OM&R costs for the delivery of the Lease Water to the Operating Agency as mandated by Section 3706(e) of the Act and upon the same terms and conditions as are mandated by Article 5.1 of Gilbert's CAP Municipal and Industrial Water Service Subcontract No. 07-XX-30-W0497, except Gilbert's obligation to pay OM&R costs shall not begin earlier than the date that Gilbert is entitled to receive water under this Lease, but in no event unless and until the Lease Water is scheduled for delivery by Gilbert. Gilbert shall not be obligated to schedule any amount of Lease Water for delivery in any Year, and Gilbert shall not be responsible for any OM&R costs for Lease Water not scheduled for delivery by Gilbert.

(b) **No Capital Charges.** Pursuant to Section 3706(e)(2) of the Act, Gilbert shall not be obligated to pay water service capital charges or municipal and industrial subcontract

charges or any other charges or payment for such Lease Water, other than the OM&R costs and lease payments under this Lease.

(c) **The Tribe.** The Tribe shall not be obligated to pay, or cause to be paid, OM&R costs to the United States or to the Operating Agency, for any Lease Water which is scheduled for delivery, but is not delivered to Gilbert.

4.13 **Other Charges or Payments.** Neither the Tribe nor Gilbert shall be obligated to pay OM&R costs, water service charges, water service capital charges, municipal and industrial subcontract charges or any other costs, charges or payments for the Lease Water other than as provided in Subsections 4.10 and 4.12(a) of this Lease.

4.14 **Permissible Uses of Lease Water.** Except as provided in this Lease, Gilbert shall have the right to use the Lease Water for any purpose in conformance with Federal law applicable to the CAP, consistent with Arizona law. Permissible uses include, but are not limited to municipal, groundwater recharge, as that term is defined in the CAP Master Repayment Contract, underground storage facilities and groundwater savings facilities, as these terms are defined in Arizona Revised Statutes § 45-802.01, as that section may be amended from time to time, and recovery projects. Provided, however, Gilbert shall not sell, sublease, transfer, or otherwise dispose of or permit the use of any Lease Water for golf courses or mining purposes, directly or indirectly by exchange, substitution or otherwise.

4.15 **Conditions Relating to Delivery and Use.** Delivery and use of water under this Lease are conditioned on the following, and Gilbert agrees that:

(a) All uses of Lease Water and Return Flow of Lease Water shall be

consistent with Arizona water law unless such law is contrary to the Federal law applicable to the CAP;

(b) The system or systems through which Lease Water is conveyed after delivery to Gilbert shall consist of pipelines, canals, distribution systems or other conduits provided and maintained with linings adequate in the Secretary's judgment to prevent excessive conveyance losses;

(c) Gilbert shall not sell, sublease, transfer or otherwise dispose of or permit the sale, sublease, transfer or other disposition of any Lease Water for use outside of its service area; Provided, however, that this does not prohibit exchange of Lease Water covered by separate agreements which have been approved in writing by the Tribe, which approval shall not be unreasonably withheld;

(d) Lease Water scheduled for delivery in any Year under this Lease may be used by Gilbert or exchanged by Gilbert pursuant to appropriate agreements approved in writing by the Secretary and the Tribe, which approval shall not be unreasonably withheld;

4.16 **Procedure for Ordering Water.**

(a) On or before the date of execution of this Lease, or as soon thereafter as is practicable, the Tribe will notify Gilbert of the amount of Lease Water available for delivery under this Lease. Gilbert shall, within a reasonable period of time as determined by the Tribe, submit a written schedule to the Tribe, the Secretary and the Operating Agency showing the quantity of water desired by Gilbert during each month of this Lease. The Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency, shall notify the

Tribe and Gilbert by written notice of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's, action on the requested schedule as soon as practicable following receipt of Gilbert's request.

(b) The amounts, times, and rates of delivery of Lease Water to Gilbert during each Year subsequent to the initial Year of water delivery shall be in accordance with a water delivery schedule for that Year. Scheduling provisions 2(b)(i) through (iv) of Exhibit 11.3 of Amendment 1 are intentionally omitted as inapplicable.

(c) The monthly water delivery schedules may be amended upon Gilbert's written request to the Secretary, the Tribe, and the Operating Agency. Proposed amendments shall be submitted by Gilbert to the Tribe, Secretary and Operating Agency promptly upon Gilbert's determination that an amendment is needed but no later than 15 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. The Secretary or, if such authority has been delegated to the Operating Agency, the Operating Agency, shall notify Gilbert and the Tribe of the action on Gilbert's requested schedule modification within 10 days of the Secretary's or, if such authority has been delegated to the Operating Agency, the Operating Agency's receipt of such request.

(d) In no event shall the Secretary, the Operating Agency, or the Tribe be required to deliver to Gilbert from the Water Supply System in any one month a total amount of Lease Water greater than 11 percent (11%) of Gilbert's maximum annual entitlement; Provided, however, that the Secretary may deliver a greater percentage in any month only if such increased delivery will not interfere with the Tribe's ability to receive the amount of Project Water

scheduled for delivery by the Tribe under its CAP contract and is compatible with the overall delivery of Project Water to other CAP contractors and subcontractors as determined by the Secretary and the Operating Agency and if Gilbert agrees to accept such increased deliveries.

4.17 **Point(s) of Delivery - Measurement and Responsibility for Distribution of Water**

(a) Unless otherwise requested by Gilbert in writing, the Lease Water to be furnished to Gilbert pursuant to this Lease shall be delivered at Gilbert's CAP turnout, or at the groundwater storage facility designated by Gilbert.

(b) Unless the United States and Gilbert agree by contract to the contrary, Gilbert shall construct and install, at its sole cost and expense, any new connection facilities required to take and convey the Lease Water from the turnouts. Gilbert shall furnish, for review by the Operating Agency and approval of the Secretary, drawings showing the construction to be performed by Gilbert within the Water Supply System right-of-way six (6) months before starting said construction. The facilities may be installed, operated, and maintained on the Water Supply System right-of-way subject to such reasonable restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by the Secretary.

(c) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by the United States or the Operating Agency. Upon the request of Gilbert, the Tribe or the Operating Agency, the accuracy of such measurements shall be investigated by the Secretary, the Operating Agency, the Tribe, and Gilbert, and any error which may be mutually determined to have

occurred therein shall be adjusted; Provided, that in the event the parties cannot agree on the required adjustment, the Secretary's determination shall be conclusive.

(d) Neither the United States, the Tribe, nor the Operating Agency shall be responsible for the control, carriage, handling, use, disposal, or distribution of Lease Water beyond the delivery point(s) agreed to pursuant to Subsection 4.17 of this Lease. Gilbert shall hold the United States, the Tribe, and the Operating Agency harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with Gilbert's control, carriage, handling, use, disposal, or distribution of such water beyond said delivery point(s).

4.18 **Temporary Reductions.** In addition to the right of the United States under Subarticle 4.3(a)(4) of the Tribe's CAP Delivery Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may temporarily discontinue or reduce the quantity of water to be furnished to Gilbert as herein provided for the purpose of investigation, inspection, maintenance, repair or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to Gilbert, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction with the Tribe and Gilbert, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, and employees, nor the Tribe, its officers, agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries

to Gilbert of less water than what has been paid for in advance, Gilbert shall be entitled to be reimbursed for the appropriate proportion of such advance OM&R payments prior to the date of Gilbert's next payment of water service charges or Gilbert may be given credit toward the next payment of water charges if Gilbert should so desire. In the event the Operating Agency does not provide the reimbursement or credit in accordance with this Subsection 4.18, the Secretary, acting through the Bureau of Reclamation, shall direct the Operating Agency to comply with this Subsection.

4.19 **Priority in Case of Shortage.** In the event of a shortage of Project Water, the water provided to Gilbert under this Lease will have the same priority as that water had when it was allocated or reallocated to the Tribe as provided in Section 3706(b)(1) of the Act and the Tribe's CAP Delivery Contract.

4.20 **Water and Air Pollution Control.** Gilbert, in carrying out this Lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

4.21 **Quality of Water.** The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Tribe, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Gilbert waives its right to make a claim against the United States, the Operating

Agency, the Tribe or any CAP contractor or subcontractor, or another lessee because of changes in water quality caused by the commingling of Lease Water with other water.

4.22 **Water Conservation Program.** There is a strong Tribal and Federal interest in developing an effective water conservation program because of this Lease. Therefore, use of the Lease Water shall be consistent with Article 6.4 of Gilbert's CAP Municipal and Industrial Subcontract which is incorporated into and made a part of this Lease.

4.23 **Officials Not to Benefit.**

(a) No Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Tribe, Gilbert or the Operating Agency shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Tribe, Gilbert, the United States or the Operating Agency shall receive any benefit that may arise by reason of this Lease other than as a water user within the Project and in the same manner as other water users within the Project.

4.24 **Books, Records and Reports.** Gilbert shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary and the Tribe may reasonably require. Reports thereon shall be furnished to the Secretary and the Tribe in such form and on such date or dates as the Secretary may require. Subject to applicable Tribal and Federal laws and regulations, each Party shall have the right during office hours and upon ten

(10) days written notice to examine and make copies of each others' books and records relating to matters covered by this Lease.

4.25 **Equal Opportunity**. During the performance of this Lease, Gilbert agrees as follows:

(a) Gilbert shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Gilbert shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Gilbert agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Gilbert shall, in all solicitations or advertisement for employees placed by or on behalf of Gilbert, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex or national origin.

(c) Gilbert shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising said labor union or workers' representative of Gilbert's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Gilbert shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Gilbert shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Gilbert's noncompliance with the nondiscrimination clauses of this Lease or with any of the such rules, regulations or orders, this Lease may be canceled, terminated, or suspended, in whole or in part, and Gilbert may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Gilbert shall include the provisions of Subsections 4.25(a) through (g), above, in every lease or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding upon each lessee or vendor. Gilbert shall take such action with respect to any lease or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the

event Gilbert becomes involved in, or is threatened with, litigation with a lessee or vendor as a result of such direction, Gilbert may request the United States to enter into such litigation to protect the interest of the United States.

4.26 **Title VI, Civil Rights Act of 1964.**

(a) Gilbert agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of Interior Regulation (43 C.F.R. § 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Gilbert receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to Gilbert by the United States, this assurance obligates Gilbert, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates Gilbert for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal

financing assistance extended after the date hereof to Gilbert by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. Gilbert recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on Gilbert, its successors, transferees, and assignees.

4.27 **Contingent on Appropriation or Allotment of Funds.** The expenditure or advance of any money or the performance of any work by the United States or the Tribe under this Lease which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve Gilbert from any obligation under this Lease. No liability shall accrue to the United States or the Tribe in case such funds are not appropriated or allotted.

4.28 **The Tribe's Covenants.** The Tribe agrees:

(a) To observe and perform all obligations imposed on the Tribe under the Tribe's CAP Delivery Contract which are not assumed by Gilbert so that Gilbert's rights are not in any way impaired;

(b) Not to execute any other lease or obligate by contract any of the Tribe's right to the delivery of its CAP Water under the Tribe's CAP Delivery Contract in a manner which would impair Gilbert's rights under this Lease;

(c) Not to alter or modify the terms of the Tribe's CAP Delivery Contract,

except as provided herein, in such a way as to impair Gilbert's rights to receive delivery of the Lease Water under the terms of this Lease, or to exercise any option required or permitted by the Tribe's CAP Delivery Contract so as to interfere with or change Gilbert's rights to receive delivery of the Lease Water under this Lease;

(d) Not to terminate or cancel the Tribe's CAP Delivery Contract, or transfer, convey or permit a transfer or conveyance of the Tribe's CAP Delivery Contract so as to cause a termination of, or interference with, its rights and obligations under the Tribe's CAP Delivery Contract; and

(e) To deliver to Gilbert a copy of any amendment or renewal to the Tribe's CAP Delivery Contract within thirty (30) days of the date of the amendment or renewal.

4.29 **Gilbert's Covenants.** Gilbert agrees not to sublease, exchange, transfer or otherwise dispose of any of Gilbert's right to the delivery of Lease Water under this Lease in violation of this Lease or in a manner which would impair the Tribe's rights hereunder.

4.30 **CAWCD Repayment.** Pursuant to Section 3706(f) of the Act, for the purpose of determining allocation and repayment of costs of the CAP as provided in Section 9.3 of the CAP Master Repayment Contract, the costs associated with the delivery of water pursuant to this Lease shall be non-reimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4.31 **Taxation.** The water subject to this Lease is allocated to the Tribe in partial satisfaction of the Federal reserved water rights of the Tribe. The water is a trust asset held in trust by the United States for the Tribe. In entering into this Lease, the Tribe and Gilbert have

assumed and relied upon the fact that the water to which the Tribe is entitled under the Tribe's CAP Delivery Contract is a Federal trust resource which would not be subject to taxation. Although it is the understanding and intent of the Tribe and Gilbert that such water is not subject to taxation in the first instance, to the extent that any such taxation right or power may exist, the Tribe and Gilbert, on a government to government basis, each agree to refrain from imposing any tax on this Lease or the Lease Water, or any tax measured by the value of such water to be delivered under this Lease or the transportation of Lease Water under this Lease.

5. **WAIVER OF SOVEREIGN IMMUNITY** Without enlarging or restricting the scope of the waiver of sovereign immunity set forth in Section 3710(a) of the Act, the Tribe waives its sovereign immunity from suit and Gilbert waives any right it may have to claim that it may not be sued under the Eleventh Amendment of the United States Constitution, in the United States District Court for the District of Arizona on any claim or claims which Gilbert and the Tribe may have as against each other, which relate to the interpretation or enforcement of this Lease, and any such claim or claims shall be brought exclusively in such District Court to the extent the Court otherwise has jurisdiction.

6. **DEFAULT AND REMEDIES**

6.1 **Loss of Entitlement.** Gilbert shall have no right to delivery of water from Project facilities during any period in which Gilbert may be in arrears in the payment of any charges due the Tribe. Failure to pay any lease payment, OM&R charge or other appropriate charge related to this Lease shall constitute a default under this Lease. Failure to cure such default within the periods set forth in this Lease may constitute a material breach which may subject Gilbert to all

remedies available to the Tribe, including termination of this Lease. During any period of default during which deliveries to Gilbert have been terminated due to such default, the Tribe may use the water within its Reservation or lease to another entity any water determined to be available under Gilbert's Lease for which payment is in arrears. Prior to the time any termination for default is deemed final, Gilbert may regain the right to use any unused or unleased portion of the water determined to be available under this Lease upon payment of all delinquent charges plus any difference between the obligation under the Lease and the price received in the lease of the water by the Tribe and payment of charges for the current period. The Tribe and Gilbert agree that notwithstanding the above provision, during the cure period provided under Subsection 6.2, the Tribe shall not lease the Leased Water to third parties and the Tribe may, subject to Gilbert's right to cure, use the water within its Reservation or on land leased by or owned by the Tribe in accordance with the Tribe's CAP Delivery Contract.

6.2 **Curing for Gilbert's Nonpayment.** If the payment of consideration under Subsection 4.10 of this Lease is not made on or before the date such payment is due, or any other payment is not made on or before the date such payment is due, Gilbert shall be in default and the Tribe shall give written notice of default to Gilbert. The notice of default shall specifically describe the default and state the amount due by Gilbert ("Default Amount"). After notice of default, the rights of Gilbert and the Tribe shall be as follows:

(a) For sixty (60) days following the notice of default, Gilbert shall have the right to cure any such default by tendering the Default Amount to the appropriate entity together with charges for late payments as prescribed in this Lease. A cure effected pursuant to this

Subsection 6.2(a) shall constitute full performance of such payment obligation.

(b) A failure by Gilbert to cure as provided for in Subsection 6.2(a) hereof, after notice of default, shall constitute a material breach under this Lease and shall constitute grounds for termination of this Lease. The Tribe shall give Gilbert at least ten (10) days written notice prior to termination of this Lease for material breach. Upon the termination of this Lease by the Tribe pursuant to this Section 6, Gilbert shall be indebted to the Tribe in the amount of Three Hundred Eighty Thousand Dollars (\$380,000.00) as adjusted pursuant to Subsection 4.10, less principal payments made before the default, together with interest, costs and reasonable attorneys' fees as provided by law, and the Tribe shall be entitled to judgment for such an amount. Payment of the amount provided in this Subsection 6.2(b) prior to the effective termination of this Lease by the Tribe pursuant to this Section 6 shall constitute full performance of Gilbert's obligations under Subsection 4.10 of this Lease and the notice of termination shall have no force or effect; Provided, however, Gilbert shall not be delivered Lease Water until Gilbert is current on all OM&R charges and other appropriate charges due under this Lease.

(c) Notwithstanding the foregoing provisions of this Section 6, upon effective termination of this Lease by the Tribe for any reason, the Tribe shall have the affirmative obligation to use its best efforts to contract with a third party or parties for a lease or leases, transfer or transfers, or other disposition of the Lease Water which is the subject of this Lease for valuable consideration. All consideration received from said lease(s) or transfer(s) shall first be applied to the costs and attorneys fees, if any, incurred by the Tribe in reducing its claim against Gilbert to judgment; then to reduce the accrued interest and principal owed by Gilbert under this

Lease. The Tribe shall be entitled to any excess proceeds, as well as to all rights to the delivery of the Lease Water which is the subject of this Lease.

6.3 **Termination**. In addition to any other remedy provided herein, or otherwise provided at law or in equity, either Gilbert or the Tribe may terminate this Lease for material breach upon written notice of default of a material provision and failure to cure the default within the periods provided herein; provided, however, if no period is specified, the time for curing such default shall be as soon as reasonably possible, but not longer than thirty (30) days.

## 7. **GENERAL PROVISIONS**

7.1 **Invalidity of Agreement**. If Gilbert's right to the delivery and use of the Lease Water under this Lease is determined to be invalid by a final judgment of a Federal court entered over the objection of Gilbert, and Gilbert declines to appeal such judgment, then the Tribe shall refund to Gilbert within ninety (90) days of said judgment that portion of the payment of consideration for the number of acre-feet remaining to be delivered pursuant to this Lease at the time of such determination, together with interest thereon at the rate of four percent (4%) per annum from the date of the Judgment to date of reimbursement to Gilbert.

7.2 **Attorneys' Fees**. The prevailing party in any lawsuit, appeal or other proceeding brought to enforce or to otherwise implement the terms and conditions of this Lease shall be entitled to an award of reasonable attorneys' fees and costs; Provided, however, this provision shall not apply to the United States.

7.3 **Delegation of Responsibility**. The Tribe agrees that the Secretary may delegate operational responsibilities to the Operating Agency. The Tribe does not consent to the delegation to the Operating Agency of any Trust responsibility of the United States to the Tribe.

7.4 **Approval, Consent and Ratification.** The Tribe, Gilbert and the Secretary, by execution of this Lease, approve, endorse, consent to and ratify this Lease.

7.5 **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

7.6 **Notice.** Any notice, demand, or request authorized or required to be given or payment to be made under this Lease shall be deemed properly given or made when received by the individual(s) designated below, or five (5) days following deposit in the United States mail, postage prepaid, addressed as follows:

(a) As to the United States:

The Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington D.C. 20240

Regional Director  
Western Regional Office  
Bureau of Indian Affairs  
2600 N. Central Avenue, 4<sup>th</sup> floor  
Phoenix, Arizona 85004

Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

Superintendent  
San Carlos Apache Agency  
1 San Carlos Avenue  
San Carlos, Arizona 85550

(b) As to the Tribe:

Office of the Tribal Chairman  
San Carlos Apache Tribe  
P.O. Box 0  
San Carlos, Arizona 85550

Office of the General Manager  
San Carlos Apache Tribe  
P.O. Box 0  
San Carlos, Arizona 85550

(c) As to Gilbert:

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

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

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Subsection for other notices.

7.7 **Governing Law.** This Lease shall be governed in accordance with applicable Federal law. To the extent that Federal law provides no controlling precedent, the Court shall apply Arizona law as its choice of law.

7.8 **Waiver.** No waiver of any breach of any of the terms or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease.

7.9 **Severability.** If any term or provision of this Lease is held to be unenforceable or invalid by a court of competent jurisdiction, that term or provision shall be severable from the

remainder of this Lease and shall not affect or render invalid any other term or provision of this Lease.

7.10 **Construction and Effect.** This Lease and each of its provisions are to be construed fairly and reasonably and not strictly for or against any party hereto. The Section titles used in this Lease are for convenience only and shall not be considered in the construction of this Lease.

7.11 **Assignment Limited - Successors and Assigns Obligated.** Each of the terms and conditions of this Lease shall apply to and bind the Parties and their successors and assigns, but no assignment or transfer of this Lease or any interest therein by any party shall be valid until approved in writing by all other signatories to this Lease.

7.12 **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Lease.

7.13 **Good Faith Negotiations.** This Lease has been negotiated in good faith and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease may be used as either evidence or argument by any party to this Lease in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease.

7.14 **Further Instrument and Acts.** Each Party will, whenever and as often as it shall be requested to do so by either or both of the others, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Lease.

7.15 **Refusal to Accept Delivery.** In the event Gilbert fails or refuses to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this Lease, or in the event Gilbert fails to submit a schedule for delivery as provided in this Lease, said failure or refusal shall not relieve Gilbert of its obligation to make the payments required in this Lease.

7.16 **Charge for Late Payments.** Gilbert shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment. Notwithstanding the foregoing, the late payment charge Gilbert shall pay on any payment under Subsection 4.10 received by the Tribe after the due date is an amount accrued from the due date at the annual rate of one percent (1%) over the Prime Rate in effect on the due date but in no event less than nine percent (9%) per annum. For purposes of this Lease, the term "Prime Rate" shall mean the per annum interest rate designated by Wells Fargo Bank, or its successor, as its "prime rate," "base rate," or "reference rate" for commercial loans as publicly announced from time to time.

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates shown below.

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

By:  \_\_\_\_\_

Its: REGIONAL DIRECTOR

Date: October 1, 2010

THE UNITED STATES OF AMERICA

BUREAU OF RECLAMATION

By *Loni Gray-Lee*

Its: Regional Director

Date: November 4, 2010

APPROVED AS TO  
LEGAL SUFFICIENCY:

*Katherine Ott Verburg*  
Katherine Ott Verburg  
Field Solicitor

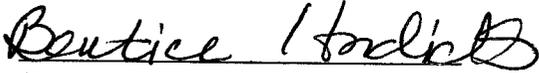
SAN CARLOS APACHE TRIBE

By 

Its: Chairman

Date: 10/7/10

ATTEST:



Secretary

APPROVED AS TO FORM:



Joe P. Sparks, Esq.

Its: Special Counsel

**TOWN OF GILBERT**

By 

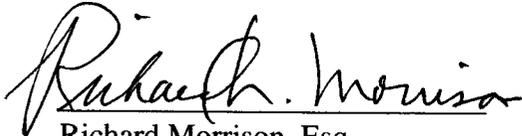
Its: MAYOR

Date: 10/2/10

ATTEST:

  
Town Clerk

APPROVED AS TO FORM:

  
Richard Morrison, Esq.  
Special Counsel



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Eric Braun, Water Resources Manager, 503-6892

**MEETING DATE:** December 1, 2016

**SUBJECT:** Amendment Number 5 To The Central Arizona Project Water Lease Among The United States Of America, The Fort McDowell Yavapai Nation, And The Town of Gilbert, Arizona

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

### RECOMMENDED MOTION

A motion to approve Amendment number 5 to the Central Arizona Project water lease among the United States of America, the Fort McDowell Yavapai Nation, and the Town of Gilbert, Arizona and authorize the Mayor to execute the necessary documents.

### BACKGROUND/DISCUSSION

Town Council approved the draft lease on September 29, 2016, however, the Bureau of Reclamation made non-principle language changes that do not affect the terms of the lease but are cause for the final version to be brought back to Council for approval at the request of the Town Attorney.

Council approved the original one year lease on November 18, 2010, which provided Gilbert 13,933 acre feet of the Fort McDowell Yavapai Nation (Nation) Colorado River (CAP) water for 2011, and amendments were approved for additional years in 2012, 2013, and 2014. This amendment will in effect, carry the same lease forward for an additional year, through 2017. The amendment to the lease will be approved by the United States (Bureau of Reclamation) and will be effective when executed by the Nation and Gilbert. The final amendment will be forthcoming.

This amendment supports Gilbert’s Infrastructure Strategic Initiative by allowing the opportunity to continue to develop Long Term Storage Credits which can be used to offset future

groundwater pumping, and qualifies for Gilbert's water supply portfolio for the Assured Water Supply Designation.

In addition to the monies paid to the Nation, there is a cost associated with obtaining and storing the CAP water. Gilbert agrees to pay the Nation \$20 per acre foot for water made available under Amendment No. 5 for a total of \$278,660 for 13,933 acre feet, due and payable by December 31, 2016. Gilbert will also incur charges by the Central Arizona Water Conservation District (CAWCD) for all water scheduled and delivered for Gilbert, which amounts to \$2,285,012 (\$164/acre foot for the cost of the CAP water for 2017) + \$167,196 (\$12/acre foot for the cost of recharging at a CAWCD recharge facility for 2016), for a total cost to CAWCD \$2,452,208.

The contract, ordinance, resolution, or policy statement was reviewed for form by Town Attorney Michael Hamblin.

### **FINANCIAL IMPACT**

The full cost of the lease from the Nation, \$278,660, as well as the CAWCD delivery and storage costs, \$2,452,208, are paid from CIP WA094, which contains adequate funding.

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

### **STAFF RECOMMENDATION**

Staff recommends approval of Amendment number 5 to the Central Arizona Project water lease among the United States of America, the Fort McDowell Yavapai Nation, and the Town of Gilbert, Arizona and authorizing the Mayor to execute the necessary documents.

Respectfully submitted,

Eric Braun  
Water Resources Manager

**Approved By**

**Approval Date**

Hakon Johanson  
Marc Skocypec  
Michael Hamblin  
Laura Lorenzen  
Douglas Boyer

11/21/2016 8:39 AM  
11/21/2016 4:38 PM  
11/22/2016 10:55 AM  
11/21/2016 7:27 PM  
11/21/2016 6:05 PM

**AMENDMENT NO. 5**

**TO**

**CENTRAL ARIZONA PROJECT WATER LEASE**

**AMONG**

**THE UNITED STATES OF AMERICA,**

**THE FORT MCDOWELL YAVAPAI NATION,**

**AND**

**THE TOWN OF GILBERT, ARIZONA**

**AMENDMENT NO. 5  
TO  
CENTRAL ARIZONA PROJECT WATER LEASE  
AMONG  
THE UNITED STATES OF AMERICA,  
THE FORT MCDOWELL YAVAPAI NATION,  
AND  
THE TOWN OF GILBERT, ARIZONA**

1.     **PREAMBLE** This Central Arizona Project Water Lease Amendment No. 5 (“Lease Amendment No. 5”) is entered into among the United States of America, the Fort McDowell Yavapai Nation (“Nation”), formerly the Fort McDowell Indian Community, and the Town of Gilbert, Arizona (“Gilbert”) (collectively referred to as the “Parties”).

2.     **EXPLANATORY RECITALS**

2.1     WHEREAS, the Parties to this Lease Amendment No. 5 are also Parties to the Fort McDowell Indian Community Water Rights Settlement Agreement dated as of January 15, 1993 (the “FMIC Agreement”);

2.2     WHEREAS, Paragraph 20.0 of the FMIC Agreement allows the United States, the Nation, and Gilbert to enter into an agreement for the lease by the Nation to Gilbert of Project Water to which the Nation is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the “CAP Delivery Contract”);

2.3     WHEREAS, by the Act of November 28, 1990, 104 Stat. 4480 (the “Authorizing Legislation”), the United States confirmed the FMIC Agreement, specifically directed the amendment of the CAP Delivery Contract, and authorized the lease of the Nation’s CAP Water;

2.4     WHEREAS, pursuant to the FMIC Agreement and the Authorizing Legislation, the United States and the Nation have executed an amendment to the CAP Delivery Contract dated December 14, 1993, which authorizes the Nation to lease its CAP water under specified

terms and conditions;

2.5 WHEREAS, the Parties entered into a Central Arizona Project Water Lease on December 14, 2010, hereinafter referred to as “Lease” in which the Nation leased 13,683 acre-feet to Gilbert for one year to expire on December 31, 2011;

2.6 WHEREAS, the Parties entered into an Amendment No. 1 to the Lease on December 20, 2011, herein referred to as “Amendment No. 1”, in which the Parties continued the lease arrangements of 13,683 acre-feet annually to Gilbert through December 31, 2012;

2.7 WHEREAS, the Parties entered into an Amendment No. 2 to the Lease on August 24, 2012, herein referred to as “Amendment No. 2”, in which the Parties continued the lease arrangements of 13,683 acre-feet annually to Gilbert through December 31, 2013;

2.8 WHEREAS, the Parties entered into an Amendment No. 3 to the Lease on December 31, 2013, herein referred to as “Amendment No. 3”, in which the Parties continued the lease arrangements and increased the quantity to 13,933 acre-feet annually to Gilbert through December 31, 2014;

2.9 WHEREAS, the Parties entered into an Amendment No. 4 to the Lease on November 12, 2014, herein referred to as “Amendment No. 4”, in which the Parties continued the lease arrangements and leased 13,933 acre-feet annually to Gilbert through December 31, 2015;

3.0 WHEREAS, the Parties did not extend the Lease arrangements for 2016, but desire to resume the Lease arrangements for 13,933 acre-feet for the year 2017;

3.1 WHEREAS, the Parties agree that the purpose of this Lease Amendment No. 5 is to resume the Lease arrangements for the year from January 1, 2017, to December 31, 2017; and

3.2 WHEREAS, the Parties acknowledge that the covenants and benefits under this

Lease Amendment No. 5 represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

**NOW, THEREFORE, the Parties agree as follows:**

3. **AMENDMENT NO. 4** Amendment No. 4 is hereby superseded and replaced in its entirety by this Lease Amendment No. 5.

4. **AMENDED PROVISIONS OF LEASE**

4.1 Article 4.2 **Subject of Lease** is hereby deleted in its entirety and replaced with the following:

“4.2 **Subject of Lease**. The Nation leases to Gilbert the right to the delivery of up to 13,683 acre-feet annually of the Nation’s CAP Water from January 1, 2011 through December 31, 2013, up to 13,933 acre-feet annually from January 1, 2014 through December 31, 2015, and now leases the right to delivery of up to 13,933 acre-feet from January 1, 2017 through December 31, 2017, subject to the terms and conditions of the Nation’s CAP Delivery Contract and this Lease.”

4.2 Article 4.3 **Term of Lease** is hereby amended by deleting “December 31, 2011” and replacing that date with “December 31, 2017”.

4.3 Article 4.8 **Consideration for Lease** is hereby deleted in its entirety and replaced with the following:

“4.8 **Consideration for Lease**. For each year this Lease was in effect prior to 2017, Gilbert paid directly to the Nation, the sum of Nineteen Dollars (\$19.00) per acre-foot for all CAP Water leased pursuant to this Lease. The amount of \$259,977 was annually paid to the Nation for the lease year 2011, 2012, and 2013. For each lease year 2014 and 2015, Gilbert paid \$264,727 to the Nation. The Nation and Gilbert did not enter Lease arrangements for 2016,

and no payment was made by Gilbert to the Nation in 2016. For the lease year 2017, Gilbert shall pay directly to the Nation the sum of Twenty Dollars (\$20.00) per acre-foot for all water leased pursuant to this Lease. The amount of \$278,660 must be paid to the Nation on or before December 31, 2016, for the 2017 lease year.”

4. **OTHER PROVISIONS OF LEASE UNAFFECTED** Except as specifically amended by this Lease Amendment No. 5, the Lease dated December 14, 2010, among the Parties, remains unchanged and in full force and effect.

*Signatures follow.*

**IN WITNESS WHEREOF**, the Parties have executed this Lease Amendment No. 5 on  
the dates shown below.

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**BUREAU OF RECLAMATION**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

*Signatures continued on the next page.*

**FORT MCDOWELL YAVAPAI NATION**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Its: Special Counsel

*Signatures continued on the next page.*

**TOWN OF GILBERT**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

# **DUPLICATE ORIGINAL**

**CENTRAL ARIZONA PROJECT WATER LEASE**

**AMONG**

**THE UNITED STATES OF AMERICA,**

**THE FORT MCDOWELL YAVAPAI NATION,**

**AND**

**THE TOWN OF GILBERT, ARIZONA**

**CENTRAL ARIZONA PROJECT WATER LEASE  
 AMONG  
 THE UNITED STATES OF AMERICA,  
 THE FORT MCDOWELL YAVAPAI NATION,  
 AND  
 THE TOWN OF GILBERT, ARIZONA**

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**CENTRAL ARIZONA PROJECT WATER LEASE**

**AMONG  
THE UNITED STATES OF AMERICA,  
THE FORT MCDOWELL YAVAPAI NATION,  
AND  
THE TOWN OF GILBERT, ARIZONA**

1. **PREAMBLE** This Central Arizona Project Water Lease (“Lease”) is entered into among the United States of America, the Fort McDowell Yavapai Nation (“Nation”), formerly the Fort McDowell Indian Community, and the Town of Gilbert, Arizona (collectively referred to as the “Parties”).

2. **EXPLANATORY RECITALS**

2.1 WHEREAS, the parties to this Lease are also Parties to the Fort McDowell Indian Community Water Rights Settlement Agreement dated as of January 15, 1993 (the “FMIC Agreement”);

2.2 WHEREAS, Paragraph 20.0 of the FMIC Agreement allows the United States, the Nation and Gilbert to enter into an agreement for the lease by the Nation to Gilbert of Project Water to which the Nation is entitled under the Central Arizona Project Indian Delivery Contract dated December 11, 1980 (the “CAP Delivery Contract”);

2.3 WHEREAS, by the Act of November 28, 1990, 104 Stat. 4480 (the “Authorizing Legislation”), the United States confirmed the FMIC Agreement, specifically directed the amendment of the CAP Delivery Contract, and authorized the lease of the Nation’s CAP Water;

2.4 WHEREAS, pursuant to the FMIC Agreement and the Authorizing Legislation, the United States and the Nation have executed an amendment to the CAP Delivery Contract

dated December 14, 1993, which authorizes the Nation to make this Lease; and

2.5 WHEREAS, the Parties acknowledge that the covenants and benefits under this Lease represent good and valuable consideration, the sufficiency of which is hereby acknowledged.

**NOW, THEREFORE, the Parties agree as follows:**

3. **DEFINITIONS**

3.1 Any capitalized terms which are not defined in this Section 3 or elsewhere in this Lease shall have the meanings ascribed to them in the Nation's CAP Delivery Contract, the CAP Master Repayment Contract or both.

3.2 "Act" shall mean the Fort McDowell Indian Community Water Rights Settlement Act of 1990. Pub. L. 101-628, Title IV, 104 Stat. 4480 (1990).

3.3 "CAP" shall mean the Central Arizona Project, a reclamation project authorized under Title 3 of the Colorado River Basin Act of 1968 (43 U.S.C. § 1521 *et seq.*).

3.4 "CAP Master Repayment Contract" shall mean the contract between the United States and the Central Arizona Water Conservation District for delivery of water and repayment of costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

3.5 "CAP Water" shall mean Project Water of the Central Arizona Project.

3.6 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, which is the contractor under the CAP Master Repayment Contract.

3.7 “**Effective Date**” shall mean that date on which this Lease is signed by the Secretary of the Interior or his authorized delegates.

3.8 “**FMIC Agreement**” shall mean that agreement dated January 15, 1993, executed by the Parties to this Lease and others, for the purpose of settling the Nation’s water entitlement upon the terms specified and ratified in the Act.

3.9 “**Gilbert**” shall mean the Town of Gilbert, an Arizona municipality, its successors and assigns, as lessee under this Lease.

3.10 “**Lease**” shall mean this Central Arizona Project Water Lease.

3.11 “**Lease Water**” under this Lease shall mean up to 13,683 acre-feet of the Nation’s CAP Water subject to the Nation’s CAP Delivery Contract.

3.12 “**Main System**” shall mean those principal works of the Project listed as follows: Granite Reef Division, Orme Division (or suitable alternative), Salt-Gila Division, Tucson Aqueduct (Colorado River Source), Buttes Dam and Navajo Project, together with all appurtenances thereto and all lands, interests in lands and right-of-way for such works and appurtenances.

3.13 “**Nation**” shall mean the Fort McDowell Yavapai Nation, a Nation of Yavapai Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476), and duly recognized by the Secretary.

3.14 “**Nation’s CAP Delivery Contract**” shall mean the Central Arizona Project Indian Water Delivery Contract between the Nation and the United States, No. 3-07-30-W0308 dated December 14, 1993, as may be amended from time to time. This contract superseded and

replaced the December 11, 1980 contract and its first amendment dated January 15, 1993 in their entirety.

3.15 **“Nation’s CAP Water”** shall mean the CAP Water to which the Nation is entitled pursuant to the Nation’s CAP Delivery Contract, except for that amount already leased in accordance with section 407(a)(2) of the Act.

3.16 **“OM&R”** shall mean the care, operation, maintenance and replacement of the Main System, or any part thereof.

3.17 **“Operating Agency”** shall mean the entity or entities authorized to assume OM&R responsibility of transferred works and approved for that purpose by the Contracting Officer. Currently this entity is the CAWCD.

3.18 **“Reservation”** shall mean that area of land described in Exhibit 2.8 of the FMIC Agreement.

3.19 **“Secretary”** shall mean the Secretary of the Interior or the Secretary’s lawful delegates.

3.20 **“United States”** shall mean the United States of America in its capacity as trustee for the Nation and of the Reservation and in all other capacities necessary to effectuate the terms of this Lease.

3.21 **“Water Supply System”** shall mean the Navajo Project, Havasu Pumping Plant, the Granite Reef, Salt Gila and Tucson aqueducts and associated pumping plants and appurtenant works, but not including Tucson Terminal Storage or any distribution works.

4. **LEASE OF CENTRAL ARIZONA PROJECT WATER**

4.1 **Nation's CAP Delivery Contract.** This Lease is subject to the provisions of the Nation's CAP Delivery Contract, and which is incorporated into and made a part of this Lease. In the event the Nation's CAP Delivery Contract and this Lease are construed to be inconsistent, the terms of the Nation's CAP Delivery Contract shall govern unless the Parties otherwise agree in writing at such time.

4.2 **Subject of Lease.** The Nation leases to Gilbert the right to the delivery of up to 13,683 acre-feet of the Nation's CAP Water, subject to the terms and conditions of the Nation's CAP Delivery Contract and this Lease, with delivery beginning as soon as practicable following the Effective Date and concluding December 31, 2011.

4.3 **Term of Lease.** The term of this Lease ("Lease Term") shall begin on the Effective Date of this Lease, and shall end December 31, 2011.

4.4 **Intentionally Left Blank.**

4.5 **Intentionally Left Blank.**

4.6 **Lease of Water Only.** This Lease shall never be construed to be a sale or assignment of the Nation's right or interest in the Lease Water. The allocation of the Lease Water to the Nation shall always be deemed to be the property of the Nation, to which Gilbert has acquired only a leasehold interest for the Lease Term, but not thereafter. Gilbert shall never assert a permanent or perpetual right to the Lease Water, whether during the Lease Term or thereafter. The Nation reserves to itself all rights to use the Lease Water in its total discretion upon expiration or termination of this Lease.

4.7 **Intentionally Left Blank**

4.8 **Consideration for Lease.** In consideration for the Lease Water which is the subject of this Lease, Gilbert shall pay directly to the Nation the sum of Nineteen Dollars (\$19.00) per acre-foot for all CAP Water delivered pursuant to this Lease, up to 13,683 acre-feet. The amount of \$259,977 must be paid to the Nation on or before the Effective Date.

4.9 **Application of Settlement Agreement.** Pursuant to Paragraph 20 of the FMIC Agreement Articles 4.10, 4.11, 4.12, 4.16, 4.17, 4.18, 4.20, 4.21, and 4.22 are included in this Lease.

4.10 **Operation, Maintenance, and Replacement Costs.** Gilbert shall pay the full amount of the water service charges for operation, maintenance, and replacement (“OM&R”) costs for the Project Water to the United States or, if so directed by the Secretary, to the Operating Agency, who is currently Central Arizona Water Conservation District (“CAWCD”) in accordance with Article 5.1 of Gilbert’s CAP Municipal and Industrial (M&I) Water Service Subcontract.

4.11 **Delivery of Water.** The United States or the Operating Agency shall deliver the Nation’s Project Water to Gilbert as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to Gilbert would limit deliveries of CAP water to the other CAP subcontractors to a degree greater than deliveries of such Project Water to the Salt River Project CAP Turnout. Subject to the provisions of this Lease, the United States or the Operating Agency shall deliver water to Gilbert in accordance

with water delivery schedules provided by Gilbert to the United States and the Operating Agency. The water ordering procedures contained in Article 4.4 of Gilbert's CAP M&I Water Service Subcontract shall apply to Gilbert's ordering of water under this Lease. In no event shall the United States or the Operating Agency be required to deliver to Gilbert from the Water Supply System in any one month a total amount of Project Water greater than eleven percent (11%) of Gilbert's maximum entitlement under this Lease; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of Project Water to all CAP subcontractors as determined by the United States and the Operating Agency if Gilbert agrees to accept such increased deliveries.

4.12 **CAWCD Repayment.** For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water pursuant to this Lease shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

4.13 **The Nation.** The Nation shall not be obligated to pay, or cause to be paid, OM&R costs to the United States or to the Operating Agency, for any Lease Water which is scheduled for delivery but is not delivered to Gilbert.

4.14 **Other Charges or Payments.** Neither the Nation nor Gilbert shall be obligated to pay OM&R costs, water service charges, water service capital charges, M&I subcontract charges or any other costs, charges or payments for the Lease Water other than as provided in

Articles 4.8 and 4.10 of this Lease.

4.15 **Permissible Uses of Lease Water.** Except as provided in this Lease, Gilbert shall have the right to use the Lease Water for any purpose in conformance with Federal law applicable to the CAP, consistent with Arizona law. Permissible uses include, but are not limited to municipal, groundwater recharge, as that term is defined in the CAP Master Repayment Contract, underground storage facilities and groundwater savings facilities, as these terms are defined in Arizona Revised Statutes § 45-802.01, as that section may be amended from time to time, and recovery projects. Provided, however, Gilbert agrees to the restrictions outlined in Article 4.22 herein.

4.16 **Use of Project Water Outside Reservation.** Gilbert may use or deliver Project Water for use outside the boundaries of the reservation, but may not use or deliver Project Water for use outside of the boundaries of CAWCD.

4.17 **Conditions Relating to Delivery and Use.** Gilbert shall have the right to use water received under this Lease for any purpose consistent with Arizona law, including, but not limited to, groundwater recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Deliveries of Project Water to Gilbert and its use by Gilbert shall be subject to the Conditions Relating to Delivery and Use in Article 4.3 of Gilbert's CAP M&I Water Service Subcontract. During the term of this Lease, the following subarticles and articles of Gilbert's CAP M&I Water Service Subcontract shall apply to Gilbert and to Gilbert's use of water under this Lease: Subarticles 4.5 (c), 4.5 (d), 5.2 (d); Articles 4.9,

4.10, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. Gilbert expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, except as otherwise provided herein.

4.18 **Secretarial Control of Return Flow.** Project Water used by Gilbert pursuant to the provisions of this Lease shall be subject to the terms relating to the Secretary's right to control return flow as provided in Article 4.8 of Gilbert's CAP M&I Water Service Subcontract.

4.19 **Intentionally Left Blank**

4.20 **Point(s) of Delivery.** The Project Water to be delivered to Gilbert pursuant to the provisions of this Lease shall be delivered at turnouts constructed by the United States at such points on the Water Supply System as have been previously agreed upon by the Contracting Officer and Gilbert in accordance with the provisions of Article 4.5 of Gilbert's CAP M&I Water Service Subcontract.

4.21 **Nation's Covenants.** The Nation agrees to observe and perform all obligations imposed on the Nation under the CAP Delivery Contract which are not assumed by Gilbert so that Gilbert's rights and duties are not in any way impaired.

4.22 **Gilbert Assignment.**

(a) Gilbert may not transfer, assign or sublease all or any part of its interest in Project Water outside the boundaries of its existing or future service area without the prior written consent of the Nation and the Secretary; Provided, that Gilbert shall not transfer, assign, or sublease all or any part of its interest in Project Water hereunder for an amount in excess of

that which Gilbert is obligated to pay under this Lease without the additional prior written approval of CAWCD and the Secretary. If Project Water under this Lease is transferred, assigned or subleased by Gilbert for an amount in excess of that which Gilbert paid for such water under this Lease, the excess amount shall be paid forthwith by Gilbert to the CAWCD for application against CAWCD's repayment obligation to the United States; Provided, however, that Gilbert shall be entitled to recover actual costs of transportation, treatment, and distribution, including but not limited to capital costs and OM&R costs. Gilbert shall not transfer, assign or sublease all or any part of its interest in Project Water if such transfer, assignment or sublease will adversely affect the Nation without the prior written approval of the Nation. Gilbert shall provide to CAWCD and the United States copies of any agreement transferring, assigning or subleasing all or any portion of Gilbert's entitlement under this Lease.

(b) Gilbert further commits that any groundwater credits it derives using water available under this Lease will be used exclusively by Gilbert for the provision of water service within Gilbert's service area under Gilbert's CAP M&I Water Service Subcontract.

4.23 **Temporary Reductions.** In addition to the right of the United States under Subarticle 4.3(a)(4) of the Nation's CAP Delivery Contract temporarily to discontinue or reduce the amount of water to be delivered, the United States or the Operating Agency may temporarily discontinue or reduce the quantity of water to be furnished to Gilbert as herein provided for the purpose of investigation, inspection, maintenance, repair or replacement of any of the Project facilities or any part thereof necessary for the furnishing of water to Gilbert, but so far as feasible the United States or the Operating Agency shall coordinate any such discontinuance or reduction

with the Nation and Gilbert, except in case of emergency, in which case no notice need be given. Neither the United States, its officers, agents, and employees, nor the Nation, its officers, agents, and employees, nor the Operating Agency, its officers, agents, and employees, shall be liable for damages when, for any reason whatsoever, any such temporary discontinuance or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to Gilbert of less water than what has been paid for in advance, Gilbert shall be entitled to be reimbursed for the appropriate proportion of such advance OM&R payments prior to the date of Gilbert's next payment of water service charges or Gilbert may be given credit toward the next payment of water charges if Gilbert should so desire. In the event the Operating Agency does not provide the reimbursement or credit in accordance with this Article, the Secretary, acting through the Bureau of Reclamation, shall direct the Operating Agency to comply with this Article.

4.24 **Priority in Case of Shortage.** In the event of a shortage of Project Water, the water provided to Gilbert under this Lease will have the same priority as that water had when it was allocated or reallocated to the Nation, and as provided under the Nation's CAP Delivery Contract.

4.25 **Water and Air Pollution Control.** Gilbert, in carrying out this Lease, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

4.26 **Quality of Water.** The operation and maintenance of Project facilities shall be performed in such manner as is practicable to maintain the quality of water made available

through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Nation, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. Gilbert waives its right to make a claim against the United States, the Operating Agency, the Nation, any CAP contractor or subcontractor, or another lessee, because of changes in water quality caused by the commingling of Lease Water with other water.

4.27 **Water Conservation Program.** Use of the Lease Water shall be consistent with Article 6.4 of Gilbert's CAP M&I Subcontract which is incorporated into and made a part of this Lease.

4.28 **Officials Not to Benefit.**

(a) No Member of or Delegate to Congress or Resident Commissioner, no officer or employee of the United States, the Nation, Gilbert or the Operating Agency shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

(b) No officer or employee of the Nation, Gilbert, the United States or the Operating Agency shall receive any benefit that may arise by reason of this Lease other than as a water user within the Project and in the same manner as other water users within the Project.

4.29 **Books, Records and Reports.** Gilbert shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of Project works, and to other matters as the Secretary and the Nation

may reasonably require. Reports thereon shall be furnished to the Secretary and the Nation in such form and on such date or dates as the Secretary may require. Subject to applicable Tribal and Federal laws and regulations, each Party shall have the right during office hours and upon ten (10) days written notice to examine and make copies of each others' books and records relating to matters covered by this Lease.

4.30 **Equal Opportunity.** During the performance of this Lease, Gilbert agrees as follows:

(a) Gilbert shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Gilbert shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Gilbert agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Gilbert shall, in all solicitations or advertisement for employees placed by or on behalf of Gilbert, state that all qualified applicants shall receive consideration for employment without discrimination because of race, color, religion, sex or national origin.

(c) Gilbert shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be

provided by the Secretary, advising said labor union or workers' representative of Gilbert's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Gilbert shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Gilbert shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Gilbert's noncompliance with the nondiscrimination clauses of this Lease or with any of the such rules, regulations or orders, this Lease may be canceled, terminated, or suspended, in whole or in part, and Gilbert may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order and such other sanctions may be imposed and remedies invoked as provided in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Gilbert shall include the provisions of Articles 4.25(a) through (g), above, in every lease or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such

provisions shall be binding upon each lessee or vendor. Gilbert shall take such action with respect to any lease or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Gilbert becomes involved in, or is threatened with, litigation with a lessee or vendor as a result of such direction, Gilbert may request the United States to enter into such litigation to protect the interest of the United States.

4.31 **Title VI, Civil Rights Act of 1964.**

(a) Gilbert agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of Interior Regulation (43 C.F.R. § 17) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participating in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Gilbert receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to Gilbert by the United States, this assurance obligates Gilbert, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates Gilbert for the period during which the Federal financial assistance is extended to it by the

United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financing assistance extended after the date hereof to Gilbert by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. Gilbert recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on Gilbert, its successors, transferees, and assignees.

4.32 **Contingent on Appropriation or Allotment of Funds.** The expenditure or advance of any money or the performance of any work by the United States or the Nation under this Lease which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve Gilbert from any obligation under this Lease. No liability shall accrue to the United States or the Nation in case such funds are not appropriated or allotted.

4.33 **Taxation.** The water subject to this Lease is allocated to the Nation in partial satisfaction of the Federal reserved water rights of the Nation. The water is a trust asset held in trust by the United States for the Nation. In entering into this Lease, the Nation and Gilbert have assumed and relied upon the fact that the water to which the Nation is entitled under the Nation's CAP Delivery Contract is a Federal trust resource which would not be subject to taxation.

Although it is the understanding and intent of the Nation and Gilbert that such water is not subject to taxation in the first instance, to the extent that any such taxation right or power may exist, the Nation and Gilbert, on a government to government basis, each agree to refrain from imposing any tax on this Lease or the Lease Water, or any tax measured by the value of such water to be delivered under this Lease or the transportation of Lease Water under this Lease.

5. **WAIVER OF SOVEREIGN IMMUNITY** The Nation waives its sovereign immunity from suit and Gilbert waives any right it may have to claim that it may not be sued under the Eleventh Amendment of the United States Constitution, in the United States District Court for the District of Arizona on any claim or claims which Gilbert and the Nation may have as against each other, which relate to the interpretation or enforcement of this Lease, and any such claim or claims shall be brought exclusively in such District Court to the extent the Court otherwise has jurisdiction. In no event shall the Nation's liability exceed the amount of consideration paid in accordance with Article 4.8 herein.

6. **DEFAULT** If the Nation or Gilbert materially defaults under this Lease, the other Party, at any time thereafter, without further notice or demand, shall have all remedies available at law or in equity, including the right to seek specific performance of this Lease. In the event of litigation between the Nation and Gilbert to enforce this Lease, the prevailing Party in such action shall be entitled to recover reasonable costs, and expenses of the suit, including, without limitation, court costs, attorneys' fees and discovery costs.

7. **GENERAL PROVISIONS**

7.1 **Invalidity of Agreement.** If Gilbert's right to the delivery and use of the Lease Water under this Lease is determined to be invalid by a final judgment of a Federal court entered over the objection of Gilbert, and Gilbert declines to appeal such judgment, then the Nation shall refund to Gilbert within ninety (90) days of said judgment that portion of the payment of consideration for the number of acre-feet remaining to be delivered pursuant to this Lease at the time of such determination, together with interest thereon at the rate of four percent (4%) per annum from the date of the Judgment to date of reimbursement to Gilbert.

7.2 **Attorneys' Fees.** The prevailing party in any lawsuit, appeal or other proceeding brought to enforce or to otherwise implement the terms and conditions of this Lease shall be entitled to an award of reasonable attorneys' fees and costs; Provided, however, this provision shall not apply to the United States.

7.3 **Delegation of Responsibility.** The Nation agrees that the Secretary may delegate operational responsibilities to the Operating Agency. The Nation does not consent to the delegation to the Operating Agency of any Trust responsibility of the United States to the Nation.

7.4 **Approval, Consent and Ratification.** The Nation, Gilbert and the Secretary, by execution of this Lease, approve, endorse, consent to and ratify this Lease.

7.5 **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

7.6 **Notice.** Any notice, demand, or request authorized or required to be given or payment to be made under this Lease shall be deemed properly given or made when received by the individual(s) designated below, or five (5) days following deposit in the United States mail, postage prepaid, addressed as follows:

(a) As to the United States:

The Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington D.C. 20240

Regional Director  
Western Regional Office  
Bureau of Indian Affairs  
2600 N. Central Avenue, 4<sup>th</sup> floor  
Phoenix, Arizona 85004

Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

Superintendent  
Salt River Agency  
10000 E. McDowell Rd.  
Scottsdale, AZ 85256

(b) As to the Nation:

President  
Fort McDowell Yavapai Nation  
P.O. Box 17779  
Fountain Hills, AZ 85269-7779

General Counsel  
Fort McDowell Yavapai Nation  
P.O. Box 17779  
Fountain Hills, AZ 85269-7779

Director of Government Relations  
Fort McDowell Yavapai Nation  
P.O. Box 17779  
Fountain Hills, AZ 85269-7779

(c) As to Gilbert:

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

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

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

7.7 **Governing Law.** This Lease shall be governed in accordance with applicable Federal law. To the extent that Federal law provides no controlling precedent, the Court shall apply Arizona law as its choice of law.

7.8 **Waiver.** No waiver of any breach of any of the terms or conditions of this Lease shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease.

7.9 **Severability.** If any term or provision of this Lease is held to be unenforceable or invalid by a court of competent jurisdiction, that term or provision shall be severable from the

remainder of this Lease and shall not affect or render invalid any other term or provision of this Lease.

7.10 **Construction and Effect.** This Lease and each of its provisions are to be construed fairly and reasonably and not strictly for or against any party hereto. The Section titles used in this Lease are for convenience only and shall not be considered in the construction of this Lease.

7.11 **Assignment Limited - Successors and Assigns Obligated.** Each of the terms and conditions of this Lease shall apply to and bind the Parties and their successors and assigns, but no assignment or transfer of this Lease or any interest therein by any party shall be valid until approved in writing by all other signatories to this Lease.

7.12 **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Lease.

7.13 **Good Faith Negotiations.** This Lease has been negotiated in good faith and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease may be used as either evidence or argument by any party to this Lease in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease.

7.14 **Further Instrument and Acts.** Each Party will, whenever and as often as it shall be requested to do so by either or both of the others, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the

intent and purpose of this Lease.

7.15 **Refusal to Accept Delivery.** In the event Gilbert fails or refuses to accept delivery of the quantity of water available for delivery to and required to be accepted by it pursuant to this Lease, or in the event Gilbert fails to submit a schedule for delivery as provided in this Lease, said failure or refusal shall not relieve Gilbert of its obligation to make the payments required in this Lease, including payments outlined in Article 4.8 due to the Nation.

7.16 **Charge for Late Payments.** Gilbert shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

IN WITNESS WHEREOF, the Parties have executed this Lease on the dates shown below.

**THE UNITED STATES OF AMERICA**

**BUREAU OF INDIAN AFFAIRS**

By:  \_\_\_\_\_

Its: Regional Director

Date: 11/29/10

**THE UNITED STATES OF AMERICA**

**BUREAU OF RECLAMATION**

By *Joia Gray-Lee*  
Its: *Regional Director*  
Date: *12-14-10*

APPROVED AS TO  
LEGAL SUFFICIENCY:

*Katherine Ott Verburg*  
Katherine Ott Verburg  
Field Solicitor

**FORT MCDOWELL YAVAPAI NATION**

By Mr. Sutam Pottu

Its: PRESIDENT

Date: 11-18-10

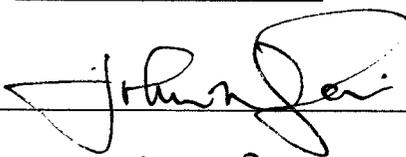
ATTEST:

Raney Thomas  
Secretary

APPROVED AS TO FORM:

Thomas M. Mowatt  
Its: Special Counsel

**TOWN OF GILBERT**

By 

Its: MAYOR

Date: 11/22/10

ATTEST

  
Town Clerk

APPROVED AS TO FORM:

  
Town Attorney



### Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Hilary Hirsch, Economic Development Administrator, 503-6873

**MEETING DATE:** December 1, 2016

**SUBJECT:** Review and Consider Adoption of a Resolution Approving a Development Agreement Between the Town of Gilbert and Silent-Aire USA, Inc.

**STRATEGIC INITIATIVE:** Economic Development

**RECOMMENDED MOTION**

A motion to adopt a resolution approving a Development Agreement with Silent-Aire USA, Inc. authorize \$440,000 in Economic Development Reserve contingency; authorize the transfer of \$500,000 from st095 (Williamsfield Road – UPRR to Power) and \$320,000 from st129 (Gilbert and Guadalupe Intersection) to st174, Mustang Road; and authorize the Mayor to execute the required documents.

**BACKGROUND/DISCUSSION**

Silent-Aire USA, Inc. currently operates the USA headquarters division and manufacturing in Gilbert, Arizona. The operations and manufacturing offices are housed at 1145 W Gary Avenue. Silent-Aire’s current facility is not large enough to accommodate their growth and adjacent property is not available to expand the building. Silent-Aire has explored expansion opportunities to expand in Gilbert and adjacent cities. Silent-Aire has identified the Park Lucero development located at 280 East Germann Road in Gilbert, Arizona as a location where they would like to relocate and expand their USA headquarters and manufacturing operations. This would be a 146,000 +/- square-foot manufacturing facility.

A proposed Development Agreement has been negotiated by the Town of Gilbert and Silent-Aire for the purpose of providing certain incentives to continue its operations in Gilbert and to expand those operations and workforce. Under the Development Agreement, Silent-Aire will retain 200 existing jobs and add at least 225 qualified new jobs over the term of the agreement, although projections for actual job creation are much higher. Additionally, Silent-Aire will invest, or cause

to be invested, over \$16 million of new capital in Gilbert during the term of this Agreement in new building construction, tenant improvements, and furniture, fixtures, and equipment.

Gilbert retained Applied Economics, an independent firm, to prepare an economic impact analysis which demonstrates that Silent-Aire could create an economic impact of \$1.38 billion for Gilbert over the next ten (10) years, including a \$690.1 million impact from the expansion. Additionally, the continued operations and expansion of its Gilbert operation would directly and indirectly support an estimated 635 jobs (including 425 direct jobs) and generate close to \$27.2 million in annual personal income in the Town.

If Silent-Aire is not able to expand in Gilbert, the alternative would be to move 200 existing jobs from Gilbert to another city. Under this alternative scenario, Gilbert would experience a cumulative negative economic impact of \$686.7 million over the next ten years, coupled with a loss of 200 direct jobs and 99 indirect and induced jobs.

The Development Agreement was reviewed for form by Michael Hamblin, Town Attorney.

**FINANCIAL IMPACT**

The estimated cost to Gilbert is a maximum of \$1,436,513. Of this amount, \$816,400 are costs that Gilbert would incur to improve Mustang Road, regardless of this project. The remaining costs are associated with Development Incentives. Gilbert will reimburse the actual costs of improvements depicted on the attached “Exhibit A”. The chart below provides a detail of the costs:

Description	CIP Funding	Economic Development Reserve	Asset Value
Road Segment A1	\$129,300		
Road Segment A2	\$479,100		
Road Segment B (1/3 Costs)		\$66,533	
Road Segment C	\$208,000	\$208,000	
Plan Review, Permitting and Inspection Fees		\$10,504	
Development Fees (Not SDF)		\$153,826	
Land for Road			\$181,250
<b>Total</b>	<b>\$816,400</b>	<b>\$438,863</b>	<b>\$181,250</b>

Funding in the amount of \$440,000 for the ED Incentives would come from the ED Reserve contingency. The funding for the CIP portion of the project is proposed to come from savings on projects st095 and st129. These projects are closing out and have come in under budget and would allow \$500,000 to be transferred from st095 and \$320,000 from st129. This would be transferred into project st174, Mustang Road – SR202 to Germann.

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

**STAFF RECOMMENDATION**

Staff recommends adoption of resolution XXXX

Respectfully submitted,

Hilary Hirsch  
Economic Development Administrator

**Approved By**

Jennifer Graves  
Michael Hamblin  
Laura Lorenzen

**Approval Date**

11/21/2016 12:42 PM  
11/21/2016 3:59 PM  
11/21/2016 7:17 PM

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH SILENT-AIRE USA, INC., AN ARIZONA CORPORATION, AND PARK LUCERO III, L.P., A DELAWARE LIMITED PARTNERSHIP, 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 further the economic development and other goals of the Town of 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 Development Agreement between the Town of Gilbert and Silent-Aire USA, Inc., an Arizona Corporation, and Park Lucero III, L.P., a Delaware limited partnership, 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 Development Agreement in accordance with its terms and intent; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Development Agreement with the Maricopa County Recorder 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 \_\_\_\_\_, 2016.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, 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**

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**DEVELOPMENT AGREEMENT**

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**TOWN OF GILBERT, ARIZONA,  
an Arizona municipal corporation**

**AND**

**SILENT-AIRE USA, INC.  
An Arizona corporation**

**AND**

**PARK LUCERO III, LP  
A Delaware limited partnership**

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\_\_\_\_\_, 2016

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and between the TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation (the “**Gilbert**”), and SILENT-AIRE USA INC., an Arizona corporation (the “**Company**”), and PARK LUCERO III, LP, a Delaware limited partnership (the “**Owner of Leased Property**”). Gilbert, Company, and Owner of Leased Property are sometimes referred to herein collectively as the “**Parties**,” or individually as a “**Party**.”

### RECITALS

A. The Company is the U.S. member of the Silent-Aire group of companies, a Canadian based national and international leader in the manufacturing of HVAC equipment for the Healthcare, Industrial and Data Center industries.

B. As of the date of the Company’s execution of this Agreement, the Company conducts certain business operations within the incorporated limits of Gilbert, AZ employing approximately 200 persons who hold Retained Jobs (as hereinafter defined).

C. The Company, in the exercise of its reasonable business discretion, determined that its existing facilities within Gilbert are inadequate and must relocate to a different site as expansion at its current site of 1145 West Gary Avenue in Gilbert, Arizona, is not possible.

D. The Owner of Leased Property owns the property set forth in Exhibit A.

E. Gilbert, recognizing the importance of the Company to the community and the national and international stature of the Company and the derivative benefits that such stature confers upon Gilbert, has agreed to its undertakings more fully set forth in this Agreement.

E. The Company, under no legal obligation or other compulsion to do so, in reliance upon the commitments and performance of Gilbert as more fully set forth in this Agreement, now elects to expand its facilities within the incorporated limits of Gilbert in accordance with this Agreement, which will constitute legal, bargained-for contractual consideration provided by the Company to Gilbert.

F. Upon the expansion of the Company and its subsidiaries current programs/operations as described in this Agreement, not only will the Company retain two hundred (200) existing jobs within Gilbert with an annual payroll (based on gross cash wages) of Eight Million Dollars and Zero Cents (\$8,000,000.00), but it will add two hundred twenty-five (225) new jobs by the end of the fifth Year (as hereinafter defined) of this Agreement, for a total of four hundred twenty-five (425) local jobs and approximately Seventeen Million Dollars and Zero Cents (\$17,000,000.00) in annual payroll (based on gross cash wages) by the end of the tenth Year of this Agreement.

G. In addition, the Company will invest, or cause to be invested, over Sixteen Million Dollars and Zero Cents (\$16,000,000.00) of new capital in Gilbert during the term of this

Agreement where new capital includes base building construction, tenant improvements, and furniture, fixtures, and equipment. The new site will be designated as the U.S. Headquarters of the Company.

H. Gilbert retained Applied Economics, an independent firm, to prepare an economic impact analysis (“Impact Study”), which demonstrated that the Company could create an economic impact of \$1.38 billion for Gilbert over the next ten (10) years, including a \$690.1 million impact from the proposed expansion; and further that the continued operations and expansion of its current programs in Gilbert would directly and indirectly support an estimated 635 jobs (including 425 direct jobs) and generate \$27.2 million in annual personal income in the Town.

I. If the Company is not able to expand in Gilbert, the Company has represented to Gilbert that but for the incentives set forth in this Agreement, up to 200 existing jobs would be at a significant risk of being relocated to a facility outside of Gilbert, Arizona for cost considerations; this would result in Gilbert experiencing a cumulative negative economic impact of \$686.7 million over the next ten (10) years, coupled with a loss of 200 direct jobs and 99 indirect and induced jobs, according to the Impact Study. These losses could be mitigated by the sale or rental of the current facility to another owner/tenant.

J. According to the Impact Study, between 2017 and 2026 the Company could generate a total of \$1.7 million in direct and indirect revenues to Gilbert based on 425 direct jobs and the construction and annual lease payments associated with a 146,000 square-foot manufacturing facility.

K. Gilbert acknowledges that the expansion of the Company’s current Gilbert operations is appropriate and beneficial and that such expansion will generate substantial economic and fiscal benefits for Gilbert. Gilbert also believes that the development of the Project will generate substantial non-monetary benefits for Gilbert, including, without limitation, the creation of new manufacturing jobs, and will enhance Gilbert’s reputation as a desirable community for supporting foreign direct investment.

L. The expansion of the Company’s current operation is of such significance that Gilbert desires to encourage and facilitate such expansion as described in this Agreement. The Parties intend that the land uses contemplated by this Agreement are consistent with Gilbert’s existing General Plan.

M. The Parties understand, acknowledge and agree that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05.

N. The Parties also understand and acknowledge that this Agreement is entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by Gilbert pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will, in numerous other ways, improve and enhance the economic welfare of the residents of Gilbert.

## AGREEMENTS

1. **Agreement of the Parties.** In consideration of the foregoing Recitals, and in further consideration of the mutual promises, payments and performances set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as more fully set forth below.

### 2. **Definitions.**

2.1 **“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 (provided said policies are publicly available), each of which apply to the development of the Project as of the date or dates upon which compliance is to be evaluated.

2.2 **“Average Annual Wage”** means the result of dividing total new jobs into total new payroll. New jobs and new payroll are calculated above 200 existing jobs and \$8 million of existing payroll. New payroll shall be determined by adding the annual gross cash wage (i.e. all cash compensation paid to employees before deductions, such as base salary and bonuses).

2.3 **“Company”** means Silent-Aire USA, Inc. and its permitted successors and assigns.

2.4 **“Company Expansion”** means the relocation and expansion of the Company’s current operation onto the Park Lucero development described on Exhibit A (with an address of 280 E. Germann Road, Gilbert, Arizona) (sometimes referred to herein as the "Land" or the "Leased Property"), which includes the construction of an approximately 146,832 square foot building, and related improvements on the land described on Exhibit A attached hereto.

2.5 **“Company Investment”** means a capital expenditure by the Company, or on behalf of the Company, to design and construct the Company Expansion or to acquire or lease tangible personal property that will be located on the Park Lucero development described on Exhibit A and used in operating the Company Expansion, but not including lease payments for the Park Lucero development described on Exhibit A.

2.6 **“Costs of Off-Site Improvements”** means all soft costs, such as engineering, design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor’s fees paid or incurred to construct the Off-Site Improvements; provided, however, that the cost of acquiring the land dedicated for such Off-Site Improvements and financing costs will not be included in the Costs of Off-Site Improvements.

2.7 **“Effective Date”** means the date this Development Agreement is recorded with the Maricopa County Recorder’s Office.

2.8 **“Existing Facilities”** means the Company’s existing owned properties in Gilbert, Arizona, as of the Effective Date, but excludes the Company Expansion.

2.9 “**Gilbert**” means Town of Gilbert, Arizona, an Arizona municipal corporation.

2.10 “**Owner of Leased Property**” or “**Owner**” means Park Lucero III, LP, owner of the Park Lucero development described on Exhibit A, and its permitted successors and assigns.

2.11 “**Off-Site Improvements**” means the improvements to Mustang Drive described on Exhibit B.

2.12 “**Project**” means the design and construction of the Company Expansion in compliance with this Development Agreement and Applicable Law.

2.13 “**Qualified New Job**” means a job that is filled by an employee and possesses all of the following characteristics: (i) the job requires a minimum of 1,750 hours per year based on the employee’s normal work week at the Company Expansion; (ii) the job, when averaged with all Qualified New Jobs, provides an Average Annual Wage equal to at least \$40,000 during the Term; (iii) the job is filled by an Arizona resident legally authorized to work in the United States; (iv) the job is filled by a person who has not been employed by the Company in its Gilbert operations within twelve (12) months before the current date of hire.

2.14 “**Retained Jobs**” means 200 jobs, held by employees of the Company in existence on the Effective Date at the Existing Facilities. “Retained Jobs” may include employees hired to replace an employee who held a Retained Job as of the Effective Date.

2.15 “**Term**” means the term of this Agreement as set forth in Section 10.6.

2.16 “**Year**” means 365 days. The first Year shall commence on the Effective Date.

### 3. **Company Obligations.**

3.1 Retained Jobs. Retained Jobs at the Company shall be deemed to total 200 jobs as of the Effective Date. Company shall retain the same number of Retained Jobs from the Effective Date through the Term of this Agreement.

3.2 Qualified New Jobs. Company shall create at least 225 Qualified New Jobs in excess of the Retained Jobs prior to the expiration of the Term of this Agreement.

3.4 Company Investment. Starting on the Effective Date through year five (5) of the Term of this Agreement, the Company’s Investment within Gilbert shall be at least Sixteen Million Dollars and Zero Cents (\$16,000,000.00).

3.5 Annual Report. Thirty (30) days before the anniversary of the Effective Date each year, Company shall provide, to Gilbert and Owner of Leased Property, records and signed statement detailing the Company Investment, the amount of Retained Jobs, and the amount of Qualified New Jobs. The Annual Report shall include the total number of Qualified New Jobs created and filled during the previous year and the total number of Retained Jobs, the

Average Annual Wage for each Retained Job and Qualified New Job reported, and the total Company Investment as of the date of the certification, including a description of such Company Investment. Gilbert shall either accept or object to the Annual Report within forty-five (45) days of receipt. Within said forty-five (45) day period, Gilbert will send to the Company, with a copy to Owner of Leased Property, either (a) an acknowledgement letter accepting the certifications or (b) an objection letter noting in detail Gilbert's reasons for such objection. If the Company does not receive an acknowledgement or objection letter within said forty-five (45) day period, Gilbert will be deemed to have accepted the Annual Report and send to Company (with a copy to Owner of Leased Property) an acknowledgement letter confirming such acceptance upon written request by the Company. The Company shall report the information required above as it exists on the last day of the month in which the applicable period ends. When the Company has met its obligations as described in 10.5, Company will no longer be required to file Annual Reports.

#### 4. **Owner of Leased Property Obligations**

4.1 **Construction of Off-Site Improvements.** Subject to the provisions herein, Owner of Leased Property shall construct the Off-Site Improvements in compliance with Applicable Laws. With respect to the Off-Site Improvements on Mustang Drive described in Exhibit B where a portion of the Cost of Off-Site Improvements will be reimbursed by Gilbert, construction shall comply with applicable bidding requirements and with the requirements of Exhibit C.

#### 5. **Gilbert Obligations.**

##### 5.1 **Reimbursement for the Cost of Off-Site Improvements.**

5.1.1 Gilbert shall use the Gilbert Economic Development Reserve Fund to reimburse Owner of Leased Property for the Cost of Off-Site Improvements described on Exhibit B as follows, and in the manner set forth in Exhibit C: Gilbert shall reimburse Owner of Leased Property one-third (1/3) of the Cost of Off-Site Improvements of Segment B (estimated to be Sixty-Six Thousand Five Hundred Thirty-Three Dollars and Zero cents (\$66,533.00)), one-half (1/2) of the Cost of Off-Site Improvements of Segment C (estimated to be Two-Hundred Eight Thousand Dollars and Zero cents (\$208,000)), and the cost of plan review, permitting, and inspection fees associated with the Off-Site Improvements (estimated to be Ten Thousand Five Hundred Four Dollars and Zero Cents (\$10,504.00)).

5.1.2 Gilbert shall use CIP funds to reimburse Owner of Leased Property for the Cost of Off-Site Improvements described on Exhibit B as follows, and in the manner set forth in Exhibit C: the Cost of Off-Site Improvements for Segment A (estimated to be Six Hundred Eight Thousand Four Hundred Dollars and Zero cents (\$608,400)) and one-half (1/2) of the Cost of Off-Site Improvements of segment C (estimated to be Two Hundred Eight Thousand Dollars and Zero cents (\$208,000)). A condition precedent to such reimbursement shall be compliance with the requirements of Exhibit C and submittal of all required documents supporting the reimbursement requests. The amounts set forth herein are estimates only and subject to increase based upon any changes requested or necessitated by Gilbert.

5.2 Land for Off-Site Improvements. Gilbert Shall provide approximately one (1) acre of Gilbert owned land as described on Exhibit D ("Gilbert Lands") for the construction of the segment C Off-Site Improvements as depicted on Exhibit B. Approximately one-half (1/2) acre of Gilbert Lands will be used by the Owner of Leased Property to construct the one-half (1/2) street Off-Site Improvements for segment C as depicted on Exhibit B. The value of the one-half (1/2) acre of Gilbert Lands is One Hundred Eighty-One Thousand Two Hundred Fifty Dollars and Zero Cents (\$181,250.00). Gilbert hereby grants Owner of Leased Property an access and construction easement on the Gilbert Lands, and adjacent lands owned by Gilbert, to enable Owner of Leased Property to construct the Off-Site Improvements, including staging of construction equipment. In addition, Gilbert agrees to accept dedication of those portions of the Owner of Leased Property's land upon which the Off-Site Improvements will be located.

5.3 Permit Fees. Gilbert shall use the Gilbert Economic Development Reserve Fund to reimburse the Owner of Leased Property for permit and plan review fees associated with development of the Company Expansion, not to exceed \$153,826. Such payment to be made within sixty (60) days following issuance of certificate of occupancy for Company Expansion.

5.4 Expedited Plan Review. Gilbert shall process the review of plans for Company Expansion within six (6) business days of receipt of such plans. Should any subsequent review be needed, Gilbert shall process those reviews within four (4) business days. Further, Gilbert shall process the review of plans for Off-Site Improvements within thirteen (13) business days. Should any subsequent reviews be needed, Gilbert shall process those reviews within eight (8) business days. For purposes of the Project, any and all expedited fee(s) shall be waived.

5.5 Limitation of Gilbert Obligations. Notwithstanding anything herein to the contrary, Gilbert shall not reimburse and/or pay to Company and/or Owner of Leased Property a combined amount in excess of Eight Hundred Twelve Thousand Three Hundred Dollars and Zero Cents (\$812,300.00), for the Gilbert Obligations described in Section 5.1.1, 5.2, or 5.3, such amount being the estimated direct revenue benefit for the Company Expansion.

## 6. **Indemnity by the Company.**

6.1 Company Indemnification. Company shall indemnify, defend, pay and hold harmless Gilbert, and its employees, agents, contractors, licensees or assignees (each, individually, a "***Gilbert Indemnified Party***," and collectively, the "***Gilbert Indemnified Parties***"), and Owner of Leased Property, and its members, managers, shareholders, directors, employees, agents, representatives, contractors, licensees, successors and assignees (each, individually, an "Owner Indemnified Party" and collectively, the "Owner 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, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Gilbert Indemnified Parties or Owner Indemnified Parties relating to, arising out of, or in connection with the Company's construction of improvements

within the Leased Property, or by reason of any statement, information, certificate or other official representation provided by Company 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 Gilbert Indemnified Party or Owner Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Gilbert Indemnified Parties or Owner Indemnified Parties by reason of any of the foregoing events, then Company, upon prompt written notice from the Gilbert Indemnified Party or Owner Indemnified Party, as applicable, will, at Company's sole cost and expense, resist or defend such claim, action or proceeding, in the Gilbert Indemnified Party's or Owner Indemnified Party's name (as applicable), if necessary, by counsel approved, in writing, by the Gilbert Indemnified Party or Owner Indemnified Party (as applicable), such approval not to be unreasonably withheld or delayed.

6.2 Gilbert Indemnification. Gilbert shall indemnify, defend, pay and hold harmless Company, and its employees, agents, contractors, licensees or assignees (each, individually, a "***Company Indemnified Party,***" and collectively, the "***Company Indemnified Parties***") and Owner of the Leased Property and the Owner 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, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Company Indemnified Parties or Owner Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Gilbert 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 Company Indemnified Party Owner Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Company Indemnified Parties or Owner Indemnified Parties by reason of any of the foregoing events, then Gilbert, upon prompt written notice from the Company Indemnified Party or Owner Indemnified Party (as applicable) will, at Gilbert's sole cost and expense, resist or defend such claim, action or proceeding, in the Company Indemnified Party's Owner Indemnified Party's (as applicable) name, if necessary, by counsel approved, in writing, by the Company Indemnified Party or Owner Indemnified Party (as applicable), such approval not to be unreasonably withheld or delayed.

6.3 Owner of Leased Property Indemnification. Owner of Leased Property shall indemnify, defend, pay and hold harmless Company, and its employees, agents, contractors, licensees or assignees (each, individually, a "***Company Indemnified Party,***" and collectively, the "***Company Indemnified Parties***") and Gilbert, and its employees, agents, contractors, licensees or assignees (each, individually, a "***Gilbert Indemnified Party,***" and collectively, the "***Gilbert Indemnified Parties***"), 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, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the Company Indemnified Parties or Gilbert Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Owner of Leased Property 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 Company Indemnified Party or Gilbert Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the Company Indemnified Parties or Gilbert Indemnified Parties by reason of any of the foregoing events, then Owner of Leased Property, upon prompt written notice from the Company Indemnified Party or Gilbert Indemnified Party (as applicable) will, at Owner of Leased Property's sole cost and expense, resist or defend such claim, action or proceeding, in the Company Indemnified Party's or Gilbert Indemnified Party's (as applicable) name, if necessary, by counsel approved, in writing, by the Company Indemnified Party or Gilbert Indemnified Party (as applicable), such approval not to be unreasonably withheld or delayed.

6.4 No Representation as to Tax Treatment or Characterization. No Party has made any representation of any nature to any other Party (and each Party hereby expressly so disclaims any such representation) with respect to the treatment or characterization of any aspect of this Agreement, or any act performed or omitted under any federal or state tax laws or regulations, any accounting rules or regulations, or any similar rules, regulations, doctrines, requirements or standards.

7. **Gilbert Representations.** Gilbert represents and warrants to the other Parties that, as of the Effective Date:

7.1 Gilbert's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the procedural requirements of Gilbert Code and Arizona Open Meeting Law.

7.2 All Gilbert consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance. Gilbert knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of Gilbert or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

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

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

8. **Company Representations.** The Company represents and warrants to the other Parties that, as of the Effective Date:

8.1 The Company has the full right, power and authorization to enter into and perform this Agreement and all of the obligations and undertakings of the Company under this Agreement, and the execution, delivery and performance of this Agreement by the Company has

been duly authorized and agreed to in compliance with the organizational documents of the Company.

8.2 But for the agreements set forth in this Agreement, Company would not be expanding its operations to Park Lucero development described on Exhibit A.

8.3 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.4 The Company knows of no litigation, proceeding or investigation pending or threatened against or affecting the Company, which could have a material adverse effect on the Company's performance under this Agreement that has not been disclosed in writing to the other Parties.

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

8.6 The Company 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 consultants, brokers, architects, engineers and attorneys.

8.7 The Company has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **Owner of Leased Property Representations.** The Owner of Leased Property represents and warrants to the other Parties that, as of the Effective Date:

9.1 The Owner has the full right, power and authorization to enter into and perform this Agreement and all of the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

9.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement by Owner have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

9.3 The Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting the Owner, which could have a material adverse effect on the Owner's performance under this Agreement that has not been disclosed in writing to the other Parties.

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

9.5 The Owner 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 consultants, brokers, architects, engineers and attorneys.

9.6 The Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

## 10. **Default, Remedies and Compliance**

10.1 Failure to Make the Required Investment. If the final Annual Report to be made before the tenth (10<sup>th</sup>) anniversary of the Effective Date, as described in Section 3.5, indicates that Company has not made the Company Investment as described in Section 3.4, Company shall repay to Gilbert Two Hundred Thirty-Three Thousand One Hundred Forty-Three and Fifty Cents (\$233,143.50), which is the estimated value of one-half of the Off-Site Land and Improvements, as described in Section 5.1.1 and Section 5.2.

10.2 Failure to Meet the Requirements for Retained and New Jobs. If the final Annual Report to be made before the tenth (10<sup>th</sup>) anniversary of the Effective Date as described in Section 3.5 indicates that Company has not shown job totals of 425 or more for at least three (3) Annual Reports as described in Section 3.5, Company shall repay to Gilbert the remaining liability as described in Section 10.3.

10.3 Limitation of Liability. As the Company meets its obligations as detailed on the Annual Report, as described in Section 3.5, the amount of liability the Company is responsible for will be reduced. When the Company Investment, as detailed in Section 3.4, has been met, the liability will be reduced by Two Hundred Thirty-Three Thousand One Hundred Forty-Three Dollars and Fifty Cents (\$233,143.50). The remaining liability will be reduced by One Hundred Twenty-Eight Thousand Nine Hundred Ninety Dollars (\$128,990.00) each year the Company files an Annual Report that shows the total number of jobs is 425 or more. Notwithstanding anything herein to the contrary, Company shall not be required to reimburse and/or pay to Gilbert an amount in excess of the actual amount of benefit to which the Company may be entitled under this Agreement, as detailed in Sections 5.1.1, 5.2, and 5.3, with such amount estimated to be Six Hundred Twenty Thousand One Hundred Thirteen Dollars and Zero Cents (\$620,113.00).

10.4 Failure to Perform Gilbert Obligations. The failure of Gilbert to perform its payment obligations in Section 5.1 or Section 5.3 of this Agreement, or to perform any other obligations under this Agreement, within thirty (30) days following written notice thereof shall be deemed a default and entitle Company and/or Owner of Leased Property to the remedies provided herein, at law and in equity, including filing suit to recover from Gilbert the amounts owed to Owner of Leased Property hereunder.

10.5 Compliance. The Company will have met its obligation under this contract when the following has occurred: (i) The Company details in an Annual Report as described in Section 3.5 that the Company has made the Company investment as described in Section 3.4, and (ii) three (3) Annual Reports indicate that the total number of jobs is 425 or more.

10.6 Term and Extension. The Term of this Agreement is ten (10) years. If at the final Annual Report due before the tenth (10<sup>th</sup>) anniversary, the Company has not met the New Job creation and Retained Jobs retention requirements of Section 10.2, the Term is automatically extended for twelve (12) months. Notwithstanding anything to the contrary herein, the Parties agree that any and all obligations or liability of Owner of Leased Property under this Agreement shall terminate and be of no further force or effect upon the Final Acceptance Date (as defined in Exhibit C).

## 11. **Miscellaneous Provisions.**

11.1 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 substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

### 11.2 Restrictions on Assignment and Transfer.

11.2.1 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 11.2 shall be void, and not voidable, and shall vest no rights in the purported transferee or assignee. Notwithstanding the foregoing, Owner may assign its rights and obligations hereunder.

11.2.2 Notwithstanding the foregoing, the restrictions on Transfer shall not apply with respect to: (a) the Project financing; (b) the exercise of any remedies by any lender under the Project financing documents; (c) the conveyance of all or any portion of the Property by Company to a wholly-owned subsidiary; (d) a Corporate Succession (as hereinafter defined), so long as the Company'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 the Company's business assets, (ii) a change in the form of business entity through which the Company conducts its business, (iii) the merger or consolidation of the Company, or (iv) the acquisition of all of the shares of the Company by another entity. The Company shall promptly notify Gilbert in writing of any event of Corporate Succession. No voluntary or involuntary successor in interest of Company shall acquire any rights or powers under this Agreement except as expressly authorized in this Section 9.2.2, and

any Transfer in violation of the provisions of this Section 11.2.2 shall be void and shall vest no rights in the purported transferee.

11.3 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, Town of Gilbert code or Town of Gilbert charter), 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 of Gilbert 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.

11.4 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, and 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 that ambiguous or conflicting terms or any other provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared, or participated in the preparation of, the executed Agreement or any earlier draft of the same.

#### 11.5 Notices.

11.5.1 Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy facsimile machine (provided a copy is also delivered by another method permitted herein), or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to Gilbert:

Town of Gilbert  
Attn: Town Manager  
50 East Civic Center Drive  
Gilbert, Arizona 85296  
Telephone: (480) 503-6864

Facsimile: (480) 497-4943

With required copies to:

L. Michael Hamblin, Esq.  
Town Attorney  
50 East Civic Center Drive  
Gilbert, Arizona 85296  
Telephone: (480) 503-6027  
Facsimile: (480) 497-4943

If to the Company:

Silent-Aire USA, Inc.  
**Attn:**  
1145 West Gary Avenue  
Gilbert, AZ 85233  
**Telephone:**  
**Facsimile:**

With required copies to:

Law Offices of Garry D. Hays  
2198 E. Camelback Road, Suite 305  
Phoenix, AZ 85016  
Telephone: (602) 308-0579

If to the Owner of Leased Property

Park Lucero III, L.P.  
c/o Trammell Crow Company  
2231 East Camelback Road, Suite 102  
Phoenix, AZ 85016  
Attn: Catherine Thuringer  
Telephone: (602) 222-4000  
Facsimile: (602) 285-3141

With required copies to:

Reinhart Boerner Van Deuren, s.c.  
16220 North Scottsdale Road, Suite 205  
Scottsdale, AZ 85254  
Attn: William Shroyer  
Telephone: (480) 860-0414, ext 1  
Facsimile: (414) 298-8097

11.5.2 Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

11.6 Time of the Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees and Costs.

11.8.1 Attorney's Fees. Company and Gilbert have been assisted by counsel of its own choosing in connection with the preparation, negotiation and execution of this Agreement. Each party shall be solely responsible its own counsel's fees in connection with the preparation, negotiation and execution of this Agreement.

11.8.2 Prevailing Party. In the event of a default under this Agreement by any Party (or commencement of a declaratory action to declare the respective rights and liabilities of one or more Parties hereto) and commencement of a subsequent legal action in an appropriate forum, the prevailing Party or Parties in any such action shall be entitled to reimbursement from the non-prevailing Party or Parties of its reasonable attorney's 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 costs of such dispute, as determined by the court and not the jury.

11.9 Defense of Actions. The Parties will reasonably cooperate with each other in the event of any proceeding or litigation challenging the authority of Gilbert to enter into or perform any of its obligations hereunder, or with respect to any action by a third party in which Gilbert is a party and the validity or enforceability of any term or provision of this Agreement is challenged. Notwithstanding the foregoing, each Party shall bear its own attorney's fees and expenses incurred on such defense or in the performance of its obligations under this Section 11.9. The severability and reformation provisions of Section 11.3 shall apply in the event of any successful challenge to this Agreement.

11.10 Waiver. Without limiting any other provision of this Agreement, the Parties agree that 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 or 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.

11.11 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders to the extent that they assume or succeed to the rights and/or obligations of a Party under this

Agreement, and except that the indemnified parties (if any) referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.

11.12 Exhibits and Recitals. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement and listed below, each of which is incorporated in this Agreement and made an integral part of this Agreement for all purposes. The Recitals to this Agreement are also incorporated in this Agreement and made an integral part of this Agreement for all purposes; provided, however, to the extent that the Recitals include projections of future business results or financial matters, the Company does not currently represent that such events can or will necessarily occur.

11.13 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subjects covered by this Agreement.

11.14 Further Assurances. Without limiting any other provision of this Agreement, each Party agrees to perform such other and further acts and to execute and deliver (and acknowledge if appropriate) such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or 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.

11.15 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 that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.16 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

11.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to section 4.1 and 5.1 shall run with the Property and shall be binding upon, and shall inure to the benefit of the Owner and Gilbert and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party," or the name of any particular Party, is used in this Agreement, such term shall include any such Party's permitted successors and assigns.

11.18 Recordation. The Owner of Leased Property has consented to the recordation of this Agreement. Within ten (10) days after this Agreement has been approved by Gilbert and executed by Gilbert, the Company, and Owner, Gilbert shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona at Gilbert's sole cost and

expense. Promptly after expiration of this Agreement, Gilbert shall record a Notice of Termination of this Agreement its sole cost and expense.

11.19 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the Parties. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement, references to this “Agreement” shall mean the Agreement as amended.

11.20 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 that 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.

11.21 Survival. All indemnifications (if any) contained in this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in such indemnification sections.

11.22 Nonliability of Gilbert’s Officials and of Partners, etc. of Company or Owner. No Town of Gilbert Council member, or official, representative director, agent, attorney or employee of Gilbert shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any non-performance, breach or default by Gilbert, or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of Gilbert under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of the Company under this Agreement shall be limited solely to the assets and earnings of the Company and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are shareholders, officers or directors of the Company. Notwithstanding anything contained in this Agreement to the contrary, the liability of the Owner under this Agreement shall be limited solely to the assets and earnings of Owner and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are shareholders, members, managers, officers, employees or directors of Owner.

11.23 Conflict of Interest Statute. This Agreement is subject to the provisions of A.R.S. § 38-511 as of the Effective Date. Under A.R.S. § 38-511, Gilbert may cancel any contract to which it is a party within three (3) years after its execution, 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 or 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 right under A.R.S. § 38-511, Gilbert agrees to immediately give notice of such election to the Company.

11.24 Records Retention. The Company shall retain all data, books and other records relating to this Agreement (“**Records**”) for a period of not less than three (3) years after the expiration of this Agreement or earlier termination of the Agreement. All Records shall be subject to inspection and audit by Gilbert at reasonable times. Upon request, the Company shall produce the original of any or all such Records at Gilbert’s office.

11.25 Compliance with the Law. The Parties shall promptly execute and comply with all federal, state, county and Town of Gilbert laws, statutes, rules, orders, building codes, fire codes, ordinances, and regulations applicable to the Project. As required, the Parties shall promptly execute and comply with A.R.S. § 41-440, immigration laws and E-Verify requirements. The Parties warrants compliance with all federal immigration laws and regulations relating to employees and further warrants its compliance with A.R.S. § 23-214. A breach of the Company’s or the Owner’s warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement (by the applicable party) and Gilbert, in such event, may terminate this Agreement; provided, however, that Gilbert shall not deem the Company or Owner to be in breach of or default under this Agreement if it has complied with the employment verification provisions prescribed by sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, subsection A. Gilbert retains the legal right to inspect the papers of any employee who works on this Agreement to ensure the Company or Owner or the Company’s or Owner’s subcontractor(s) are in compliance with the warranty under this Section.

11.26 Estoppel. Each Party shall, within ten (10) days following such Party’s receipt of the written request of any other Party (which request shall not be more frequently than two (2) times during any calendar year), execute, acknowledge and deliver to the Party making such request a certificate or similar instrument certifying, to the extent accurate: (i) that this Agreement is in full force and effect; (ii) that this Agreement has not been modified or amended in any respect (or if modified, that this Agreement is in full force and effect as modified and setting forth such modifications); (iii) that there are no existing defaults hereunder, to the knowledge of the Party executing the certificate and specifying the nature of such defaults, if any; (iv) that there are due no sums due and owing pursuant to this Agreement, or specifying the amount of such sums due and owing; and (v) such other information as the requesting party may reasonably request. Each certificate delivered pursuant to this Section may be relied on by the Party requesting the same and any prospective purchaser, assignee or lender of the requesting Party.

11.27 Expiration of Term. This Agreement shall be effective for the term (“**Term**”) commencing on the Effective Date and expiring on the day prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date, as may be extended in accordance with Section 10.6 . The parties acknowledge and agree that the obligations to submit Company certifications in accordance with Section 3 and 10.5 and to make payments in accordance with Sections 10.1, 10.2 and 10.3 shall survive the Expiration Date for the requisite amount of time to satisfy said obligations.

11.28 Payment Obligations of Gilbert. To the extent permitted by law, notwithstanding anything to the contrary herein, including any defaults by the Company or Gilbert, or any termination or expiration of this Agreement, Gilbert shall be required to fulfill its

payment obligations to Owner of Leased Property pursuant to Section 5.1, so long as Owner complies with provisions of Section 4.1 and Exhibit C.

[SIGNATURE PAGE FOLLOWS]

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

SILENT-AIRE USA, INC., an Arizona corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PARK LUCERO III, LP,  
a Delaware limited partnership

By: Thurca, LLC,  
A Delaware limited liability company  
its General Partner

By: Trammell Crow Arizona Development, Inc.  
a Delaware corporation  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TOWN OF GILBERT, ARIZONA, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
L. Michael Hamblin, Town Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, Town \_\_\_\_\_ of the Town of Gilbert, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of Gilbert.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

=====

  )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Silent-Aire USA, Inc. a \_\_\_\_\_ corporation.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

=====

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, on behalf of Park Lucero III, L.P.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_



**EXHIBIT A**

**Park Lucero Legal Description**

PARCEL 1:

THAT PORTION OF LOT 1 OF PARK LUCERO AS RECORDED IN BOOK 1203 OF MAPS, PAGE 36, OF OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA LOCATED WITHIN A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 MARKED BY A 1/2" REBAR & CAP STAMPED "RLS 45835", THENCE SOUTH 0°04'11" WEST, FOR A DISTANCE OF 553.23 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF SOUTH MUSTANG DRIVE AS RECORDED 967 OF MAPS, PAGE 6, OF OFFICIAL RECORDS MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 89°59'55" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 40.00 FEET;

THENCE NORTH 00°04'11" EAST, FOR A DISTANCE OF 1.87 FEET TO A POINT ON A NON-TANGENT CURVE, HAVING A RADIUS OF 224.38 FEET AND A CHORD BEARING OF NORTH 83°01'50" WEST, FOR A DISTANCE OF 7.27 FEET;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 1°51'24", AN ARC LENGTH OF 7.27 FEET TO A POINT ON A COMPOUND NON-TANGENT CURVE, HAVING A RADIUS OF 254.56 FEET AND A CHORD BEARING OF NORTH 86°57'37" WEST, FOR A DISTANCE OF 27.00 FEET;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 6°04'46", AN ARC LENGTH OF 27.01 FEET TO A NON-TANGENT POINT;

THENCE NORTH 90°00'00" WEST, FOR A DISTANCE OF 62.58 FEET;

THENCE SOUTH 0°00'00" EAST, FOR A DISTANCE OF 6.49 FEET;

THENCE SOUTH 89°59'38" WEST, FOR A DISTANCE OF 599.00 FEET;

THENCE NORTH 0°00'00" WEST, FOR A DISTANCE OF 6.55 FEET;

THENCE SOUTH 90°00'00" WEST, FOR A DISTANCE OF 112.71 FEET;

THENCE NORTH 6°32'52" WEST, FOR A DISTANCE OF 546.20 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1;

THENCE NORTH 83°27'10" EAST, ALONG THE NORTH LINE OF SAID LOT 1, FOR A DISTANCE OF 159.79 FEET;

THENCE CONTINUING ALONG THE NORTH LINE OF SAID LOT 1, SOUTH 89°06'04" EAST, FOR A DISTANCE OF 752.77 FEET TO THE POINT OF BEGINNING.

SAID AREA CONTAINS 492,302 SQUARE FEET, OR 11.301 ACRES, MORE OR LESS.

PARCEL 2:

TOGETHER WITH A COMMON INTEREST IN PARCEL 2 AS DESCRIBED HEREIN:

THAT PORTION OF LOT 1 OF PARK LUCERO AS RECORDED IN BOOK 1203 OF MAPS, PAGE 36, OF OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA LOCATED WITHIN A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1, MARKED BY A 1/2" REBAR & CAP STAMPED "RLS 45835", THENCE SOUTH 00°04'11" WEST, ALONG THE EAST LINE OF SAID LOT ONE, FOR A DISTANCE OF 553.23 FEET, SAID POINT ALSO BEING ON THE NORTH RIGHT-OF-WAY OF SOUTH MUSTANG DRIVE AS RECORDED 967 OF MAPS, PAGE 6, OF OFFICIAL RECORDS MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 89°59'55" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 40.00 FEET

THENCE SOUTH 0°04'11" WEST, ALONG THE WEST RIGHT-OF-WAY OF SAID SOUTH MUSTANG DRIVE, FOR A DISTANCE OF 283.32 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 0°04'11" WEST, ALONG THE WEST RIGHT-OF-WAY OF SAID SOUTH MUSTANG DRIVE, FOR A DISTANCE OF 177.96

THENCE NORTH 89°55'24" WEST, FOR A DISTANCE OF 64.90 FEET;

THENCE NORTH 00°00'03" EAST, FOR A DISTANCE OF 0.55 FEET;

THENCE NORTH 89°59'57" WEST, FOR A DISTANCE OF 294.70 FEET TO A POINT ON A NON-TANGENT CURVE, HAVING A RADIUS OF 299.50 FEET AND A CHORD BEARING OF NORTH 72°26'36" WEST, FOR A DISTANCE OF 180.69 FEET;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 35°06'48", AN ARC LENGTH OF 183.55 FEET TO A TANGENT REVERSE CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 300.50 FEET;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 38°03'47", AN ARC LENGTH OF 199.63 FEET TO A NON-TANGENT POINT;

THENCE NORTH 32°32'23" WEST, FOR A DISTANCE OF 68.32 FEET;

THENCE NORTH 75°13'17" EAST, FOR A DISTANCE OF 19.60 FEET TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 179.50 FEET AND A CHORD BEARING OF NORTH 82°36'38" EAST, FOR A DISTANCE OF 46.17 FEET;

THENCE NORTHEASTERLY, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 14°46'43", AN ARC LENGTH OF 46.30 FEET, TO A TANGENT POINT;

THENCE NORTH 90°00'00" EAST, FOR A DISTANCE OF 20.02 FEET TO A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2.50 FEET;

THENCE SOUTHEASTERLY, ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 3.93 FEET;

THENCE SOUTH 0°00'00" EAST, FOR A DISTANCE OF 16.50

THENCE NORTH 90°00'00" WEST, FOR A DISTANCE OF 610.65 FEET;

THENCE NORTH 0°00'00" EAST, FOR A DISTANCE OF 16.50 FEET TO A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2.50 FEET;

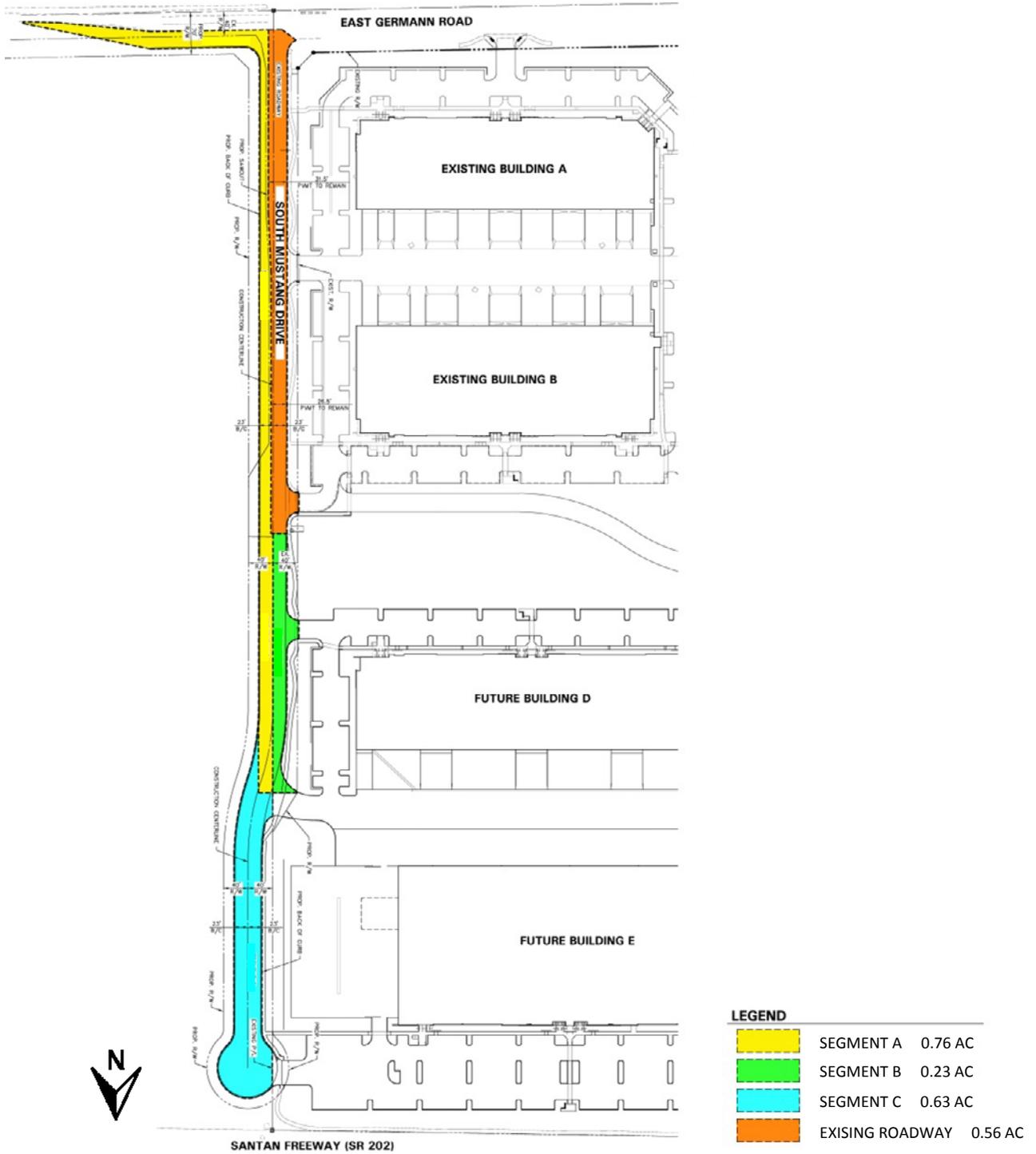
THENCE NORTHEASTERLY, ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 3.93 FEET TO A TANGENT POINT;

THENCE NORTH 90°00'00" EAST, FOR A DISTANCE OF 56.75 FEET TO THE POINT OF BEGINNING.

SAID AREA CONTAINS 96,829 SQUARE FEET, OR 2.223 ACRES, MORE OR LESS.

# EXHIBIT B

## Off-Site Improvements



## EXHIBIT C

### **Reimbursement Requirements**

Section 5.1 of the Agreement provides that Gilbert shall reimburse Owner of Leased Property for the Costs of Off-Site Improvements. The term “Costs of Off-Site Improvements” is defined in the Agreement as “all soft costs, such as engineering, design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor’s fees paid or incurred to construct the Off-Site Improvements; provided, however, that the cost of acquiring the land dedicated for such Off-Site Improvements and financing costs will not be included in the Costs of Off-Site Improvements”.

Gilbert is limited by law in how it can spend public monies and therefore establishes conditions precedent to Gilbert’s reimbursement obligations, and Owner of Leased Property accepts the following conditions precedent to its right to reimbursement for the Costs of Off-Site Improvements:

1. The plans and specifications must be reviewed and approved by the Town Engineer prior to bidding the construction work for the Costs of Off-Site Improvements to be reimbursed by Gilbert to Owner of Leased Property.
2. The work described in Section 1 above shall be publicly bid pursuant to the requirements of A.R.S. Title 34 for public works projects. Such bids shall be obtained in conformity with procedures prescribed by Gilbert and all bids must be reviewed and approved by Town Engineer prior to commencement of construction.
3. Prior to commencing any construction of the Off-Site Improvements, Owner of Leased Property or its contractor shall provide Gilbert with dual obligee payment and performance bonds in amounts equal to the full amount of the written construction contracts for such improvements or portions of improvements.
4. All construction work on the Off-Site Improvements must be completed in compliance with Applicable Law (as defined in the Agreement) and in accordance with the plans approved by the Town Engineer and must be completed in a workmanlike manner. Gilbert has no obligation to reimburse Owner of Leased Property until such time as the work is accepted by Gilbert, pursuant to Section 8 hereof.
5. After the expiration of the Guaranty Period (as hereinafter defined) Owner of Leased Property shall partially assign all guarantees or warranties from contractors or manufacturers for materials and workmanship which extend beyond the Guaranty Period (to the extent assignable), rendering both Owner of Leased Property and Gilbert beneficiaries. Such contractor warranties (shall comply with Gilbert’s ordinance requirements, which Gilbert shall provide in writing to Owner of Leased Property upon execution of the Agreement. .

6. All required dedications, free and clear of liens and encumbrances not acceptable to Gilbert, must be completed in a form acceptable to Gilbert.
7. Upon completion of any Off-Site Improvements, Owner of Leased Property and/or the applicable contractor will provide to Gilbert for review and approval a detailed statement and certification of the applicable Costs of Off-Site Improvements that sets forth a description of each construction contract, any change orders issued related to each construction contract, the total Costs of Off-Site Improvements for which reimbursement is sought, and a certification that the Costs of Off-Site Improvements are stated accurately. Upon request of Gilbert, Owner of Leased Property shall provide to Gilbert a copy of all construction contracts and change orders described in the certification.
8. Owner of Leased Property shall provide Gilbert with written notice upon completion of the Off-Site Improvements ("Notice of Completion"). Within ten (10) business days of receipt of such Notice of Completion, Gilbert shall accompany Owner of Leased Property on an initial inspection of the Off-Site Improvements. Upon completion or repair of all punch list items identified by the parties during such inspection (if any), Owner of Leased Property shall provide written notice of initial punch list completion ("Initial Punch List Completion Notice"). Within five (5) business days of receipt of Initial Punch List Completion Notice, Gilbert shall complete a second confirmation walk with Owner of Leased Property and shall notify the Owner of Leased Property in writing of either 1) any work remaining incomplete, or 2) shall provide an Initial Acceptance Notice for the Off-Site Improvements ("Acceptance Date"). After the Acceptance Date, and after the documentation of all project costs, warranties and other required information is received and approved by Gilbert, Gilbert shall pay ninety-five percent (95%) of all required reimbursements to Owner of Leased Property within thirty (30) days. Upon reimbursement of such 95% of the costs to be reimbursed herein, Owner of Leased Property shall give, grant, convey and fully dedicate the Offsite Improvements to Gilbert, and such Offsite Improvements shall be formally accepted by Gilbert. After the Acceptance Date, and subject to the Warranty Items (defined below), Gilbert shall be responsible for all maintenance and repairs of the Off-Site Improvements, other than the landscaping that is adjacent to the property set forth on Exhibit A of the Agreement ("Landscaping"), and the Owner of Leased Property shall have no further liability or obligations related to the Offsite-Improvements (other than the Landscaping and Warranty Items).
9. Owner of Leased Property shall guarantee the Off-Site Improvements against defects in workmanship or materials ("Warranty Items") for a period of twelve (12) months after the Acceptance Date ("Guaranty Period"). If any defect should appear during the Guaranty Period, Owner of Leased Property agrees to cause its contractor to make

required replacement or acceptable repairs of the defective work. To ensure the good quality of materials and workmanship of the Off-Site Improvements, as required by Applicable Law and this Agreement, Gilbert shall hold the remaining 5% of all required reimbursements to Owner of Leased Property for the Guaranty Period. Gilbert shall have access to such funds to correct or repair any Warranty Item; provided, however, Gilbert shall give Owner of Leased Property at least thirty (30) days' written notice and an opportunity to cure before using such funds or acting to correct or repair any defect or deficiency in the Off-Site Improvements.

10. Within ten (10) business days following request from Owner of Leased Property, Gilbert will schedule a final inspection walk with Owner of Leased Property ("Final Walk"). The Final Walk will take place no earlier than one year after the Acceptance Date. Upon completion or repair of all Warranty Items identified during such Final Walk (if any), Owner of Leased Property shall provide written notice of Warranty Item completion ("Final Completion Notice"). Within five (5) business days of receipt of the Final Completion Notice, Gilbert shall complete a second confirmation walk and shall notify the Owner of Leased Property in writing of either 1) any Warranty Items remaining incomplete, or 2) shall provide a Final Acceptance Notice for the Off-Site Improvements ("Final Acceptance Date"). Gilbert shall pay the remaining five (5)% of all required reimbursements to Owner of Leased Property within thirty (30) days of the Final Acceptance Date. Owner of Leased Property's obligations under this Agreement shall terminate in full as of the Final Acceptance Date and thereafter Gilbert shall maintain, at its sole expense, all of the Off-Site Improvements (with the exception of the Landscaping).
11. The reimbursement requirements set forth in this Exhibit C are in addition to and not in limitation of any other conditions or requirements of the Agreement applicable to reimbursement of the Costs of Off-Site Improvements. Any actions to be taken by Gilbert or any of its officers, including the Town Engineer, pursuant to this Exhibit C shall be subject to Applicable Law.

**EXHIBIT D**

**Land for Off-Site Improvements**

**LEGAL DESCRIPTION  
RIGHT OF WAY DEDICATION**

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, 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 A MARICOPA COUNTY ENGINEERING DEPARTMENT BRASS CAP IN HANDHOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6, FROM WHICH A BRASS CAP SET FLUSH MARKING THE NORTH QUARTER CORNER OF SAID SECTION 6 BEARS NORTH 00°04'11" EAST, A DISTANCE OF 5268.79 FEET;

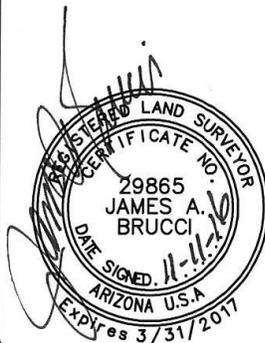
THENCE NORTH 00°04'11" EAST, ALONG THE MID SECTION LINE OF SAID SECTION 6, A DISTANCE OF 1671.84 FEET TO A POINT OF CURVATURE, CONCAVE SOUTHWESTERLY, WHOSE RADIUS IS 18.50 FEET, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 46°49'35" AN ARC LENGTH OF 15.12 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE EASTERLY, WHOSE RADIUS IS 67.00 FEET;

THENCE NORTHWESTERLY, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 100°10'12" AN ARC LENGTH OF 117.14 FEET TO A POINT ON THE MID SECTION LINE OF SAID SECTION 6;

THENCE SOUTH 00°04'11" WEST, ALONG SAID MID SECTION LINE, A DISTANCE OF 116.10 FEET TO THE POINT OF BEGINNING;

SAID DESCRIPTION CONTAINING 0.047 ACRE, (2039 S.F.) MORE OR LESS.

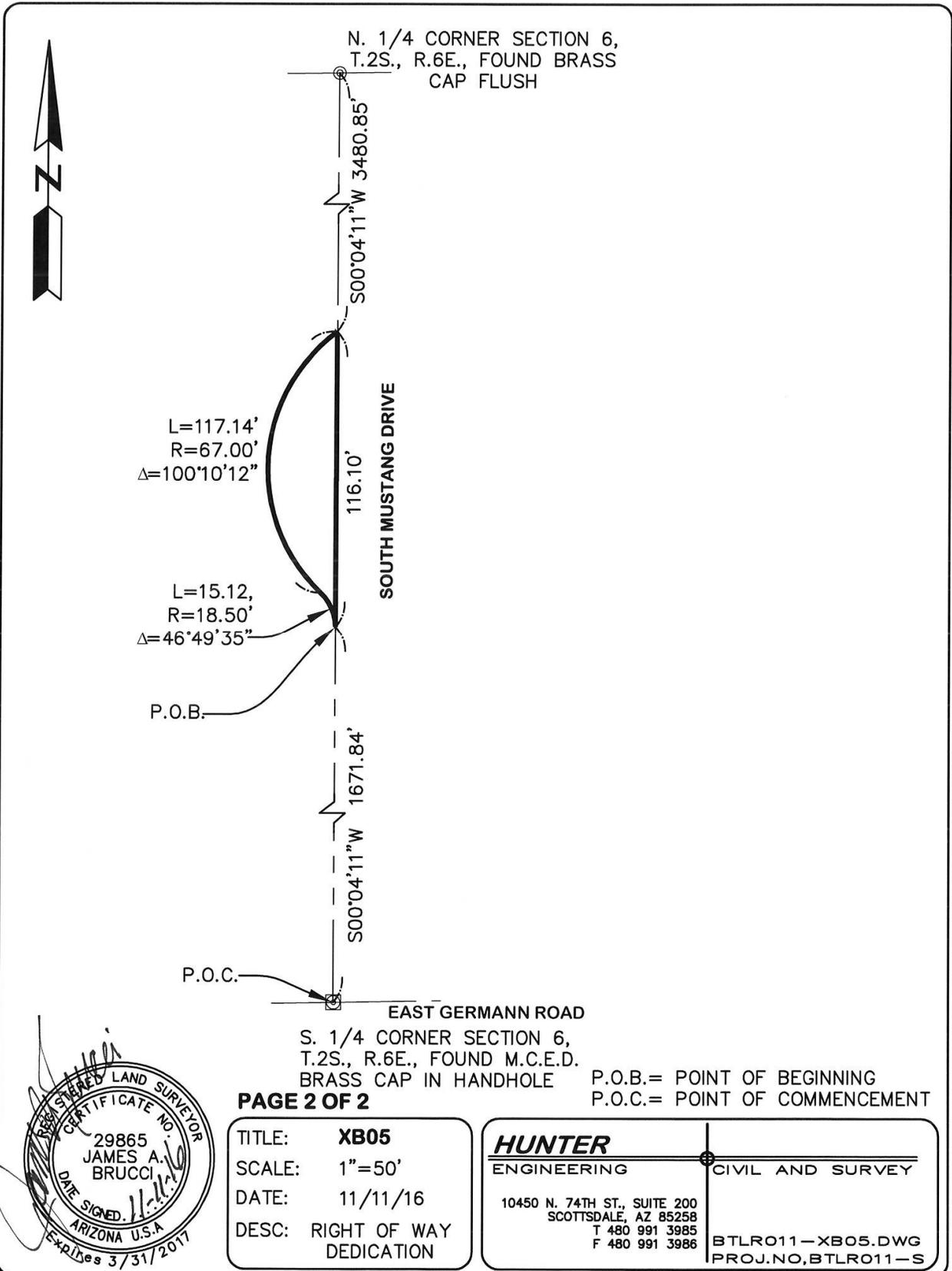


**PAGE 1 OF 2**

TITLE: **XB05**  
SCALE: 1"=50'  
DATE: 11/09/16  
DESC: RIGHT OF WAY DEDICATION

<b>HUNTER</b> ENGINEERING	CIVIL AND SURVEY
10450 N. 74TH ST., SUITE 200 SCOTTSDALE, AZ 85258 T 480 991 3985 F 480 991 3986	BTLR011-XB05.DWG PROJ.NO,BTLR011-S

EXHIBIT D CONTINUED



## LEGAL DESCRIPTION RIGHT OF WAY DEDICATION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, 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 A MARICOPA COUNTY ENGINEERING DEPARTMENT BRASS CAP IN HANDHOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6, FROM WHICH A BRASS CAP SET FLUSH MARKING THE NORTH QUARTER CORNER OF SAID SECTION 6 BEARS NORTH 00°04'11" EAST, A DISTANCE OF 5268.79 FEET;

THENCE NORTH 00°04'11" EAST, ALONG THE MID SECTION LINE OF SAID SECTION 6, A DISTANCE OF 1283.23 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89°59'55" WEST, A DISTANCE OF 40.00 FEET;

NORTH 31°39'24" EAST, A DISTANCE OF 76.37 FEET;

THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 65.00 FEET TO THE POINT OF BEGINNING.

SAID DESCRIPTION CONTAINING 0.030 ACRE, (1300 S.F.) MORE OR LESS.



### PAGE 1 OF 2

TITLE: **XB05**  
SCALE: 1"=50'  
DATE: 11/09/16  
DESC: RIGHT OF WAY  
DEDICATION

### **HUNTER**

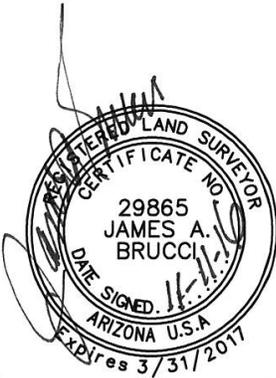
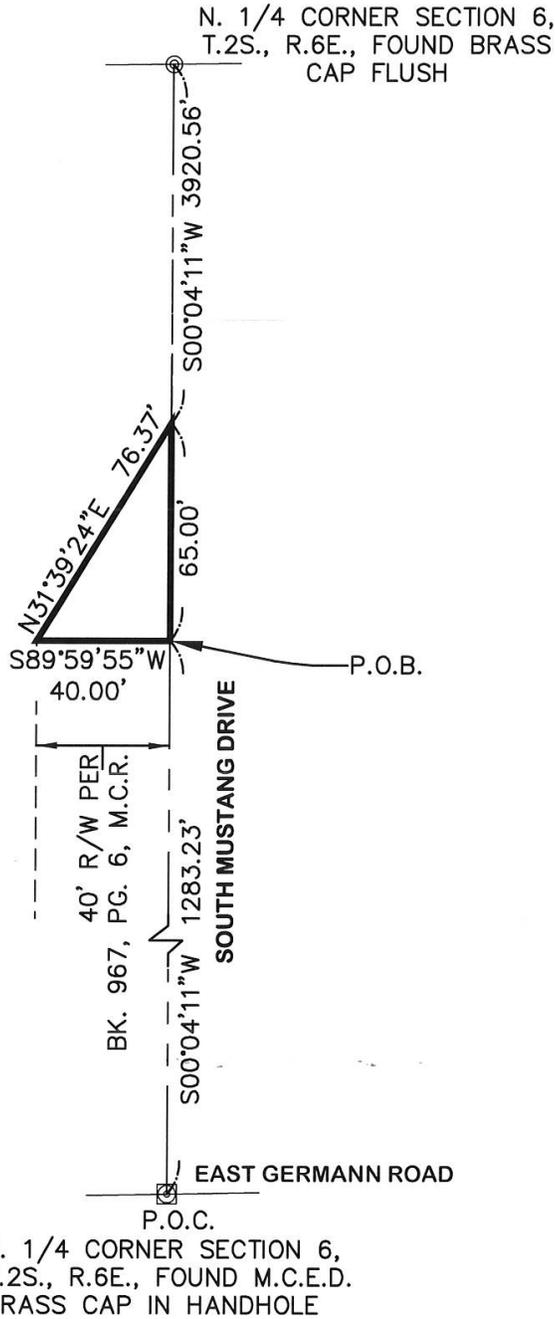
ENGINEERING

CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200  
SCOTTSDALE, AZ 85258  
T 480 991 3985  
F 480 991 3986

BTLR011-XB05.DWG  
PROJ.NO,BTLR011-S

EXHIBIT D CONTINUED



**PAGE 2 OF 2**

TITLE: **XB05**  
 SCALE: 1"=50'  
 DATE: 11/11/16  
 DESC: RIGHT OF WAY DEDICATION

P.O.B.= POINT OF BEGINNING  
 P.O.C.= POINT OF COMMENCEMENT

**HUNTER**  
 ENGINEERING

10450 N. 74TH ST., SUITE 200  
 SCOTTSDALE, AZ 85258  
 T 480 991 3985  
 F 480 991 3986

CIVIL AND SURVEY

BTLR011-XB05.DWG  
 PROJ.NO,BTLR011-S

# LEGAL DESCRIPTION RIGHT OF WAY DEDICATION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, 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 A MARICOPA COUNTY ENGINEERING DEPARTMENT BRASS CAP IN HANDHOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6, FROM WHICH A BRASS CAP SET FLUSH MARKING THE NORTH QUARTER CORNER OF SAID SECTION 6 BEARS NORTH 00°04'11" EAST, A DISTANCE OF 5268.79 FEET;

THENCE NORTH 00°04'11" EAST, ALONG THE MID SECTION LINE OF SAID SECTION 6, A DISTANCE OF 863.09 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°04'11" EAST, A DISTANCE OF 924.85 FEET TO A POINT ON A CURVE, CONCAVE SOUTHWESTERLY, WHOSE RADIUS IS 67.00 FEET AND WHOSE CHORD BEARS SOUTH 39°50'43" EAST A DISTANCE OF 133.78 FEET;

THENCE SOUTHEASTERLY, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 173°28'58" AN ARC LENGTH OF 202.87 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS IS 18.50 FEET;

THENCE SOUTHERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 46°49'35" AN ARC LENGTH OF 15.12 FEET;

THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 279.18 FEET TO A POINT OF CURVATURE, CONCAVE WESTERLY, WHOSE RADIUS IS 440.00 FEET;

THENCE SOUTHWESTERLY, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18°15'53" AN ARC LENGTH OF 140.26 FEET TO A POINT OF REVERSE CURVATURE, CONCAVE SOUTHEASTERLY, WHOSE RADIUS IS 360.00 FEET;

THENCE SOUTHERLY, ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 18°15'53" AN ARC LENGTH OF 114.76;

THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 276.16 FEET;

THENCE NORTH 89°26'58" WEST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

SAID DESCRIPTION CONTAINING 1.395 ACRES, (60,760 S.F.) MORE OR LESS.

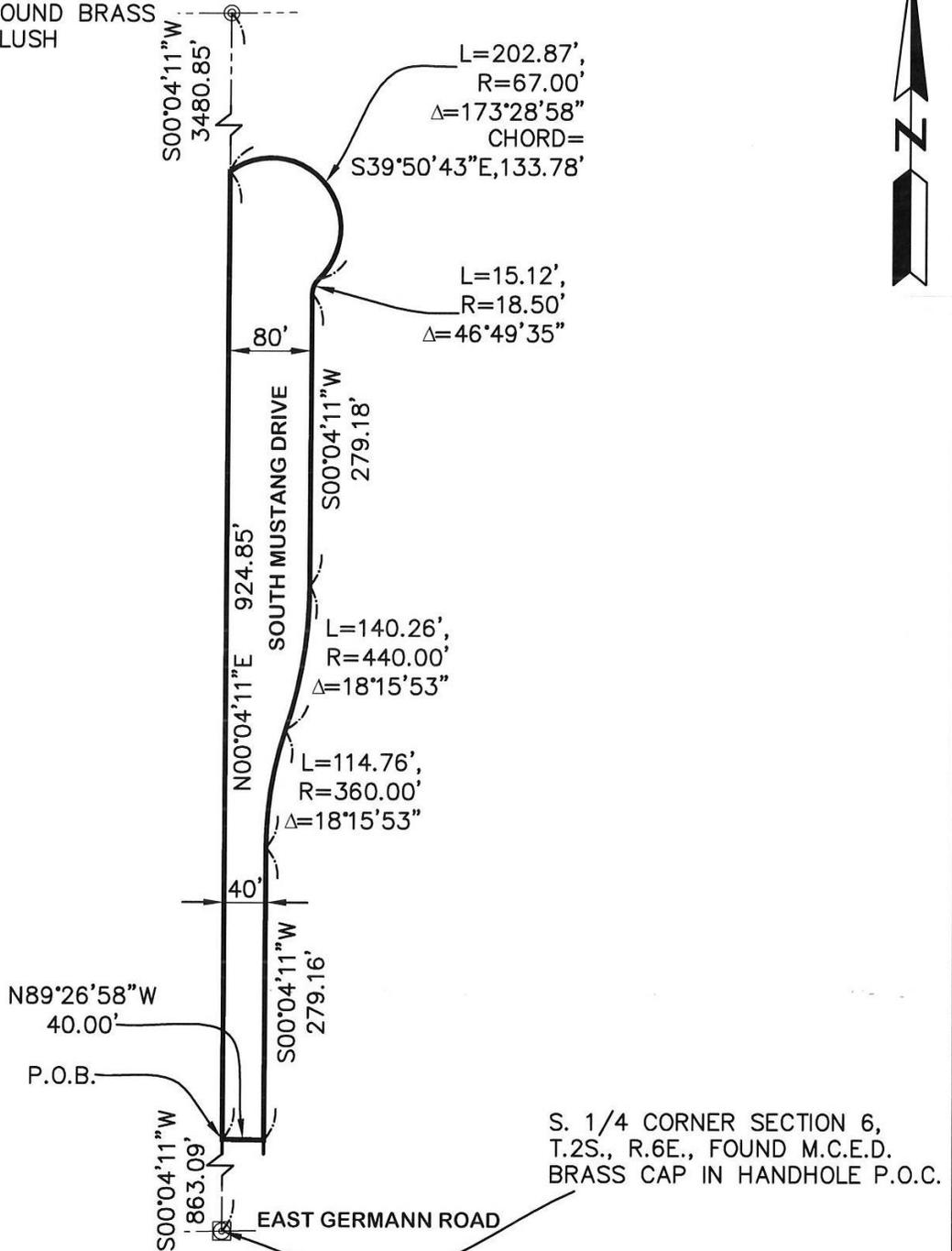


**PAGE 1 OF 2**

TITLE: **XB01**  
SCALE: 1"=150'  
DATE: 11/09/16  
DESC: RIGHT OF WAY DEDICATION

<b>HUNTER</b>	
ENGINEERING	CIVIL AND SURVEY
10450 N. 74TH ST., SUITE 200 SCOTTSDALE, AZ 85258 T 480 991 3985 F 480 991 3986	
BTLR011—XB05.DWG PROJ.NO,BTLR011—S	

N. 1/4 CORNER SECTION 6,  
T.2S., R.6E., FOUND BRASS  
CAP FLUSH



S. 1/4 CORNER SECTION 6,  
T.2S., R.6E., FOUND M.C.E.D.  
BRASS CAP IN HANDHOLE P.O.C.

N89°26'58"W  
40.00'  
P.O.B.

EAST GERMAN ROAD

P.O.B.= POINT OF BEGINNING  
P.O.C.= POINT OF COMMENCEMENT



**PAGE 2 OF 2**

TITLE: **XB01**  
SCALE: 1"=150'  
DATE: 11/11/16  
DESC: RIGHT OF WAY  
DEDICATION

**HUNTER**

ENGINEERING

10450 N. 74TH ST., SUITE 200  
SCOTTSDALE, AZ 85258  
T 480 991 3985  
F 480 991 3986

CIVIL AND SURVEY

BTLR011-XB05.DWG  
PROJ.NO,BTLR011-S

## LEGAL DESCRIPTION RIGHT OF WAY DEDICATION

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, 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 A MARICOPA COUNTY ENGINEERING DEPARTMENT BRASS CAP IN HANDHOLE MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 6, FROM WHICH A BRASS CAP SET FLUSH MARKING THE NORTH QUARTER CORNER OF SAID SECTION 6 BEARS NORTH 00°04'11" EAST, A DISTANCE OF 5268.79 FEET;

THENCE NORTH 00°04'11" EAST, ALONG THE MID SECTION LINE OF SAID SECTION 6, A DISTANCE OF 70.01 FEET; THENCE NORTH 88°57'14" EAST, A DISTANCE OF 17.02 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 10°33'40" WEST, A DISTANCE OF 24.49 FEET;

THENCE NORTH 00°04'11" EAST, A DISTANCE OF 227.44 FEET;

THENCE NORTH 03°06'36" WEST, A DISTANCE OF 108.17 FEET;

THENCE NORTH 00°04'11" EAST, A DISTANCE OF 280.74 FEET;

THENCE NORTH 31°39'28" EAST, A DISTANCE OF 63.95 FEET;

THENCE SOUTH 00°04'11" WEST, A DISTANCE OF 669.29 FEET;

THENCE SOUTH 45°29'31" EAST, A DISTANCE OF 35.01 FEET;

THENCE SOUTH 88°57'14" WEST, A DISTANCE OF 47.99 FEET TO THE POINT OF BEGINNING.

SAID DESCRIPTION CONTAINING 0.477 ACRE, (20,778 S.F.) MORE OR LESS.



**PAGE 1 OF 2**

TITLE: **XB01**  
 SCALE: 1"=100'  
 DATE: 11/11/16  
 DESC: RIGHT OF WAY DEDICATION

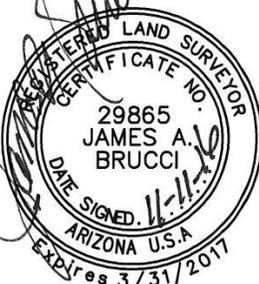
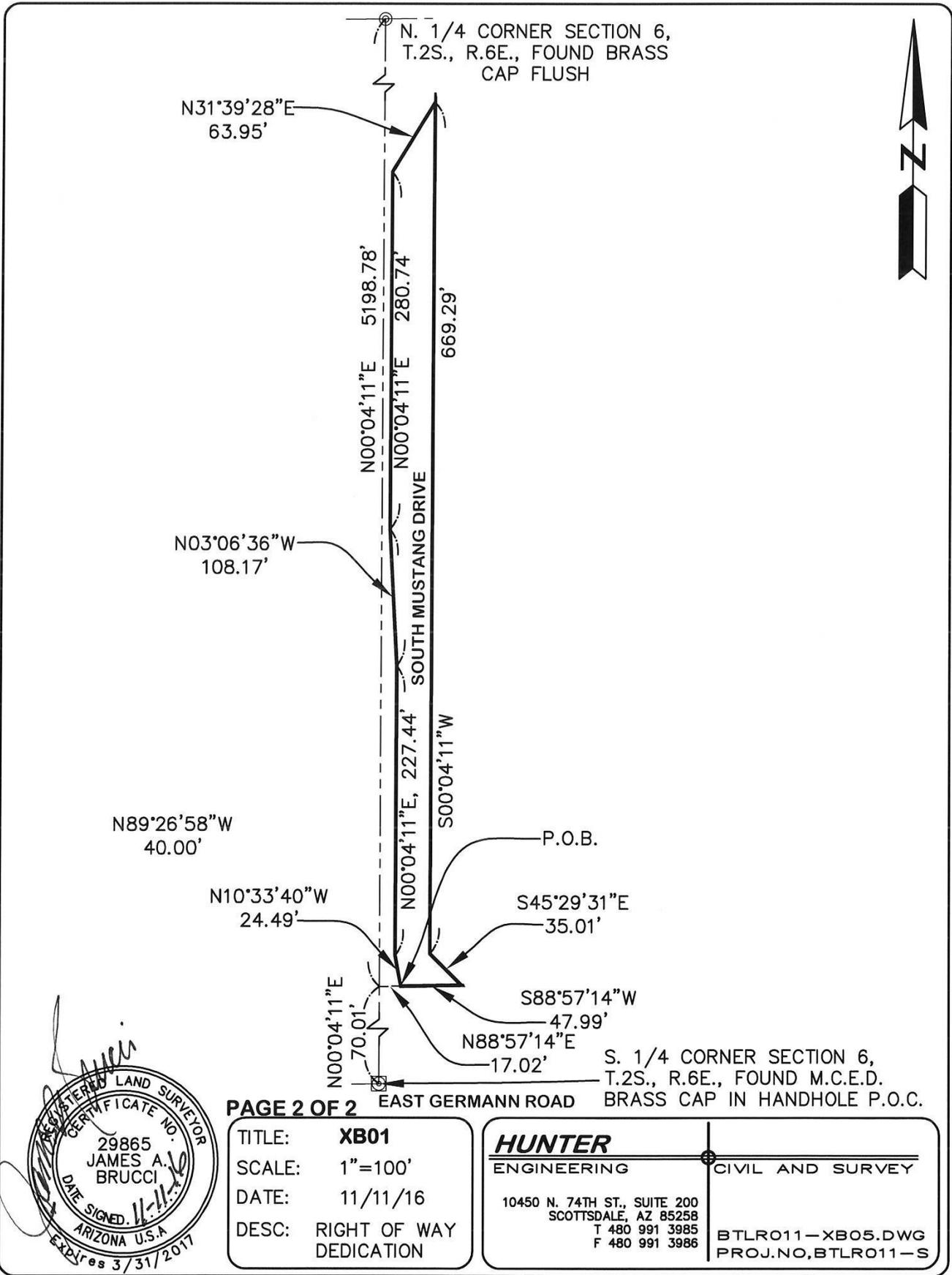
**HUNTER**

ENGINEERING

10450 N. 74TH ST., SUITE 200  
 SCOTTSDALE, AZ 85258  
 T 480 991 3985  
 F 480 991 3986

CIVIL AND SURVEY

BTLR011-XB05.DWG  
 PROJ.NO,BTLR011-S



**PAGE 2 OF 2**

TITLE: **XB01**  
 SCALE: 1"=100'  
 DATE: 11/11/16  
 DESC: RIGHT OF WAY DEDICATION

<b>HUNTER</b>	
ENGINEERING	CIVIL AND SURVEY
10450 N. 74TH ST., SUITE 200 SCOTTSDALE, AZ 85258 T 480 991 3985 F 480 991 3986	
BTLR011-XB05.DWG PROJ.NO,BTLR011-S	



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Rob Duggan, Assistant Fire Chief, 503-6332

**MEETING DATE:** December 1, 2016

**SUBJECT:** Fire Act Grant from the Federal Emergency Management Agency

**STRATEGIC INITIATIVE:** High Performing Government

The request will help Gilbert Fire and Rescue maintain a qualified and well trained work force.

### RECOMMENDED MOTION

A motion to authorize application and acceptance of an Assistance to Firefighters Grant, #2017-3002-0496, from the Federal Emergency Management Agency in the amount of \$43,765.22 for incident command training, and authorize the Mayor to execute the required documents.

### BACKGROUND/DISCUSSION

Annually, grants are made available through the Assistance to Firefighters Grant Program (AFG) to fire departments for the purchase of equipment, services and training materials. The AFG is administered by the Federal Emergency Management Agency (FEMA) and funding is made directly to fire departments with no state or county pass through requirements. After a FEMA review to ensure completeness and accuracy a group of peer evaluators scores each application for funding priority.

The Fire & Rescue Department would like to apply for a portion of a Regional Valley Training Alliance grant through the AFG program for the cost of incident command training classes and overtime/backfill costs to attend training classes. The City of Peoria has agreed to serve as the lead proposal entity to the Alliance and, if funded will serve as the administrative entity for the award.

Ongoing training is crucial to ensure effective fire ground operations and safety. The incident command training would focus on hostile fire events and larger scale incidents which present the

highest risk to firefighters. The recent large scale fires within the Town of Gilbert brings greater focus for the importance to train on large scale, region impacting events. The regional training approach will allow fire crews to train with regional partners to improve consistency, communications and relationships while training on these high risk incidents.

The incident command training will be offered at Mesa Community College's Virtual Incident Command Center (VICC). The VICC is a state of the art facility which creates a true-to-life environment of realistic, reproducible command training experiences. It serves as a "force multiplier" of training opportunities. What would take years of real world experience to obtain could be experienced in several days at the VICC.

The AFG is a federally operated and funded program. If approved by FEMA to receive the grant, Gilbert would be required to comply with all Federal statues relating to nondiscrimination, the Hatch Act; Davis-Bacon Act; will cause to be performed the required financial and compliance audits; will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing the program; will report to the National Fire Incident Reporting System. There are no requirements beyond the applicable grant period.

If approved, the AFG has a matching requirement of 15 % by the applicant. It is anticipated that notification of the application status would be received during Fiscal year 2018.

### **FINANCIAL IMPACT**

If approved, the AFG would fund \$43,765 and the Town's matching portion (15%) would be \$6,564. If approved and accepted the total amount of funding for Incident Command Training would be \$50,330. Funding for the matching portion would come from the Fire Department's operating accounts used for training.

The breakdown of the \$50,330 is \$30,080 in personnel costs (overtime/backfill) and \$20,250 in training classes costs.

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

### **STAFF RECOMMENDATION**

Respectfully submitted,

Rob Duggan  
Assistant Fire Chief

**Approved By**

Jim Jobusch  
Michael Hamblin  
Laura Lorenzen

**Approval Date**

11/8/2016 11:21 AM  
11/22/2016 10:59 AM  
11/21/2016 1:40 PM



## Council Communication

**TO:** Honorable Mayor and Councilmembers

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

**MEETING DATE:** December 1, 2016

**SUBJECT:** S15-03: Abandonment of an Ingress and Egress Easement and a Public Utility Easement located along the 162nd Street alignment, north of Pecos Road.

<p><b>STRATEGIC INITIATIVE:</b> N/A</p>
---

### RECOMMENDED MOTION

A motion to approve a Resolution of Abandonment for an Ingress and Egress Easement and a Public Utility Easement located along the 162nd Street alignment, north of Pecos Road.

### BACKGROUND/DISCUSSION

Approximately 30 years ago, the Town of Gilbert acquired the Tankersley Water Company. A portion of this acquisition included water mains, service taps and easements on the 162<sup>nd</sup> Street and Fairview Lane alignments, just north of Pecos Road and east of Greenfield Road. In order to maintain service to approximately a dozen existing customers, while at the same time minimizing impacts to the new Graystone subdivision, the developer proposed abandoning a section of the public utility and ingress / egress easements along the 162<sup>nd</sup> Street alignment. Prior to abandoning the potable water main, the developer had to construct an alternate supply line to serve the properties, and demonstrate that the Tankersley water main could be abandoned with no adverse impact to those existing customers. Now that the developers have completed new potable water improvements, the portion of the public utility easement along 162<sup>nd</sup> Street alignment – as well as the ingress / egress easement - can be abandoned by means of the attached Resolution.

In conformance with the requirements contained in the Town's Land Development Code (LDC), notices were sent to potentially impacted utility companies and other interested parties. With the exception of the existing water services – which are now being served via the new water system in Graystone - no objections to the abandonment were received.

The Resolution was reviewed for form by Attorney Jack Vincent.

**FINANCIAL IMPACT**

There is no financial impact to the Town associated with the proposed abandonment.

The financial impact was reviewed by Justine Bruno, Management and Budget Analyst.

**STAFF RECOMMENDATION**

All requirements for approval of this Resolution of Abandonment have been addressed. Town staff has reviewed the Resolution of Abandonment and recommend approval.

Respectfully submitted,

Tom Condit, PE  
Development Engineer

**Approved By**

Kyle Mieras  
Jack Vincent  
Justine Bruno

**Approval Date**

11/17/2016 6:03 PM  
11/21/2016 12:02 PM  
11/20/2016 11:00 PM

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, VACATING, ABANDONING, AND EXTINGUISHING ALL OF ITS INTEREST IN APPROXIMATELY 15,637 SQUARE FEET OF PUBLIC INGRESS & EGRESS EASEMENT AND 4,940 SQUARE FEET OF PUBLIC UTILITY EASEMENT ON THE 162<sup>ND</sup> STREET ALIGNMENT, NORTH OF THE INTERSECTION WITH GERMANN ROAD; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, the Town Council of the Town of Gilbert finds that the public ingress & egress easement and public utility easement on the 162nd Street alignment, north of the intersection with Germann Road, is no longer necessary for public use; and

WHEREAS, the Town Council finds it to be in the best interest of the Town to abandon and vacate approximately 15,637 square feet of public ingress & egress easement and 4,940 square feet of public utility easement on the 162nd Street alignment, north of the intersection with Germann Road; and

WHEREAS, the Town of Gilbert is authorized to vacate and abandon easements pursuant to Arizona Revised Statutes Sections 9-240(B)(3)(e) and 28-7205;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona:

1. That the approximately 15,637 square feet of public ingress & egress easement and 4,940 square feet of public utility easement on the 162nd Street alignment, north of the intersection with Germann Road, legally described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein, is hereby vacated and abandoned.

2. That the Town Clerk is hereby authorized and directed to record a copy of this Resolution with the Maricopa County Recorder evidencing the permanent abandonment of said portion of said easements.

3. That, pursuant to Section 28-7213 of the Arizona Revised Statutes, this Resolution shall become effective on the date it is recorded in the Office of the Maricopa County Recorder.

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

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 1<sup>ST</sup> DAY OF DECEMBER, 2016.

\_\_\_\_\_  
Jenn Daniels, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Maxwell, 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 December 1, 2016, and that quorum was present thereat and that the vote thereon was \_\_\_\_\_ ayes and \_\_\_\_\_ nays and \_\_\_\_\_ abstentions. \_\_\_\_\_ Council members were absent or excused.

\_\_\_\_\_  
Lisa Maxwell, Town Clerk  
Town of Gilbert

The following exhibits are attached hereto and incorporated herein:

1. Exhibit A – Legal Description for Easement Abandonment
2. Exhibit B – Map showing Graystone Easement Abandonment

**Exhibit 'A'**  
**Legal Description**

Job No. 15-081

September 29, 2016

**Ingress and Egress Easement Abandonment:**

The west 25 feet of the south half of the southeast quarter of the southwest quarter of Section 34, Township 1 South, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

Except the south 33 feet.

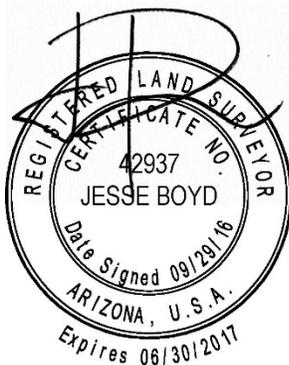
Containing an area of 15,637 square feet or 0.3590 acres, more or less.

**Public Utility Easement Abandonment:**

The west 8 feet of the south half of the southeast quarter of the southwest quarter of Section 34, Township 1 South, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

Except the north 8 feet and except the south 33 feet.

Containing an area of 4,940 square feet or 0.1134 acres, more or less.





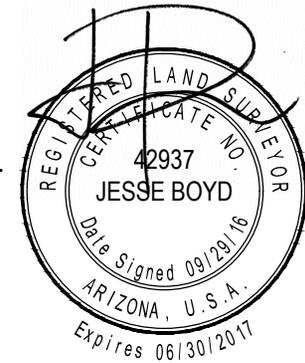
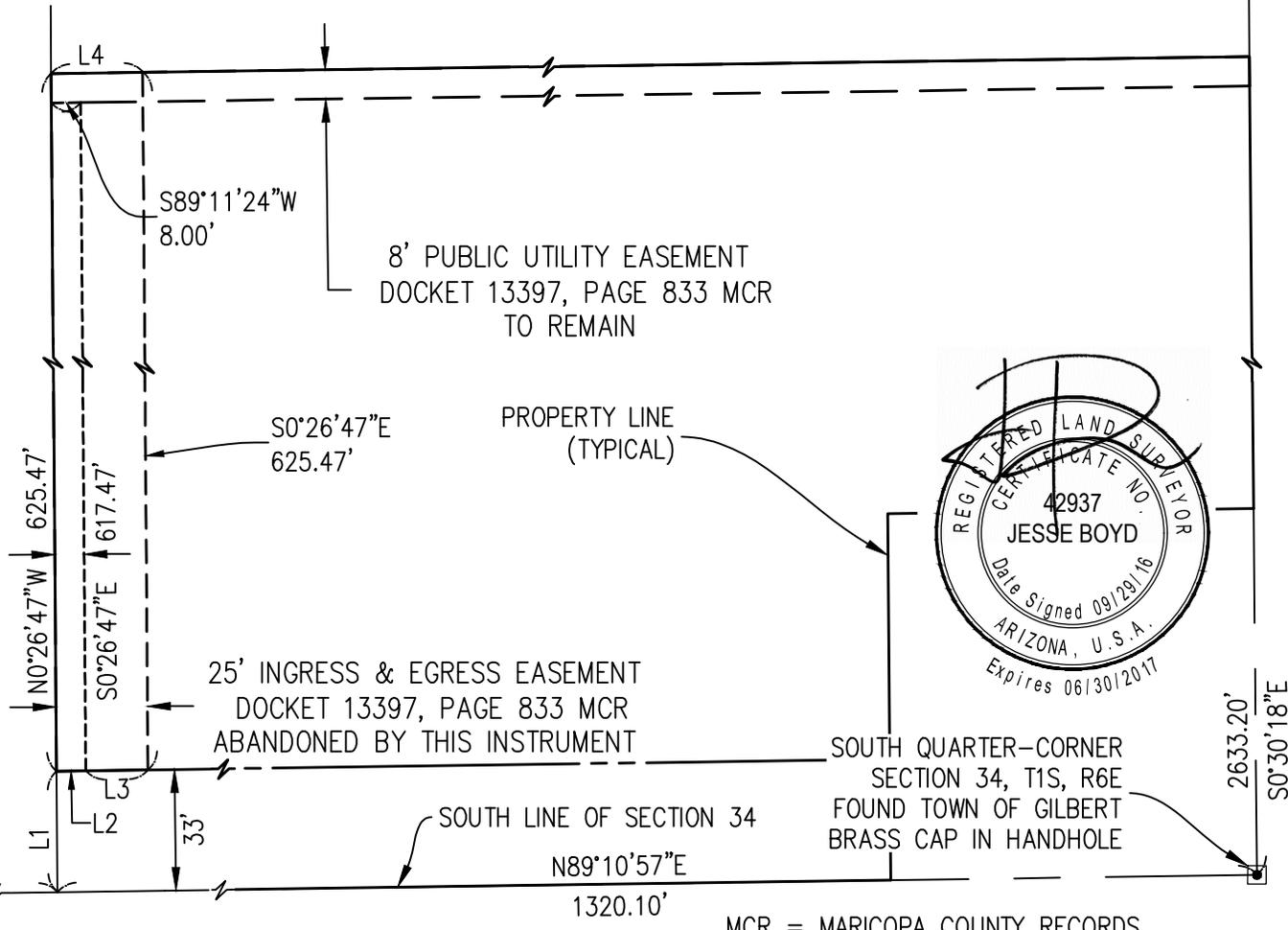
**Exhibit 'B'**

CENTER QUARTER-CORNER  
SECTION 34, T1S, R6E  
CALCULATED POSITION  
(NOTHING FOUND)

MID-SECTION LINE

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°26'47"W	33.00'
L2	S89°10'57"W	8.00'
L3	S89°10'57"W	17.00'
L4	N89°11'24"E	25.00'

8' PUBLIC UTILITY EASEMENT  
DOCKET 13397, PAGE 833 MCR  
ABANDONED BY THIS INSTRUMENT



www.epsgroupinc.com

15-081

**PUBLIC UTILITY EASEMENT AND INGRESS & EGRESS EASEMENT ABANDONMENT**

**GRAYSTONE  
SEPTEMBER 29, 2016**





## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Leslie Giltner, Customer Service Manager, 503-6801

**MEETING DATE:** December 1, 2016

**SUBJECT:** Permanent Extension of Premises for AZ Ice Gilbert located at 2305 East Knox Road

<p><b>STRATEGIC INITIATIVE:</b> N/A</p>
---

### **RECOMMENDED MOTION**

A motion to recommend approval of a Permanent Extension of Premises for AZ Ice Gilbert located at 2305 East Knox Road.

### **BACKGROUND/DISCUSSION**

Nicholas Carl Gutilla is requesting a Permanent Extension of Premises AZ Ice Gilbert located at 2305 East Knox Road. The extension of premises is required due to an addition to the existing building. There is a valid building permit for the addition.

The Permanent Extension of Premises has been reviewed by Town staff and no adverse information has been received.

### **FINANCIAL IMPACT**

The permanent extension of premises license fee is \$50.

### **STAFF RECOMMENDATION**

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner  
Customer Service Manager

Attachments and Enclosures:

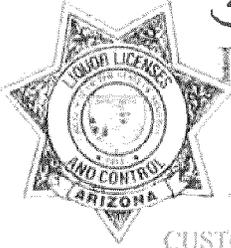
Attachment 1 – Application for Extension of Premises/Patio Permit

**Approved By**

Kyle Mieras

**Approval Date**

11/17/2016 5:26 PM



32D

RECEIVED  
Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

DLLC USE ONLY

CSR:
Log #:

11-11-16

TOWN OF GILBERT  
CUSTOMER SERVICE CENTER

**APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT**  
**\*OBTAIN APPROVAL FROM LOCAL GOVERNING BOARD BEFORE SUBMITTING TO THE DEPARTMENT OF LIQUOR\***  
**\*\*Notice: Allow 30-45 days to process permanent change of premise\*\***

Permanent change of area of service. **A non-refundable \$50. Fee will apply.** Specific purpose for change  
**Increase sq. ftg. of current licensed premises.**

Temporary change (No Fee) for date(s) of \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_ list specific purpose for change:

1. Licensee's Name:	Mellen	Andrew	Charles	License #:	12079901
	<small>Last</small>	<small>First</small>	<small>Middle</small>		
2. Mailing address:	3853 E. Thomas Road	Phoenix	AZ	85018	
	<small>Street</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	
3. Business Name:	AZ ICE Gilbert				
4. Business Address:	2305 E. Knox Road	Gilbert	AZ	85296	
	<small>Street</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	
5. Email Address:	mellen@landmarkacm.com				
6. Business Phone Number:	480.503.7080	Contact Phone Number:	602.677.9700		

7. Is extension of premises/patio complete?  
 N/A  Yes  No If no, what is your estimated completion date? 12/15/16

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

11. What security precautions will be taken to prevent liquor violations in the extended area?  
Increased staff to monitor extended premises.

12. **IMPORTANT:** Attach the revised floor plan clearly depicting your licensed premise along with the new extended area outlined in black marker or ink. **If the extended area is not outlined and marked "extension" we cannot accept the application.**

62732

408885

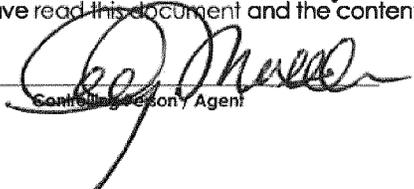
Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premise. List specific reasons for exemption:

\_\_\_\_\_  
\_\_\_\_\_

Approval  Disapproval by **DLLC**: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

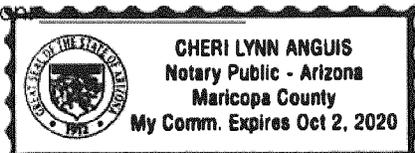
**Notary**

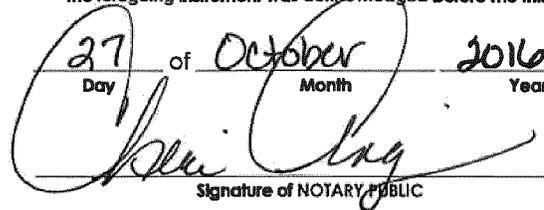
I, (Print Full Name) Andrew Charles Melton hereby declare that I am a **CONTROLLING PERSON/ AGENT** filing this notification. I have read this document and the contents and all statements are true, correct and complete.

X (Signature)   
Controlling Person/ Agent

State of Arizona County of Maricopa  
the foregoing instrument was acknowledged before me this  
27 of October 2016  
Day Month Year

My commission expires on \_\_\_\_\_



  
Signature of NOTARY PUBLIC

**GOVERNING BOARD**

After completion, and **BEFORE submitting to the Department of Liquor**, 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:**

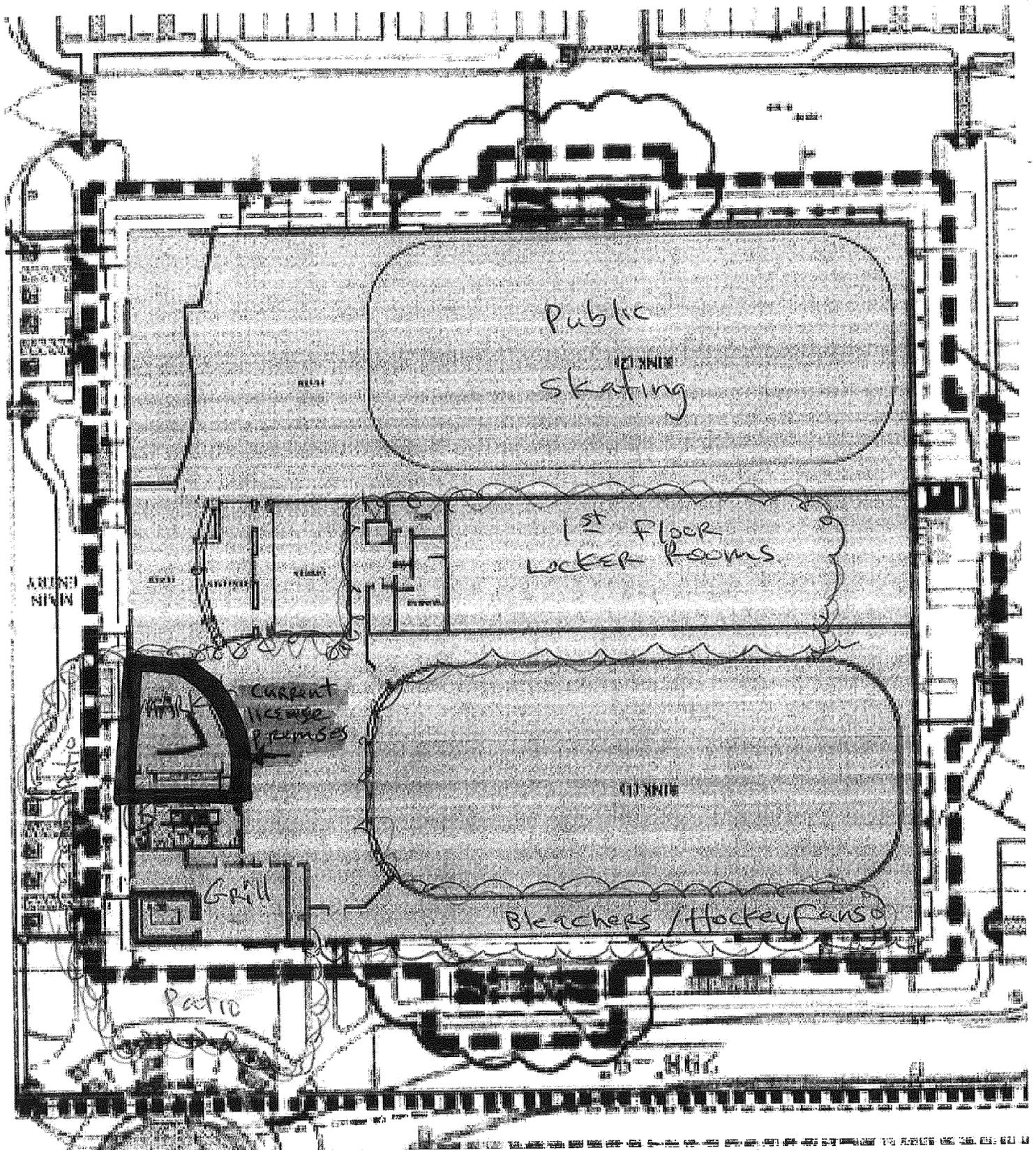
\_\_\_\_\_  
Authorized Signature Title Agency Date

**DLLC USE ONLY**

Investigation Recommendation:  Approval  Disapproval by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Director Signature required for Disapprovals: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

M's Market & Grill  
2305 E. Knox Road - Gilbert, AZ



Hours of Operation

Sun. - Thurs. 6am - 11pm  
Fri. & Sat. 6am - 12 midnight.



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Leslie Giltner, Customer Service Manager, 503-6801

**MEETING DATE:** December 1, 2016

**SUBJECT:** Permanent Extension of Premises for Grubstak located at 384 North Gilbert Road, Suite 106

<p><b>STRATEGIC INITIATIVE:</b> N/A</p>
---

### **RECOMMENDED MOTION**

A motion to recommend approval of a Permanent Extension of Premises for Grubstak located at 384 North Gilbert Road, Suite 106.

### **BACKGROUND/DISCUSSION**

Randy Nations is requesting a Permanent Extension of Premises for Grubstak located at 384 North Gilbert Road, Suite 106. The extension of premises is required due to an addition to the existing building. There is a valid building permit for the addition.

The Permanent Extension of Premises has been reviewed by Town staff and no adverse information has been received.

### **FINANCIAL IMPACT**

The permanent extension of premises license fee is \$50.

### **STAFF RECOMMENDATION**

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner  
Customer Service Manager

Attachments and Enclosures:

Attachment 1 – Application for Extension of Premises/Patio Permit

**Approved By**

Kyle Mieras

**Approval Date**

11/16/2016 5:30 PM



Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix AZ 85007 2934  
 www.azliquor.gov  
 (602) 542-5141

DLLC USE ONLY

CSR
Log #

**APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT**  
 \*OBTAIN APPROVAL FROM LOCAL GOVERNING BOARD BEFORE SUBMITTING TO THE DEPARTMENT OF LIQUOR\*  
 \*\*Notice Allow 30 45 days to process permanent change of premise\*\*

Permanent change of area of service **A non refundable \$50 Fee will apply** Specific purpose for change  
Additional seating along the roll up window allowing customers to order food and beverages

Temporary change (**No Fee**) for date(s) of \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_ list specific purpose for change

1 Licensee's Name	<u>Nations</u>	<u>Randy</u>	<u>D</u>	License#	<u>1207A684</u>
	<small>Last</small>	<small>First</small>	<small>Middle</small>		
2 Mailing address	<u>PO Box 2502</u>	<u>Chandler</u>	<u>Arizona</u>	<u>85244</u>	
	<small>Street</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	
3 Business Name	<u>Grubstak</u>				
4 Business Address	<u>384 N Gilbert Rd #106</u>	<u>Gilbert</u>	<u>Arizona</u>	<u>85234</u>	
	<small>Street</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	
5 Email Address	<u>miranda@azlic.com</u>				
6 Business Phone Number	<u>602-381-6595</u>	Contact Phone Number	<u>480-730-2675</u>		

7 Is extension of premises/patio complete?  
 N/A  Yes  No If no what is your estimated completion date? \_\_\_/\_\_\_/\_\_\_

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

11 What security precautions will be taken to prevent liquor violations in the extended area? The extended area will be under constant observation, during periods of use

12 **IMPORTANT** Attach the revised floor plan clearly depicting your licensed premise along with the new extended area outlined in black marker or ink if the extended area is not outlined and marked 'extension' we cannot accept the application

*WSUMR #446772  
 Activity #62755  
 Quad 120*

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.

The extended area is a pedestrian walkway, a permanent barrier would not be allowed

"No alcohol allowed beyond this point" signs will be posted as depicted on the attached diagram

Approval  Disapproval by DLLC \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

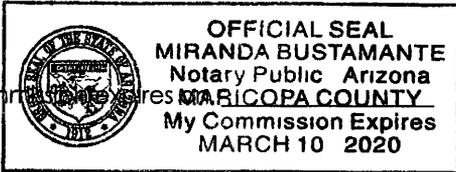
**Notary**

I (Print Full Name) Randy D Nations hereby declare that I am a **CONTROLLING PERSON/ AGENT** filing this notification. I have read this document and the contents and all statements are true, correct and complete.

X (Signature) *Randy D Nations*  
Controlling Person / Agent

State of Arizona County of Maricopa  
the foregoing instrument was acknowledged before me this

2nd of November 2016  
Day Month Year



*Miranda Bustamante*  
Signature of NOTARY PUBLIC

**GOVERNING BOARD**

After completion and **BEFORE submitting to the Department of Liquor**, 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.

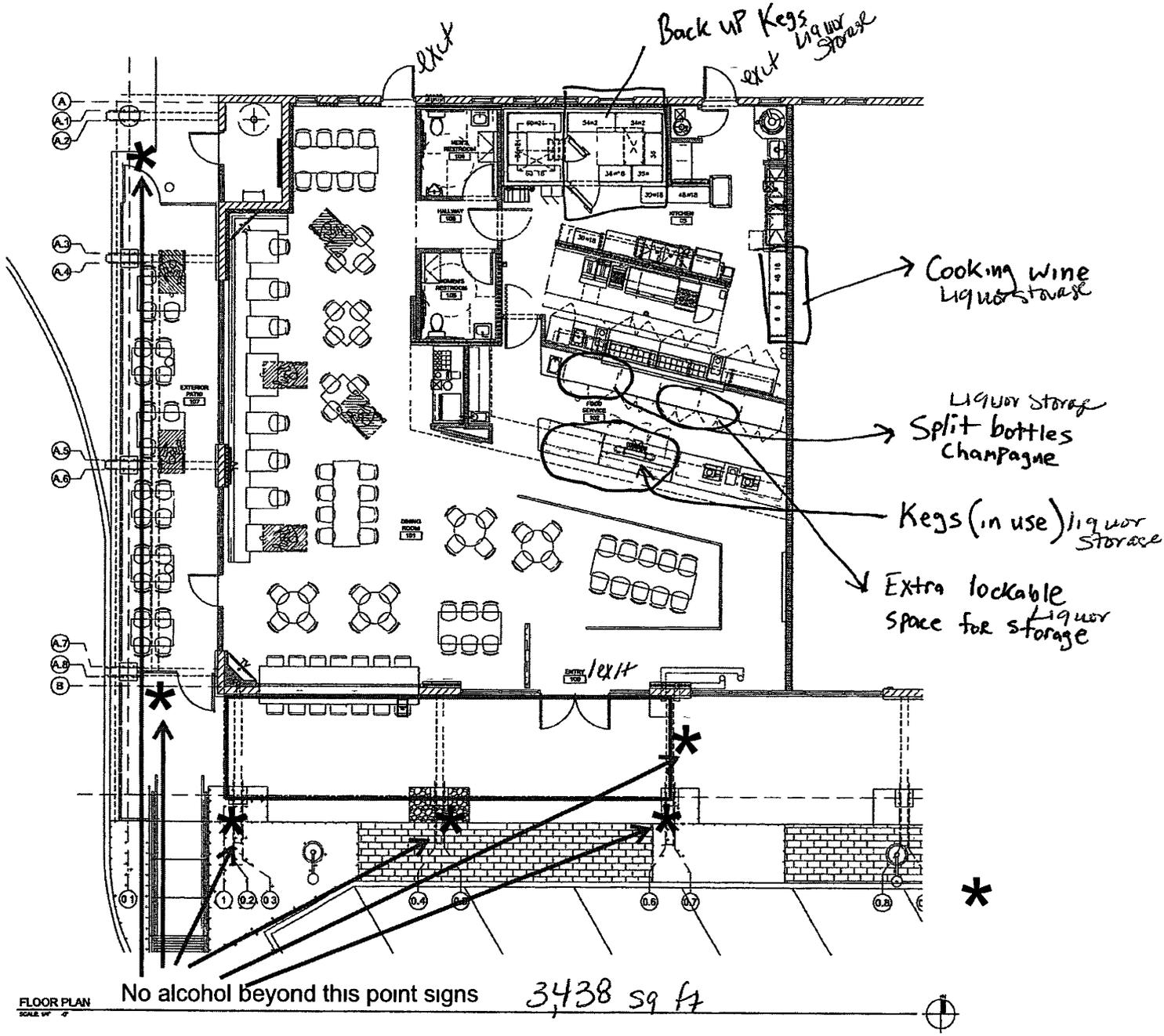
**This change in premises is recommended by the local Board of Supervisors, City Council, or Designate.**

\_\_\_\_\_  
Authorized Signature Title Agency Date

**DLLC USE ONLY**

Investigation Recommendation  Approval  Disapproval by \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Director Signature required for Disapprovals \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_



**MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING OF  
NOVEMBER 1, 2016 AT 6:00 PM, COUNCIL CHAMBERS, 50 EAST CIVIC CENTER  
DRIVE, GILBERT, ARIZONA**

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**COUNCIL PRESENT:** Mayor Jenn Daniels, Vice Mayor Jared Taylor, Councilmembers James Candland, Eddie Cook, Victor Petersen, Brigitte Peterson and Jordan Ray

**COUNCIL ABSENT:** none

**STAFF PRESENT:** Manager Patrick Banger, Assistant Manager Marc Skocypec, Clerk Lisa Maxwell, Attorney Michael Hamblin, Economic Development Director Dan Henderson

**AGENDA ITEM**

**CALL TO ORDER**

Mayor Jenn Daniels called the meeting to order at 6:02 p.m.

**ROLL CALL**

Town Clerk Lisa Maxwell called roll and declared a quorum present.

**CONSENT CALENDAR**

1. DEVELOPMENT AGREEMENT - consider adoption of a Resolution approving a Development and Disposition Agreement with CBDG Gilbert, LLC (Common Bond) for the sale and development of property located on the northeast corner of Hearne Way and Gilbert Road and authorize the Mayor to execute the required documents.

Mary Ellen Fresquez, Gilbert resident, said approving this agreement solidifies the construction of a parking garage near this location. There was a stakeholders' meeting on October 26 to discuss the proposed parking garage. There was a question regarding the site selected for the parking garage and there were concerns about the proposed location. The Gilbert Chamber of Commerce looked at more southern locations for a parking garage. Ms. Fresquez would like the Town to be more inclusive in the early planning stages in the Heritage District.

Councilmember Victor Petersen said this project has accelerated the parking structure construction. There are still questions about how parking will be paid for. There is a clause in this Development Agreement that allows for some payment towards parking. The Town is committing to build a parking garage that will cost \$21,000,000. The purchase price of the land sale is \$1,000,000. Deducting the purchase price of the land from the sales price leaves the Town with a profit of only \$100,000. This agreement is providing a large subsidy for this

project. Councilmember Victor Petersen said growth should pay for growth and but this agreement is setting a bad precedent.

Vice Mayor Jared Taylor agreed and said Councilmember Victor Petersen had valid points. The Town needs a parking plan and policy. Until that is completed he does not feel the urgency to complete a parking garage so soon.

Councilmember Jordan Ray agreed there was a lack of communication from the Town to the Heritage District residents and business owners. When this garage is completed the Town is looking at another site further south for another parking garage. He agreed there should be a long term parking policy in place. The current policy is the Town pays for all parking and that is what is being followed now. The Town needs a plan to pay maintenance on the parking facilities. Mayor Jenn Daniels said Council will discuss parking at a Study Session on November 29.

Economic Development Director Dan Henderson answered questions on the economic impact of the different projects in the Heritage District. This specific project has not been analyzed. Over a five year period sales tax collections has increased 93% in just the Heritage District. Town Manager Patrick Banger mentioned there was discussion at the Council Retreat on how to find data for specific areas. A few years ago the money collected from the Heritage District totaled \$3,300,000 a year.

Councilmember Eddie Cook asked for more information on what the proposed public pedestrian plaza might look like. Economic Development Director Dan Henderson said the pedestrian and vehicular plaza is envisioned as site for pedestrians to gather and interact. Bicycles and pedestrians could leave the Power Line trail and move south towards Elliot Road. Public participation will be part of the design process of the plaza.

A motion was made Eddie Cook, seconded by Brigette Peterson, to adopt a Resolution approving a Development and Disposition Agreement with CBDG Gilbert, LLC (Common Bond) for the sale and development of property located on the northeast corner of Hearne Way and Gilbert Road and to authorize the Mayor to execute the required documents. *Motion carried 5-2 with Vice Mayor Jared Taylor and Councilmember Victor Petersen casting the dissenting votes. Resolution No. 3881 was adopted.*

## **ADJOURN**

Mayor Jenn Daniels adjourned the meeting at 6:22 p.m.

## **ATTEST:**

---

Jenn Daniels, Mayor

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Lisa Maxwell, CMC, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Gilbert held on the 1st day of November 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Lisa Maxwell, CMC, Town Clerk

DRAFT

**MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING OF NOVEMBER 10, 2016 AT 6:30 PM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA**

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**COUNCIL PRESENT:** Mayor Jenn Daniels, Vice Mayor Jared Taylor, Councilmembers James Candland, Eddie Cook, Victor Petersen and Brigette Peterson.

**COUNCIL ABSENT:** Councilmember Jordan Ray

**STAFF PRESENT:** Manager Patrick Banger, Clerk Lisa Maxwell, Attorney Michael Hamblin, Project Manager Ken Snow and Planner Ashlee MacDonald

**AGENDA ITEM**

**CALL TO ORDER**

Mayor Jenn Daniels called the meeting to order at 6:33 p.m.

**PRESENTATION OF STUDENT CITIZEN OF THE MONTH AWARD**

Mayor Jenn Daniels and the Council presented Student Citizen of the Month Awards for October to:

Londyn Webster, Skye Robinson, Michael Guardado, Alexia Ruvalcaba, Everly Matson, Carly Hudson, Zachary Jones, Ellie Ebright, Allison Blum, Nina Gojkovic, Houston Hawkins, Amare Patel, Kanz Sulaiman, Sage Ehlert, Timothy Ortiz, Jordan Carlin, Madison Avery, Kendall Stout, Madison Crook, Mikal Buckner, Tyler Judd, Isabella Gobrick, Gary Daniels, Eric Chikando, Madison Wright, Jesse Waters, Gracie Miraglia, Lauren Zaur, Carleigh Mendez, Navy LeBaron, Emilie Miranda, Rony Finney, Sydney Murrell, Bradley Nisbet, Nathaniel Foote, Mason Rein, Jared Mannie, Karter Doucette, Lynsey Shaffer, Diego Alegre, Madison Durrant, Allen Jacob, Julissa Solis, Benjamin Pettit, Emily Narducci, Ashley Nichols, and Charles Hamrock.

**PRESENTATIONS; PROCLAMATIONS**

1. Proclamation declaring Gilbert as a Hidden Heroes City in partnership with the Elizabeth Dole Foundation.

Mayor Jenn Daniels read a proclamation declaring Gilbert, Arizona as a Hidden Heroes City in partnership with the Elizabeth Dole Foundation, and presented the proclamation to Annie Remsberg, the Arizona Dole Caregiver Fellow.

2. Proclamation declaring November 2016 as American Diabetes Month

No presentation.

3. Presentation on iRun4Good.

Councilmember Victor Petersen introduced Tim Thompson, who gave an overview of the iRun4Good event. Mr. Thompson presented a check to the Police Department Family Violence Unit in the amount of \$10,000.

4. Presentation of the International City/County Management Association (ICMA) Certificate of Excellence.

Management and Budget Director Kelly Pfof reported the Town received a Certificate of Excellence from the ICMA and she presented the award to Town Manager Patrick Banger.

### **INVOCATION AND PLEDGE OF ALLEGIANCE**

Councilmember James Candland introduced the young man who led the Pledge of Allegiance. Pastor Thor Strandholt of Valor Christian Church gave the invocation.

### **ROLL CALL**

Town Clerk Lisa Maxwell called roll and declared a quorum present.

### **COMMUNICATIONS FROM CITIZEN**

None.

### **CONSENT CALENDAR**

A MOTION was made by Vice Mayor Jared Taylor, seconded by Councilmember Victor Petersen, to approve Consent Items 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 29; remove Items 10, 22 and 23 from the Consent Calendar; remove Consent Item 8 from the agenda; and add Item 35 to the Consent Calendar, appointing Mary Harris and Seth Banda to the Planning Commission as alternate members with terms ending November 14, 2016 to November 14, 2017. *Motion carried 6-0.*

5. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2017-3001-0490 with Maricopa County in an amount not to exceed \$143,966 for FY2016-2017 basic animal control services and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

6. AGREEMENT – consider approval of Cooperative Purchase Agreement No. 2017-3002-0482 with Braun Northwest Inc. in an amount not to exceed \$310,928 for the purchase of two ambulances and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

7. PURCHASE - consider:

a) waiving the bidding requirements and authorize the purchase of eighteen (18) police vehicle replacements and five (5) new patrol vehicles fully up-fit from San Tan Ford, in an amount not to exceed \$1,106,000, including taxes;

b) a Contingency Transfer from the Capital Improvement Plan (CIP) Contingency Fund to the Police System Development Fee Fund in the amount of \$242,500; and

c) a Contingency Transfer from the General Fund Replacement Fund in the amount of \$18,210.

This item was approved with the Consent Calendar vote.

8. HOME FUNDS - consider approval and authorize the Mayor or her designee to execute the required documents:

a) Intergovernmental Agreement No. 2016-5501-0369 with Maricopa County HOME Consortium, in the amount of \$200,023 to utilize FY 2016-2017 HOME Investment Partnership Funds; and

b) Amendment No. 2 to Contract No. 2015-2105-0699 with Affordable Rental Movement of Save the Family Foundation of Arizona in the amount of \$200,023 to utilizing FY 2016-2017 HOME Investment Partnership Funds.

This item was moved to December 15, 2016.

9. CONTRACT – consider approval of Design Services Contract No. 2017-2106-0436 with Water Works Engineers, LLC, in an amount not to exceed \$213,922 for the System Wide Force Main Retrofit, Project No. WW105, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

10. CONTRACT – consider approval of Design Services Contract No. 2017-2106-0473 with Rick Engineering Company in an amount not to exceed \$237,330 for the 18-inch Reclaimed Waterline in Higley and Queen Creek Roads, Project No. WW072, and authorize the Mayor to execute the required documents.

Councilmember Victor Petersen addressed his initial concerns that a firm was selected directly for this project without using a Request for Quotation (RFQ) process. He stated that

though he felt the goals could have been better served with a competitive RFQ selection procedure, he did not wish to delay the progress or put critical dates in jeopardy.

Project Manager Ken Snow affirmed that Councilmember Victor Petersen “captured the essence of this selection”.

A MOTION was made by Councilmember Victor Petersen, seconded by Vice Mayor Jared Taylor, to approve Item 10. *Motion carried 6-0.*

11. CONTRACT – consider approval of Cooperative Purchasing Contract No. 2017-1103-0456 with Western States Petroleum Inc., in an amount not to exceed \$3,100,000 for the FY2016-2017 purchase of bulk fuel services and supplies with the option for two (2) one-year renewals, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

12. CONTRACT – consider approval of Construction Manager at Risk Services Pre-Construction Services Contract No. 2017-2106-0396 with Haydon Construction Corporation in an amount not to exceed \$139,925 for the Elliot District Park Improvements Project, Project No. PR125, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

13. CONTRACT – consider approval of the contracts as follows for water meter part materials in an amount not to exceed \$140,000 total with the option to renew for four (4) years and authorize the Mayor to execute the required documents:

- a) Contract No. 2017-4105-0455 with Ferguson Enterprises, Inc.; and
- b) Contract No. 2017-4105-0483 with Farnsworth Wholesale Company.

This item was approved with the Consent Calendar vote.

14. CONTRACT – consider approval of Job Order Contract (JOC) Contract No. 2017-2106-0411 with CS Construction, Inc. in for streetlights, traffic signals and Intelligent Transportation System Components, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

15. CONTRACT – consider approval of expenditures under Contract No. 2017-1105-0463 with CDW Government LLC in an amount not to exceed \$235,000 for Microsoft, CommVault, NetMotion, and Veeam software licenses, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

16. CONTRACT – consider approval of renewal Contract No. 2014-1105-0140 with Tyler Technologies in an amount not to exceed \$192,000 for the support and maintenance of Eden for FY2017, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

17. CONTRACT – consider approval of renewal Contract No. 2014-1105-0241 with Databank in an amount not to exceed \$150,000 for the support and maintenance of OnBase document management system hardware and software for FY2017, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

18. CONTRACT- consider approval and authorize the Mayor to execute the required documents for:

a) expenditures under Cooperative Purchase Agreement No. 2016-1103-0022 with Vanguard Truck Centers in an amount not to exceed \$596,000 for the purchase of two (2) Mack/McNeilus Rear Loaders; and

b) a Contingency Transfer from the Environmental Services Residential Replacement fund in the amount of \$28,020.

This item was approved with the Consent Calendar vote.

19. AGREEMENT - consider approval of the agreements as follows for the purchase of 26 medium duty and light duty vehicles in an amount not to exceed \$874,274 and authorize the Mayor to execute the required documents:

a) Cooperative Purchase Agreement No. 2012-1103-0222 with San Tan Ford;

b) Cooperative Agreement No. 2015-1103-0721 with Sanderson Ford;

c) Cooperative Agreement No. 2012-1103-0224 with Courtesy Chevrolet;

d) a Contingency Transfer from Water Replacement Fund in the amount of \$1,340; and

e) a Contingency Transfer from the Street Replacement Fund in the amount of \$2,540.

This item was approved with the Consent Calendar vote.

20. BUDGET – consider approval of a General Fund Contingency Transfer in the amount of \$350,000 to cover costs associated with Staff overtime and external plan review services.

This item was approved with the Consent Calendar vote.

21. BUDGET/HUMAN RESOURCES - consider authorization of:

- a) one additional Senior Building Plan Review position for immediate hire;
- b) one additional Fire Plan Review position for immediate hire; and
- c) a General Fund Contingency Transfer in the amount of \$193,200.

This item was approved with the Consent Calendar vote.

22. ABANDONMENT - consider adoption of a Resolution of abandonment for a Temporary Storm Water Drainage Retention Basin Easement located along the south side of Riggs Road directly across from Martingale Road.

23. FINAL PLAT S602 - consider approval of the final plat for Petersen Acres located east of the southeast corner of Higley Road and Riggs Road.

Councilmember Victor Petersen announced he was abstaining from discussion on these items as it was his family's property.

A MOTION was made by Councilmember Brigette Peterson, seconded by Councilmember James Candland, to approve items 22 and 23. *Motion carried 5-0-1 with Councilmember Victor Petersen abstaining. Resolution No. 3882 was adopted.*

24. FINAL PLAT SP1515- consider approval of the final plat for The Enclave at Gilbert located at the southeast corner of Queen Creek Road and Val Vista Drive.

This item was approved with the Consent Calendar vote.

25. FINAL PLAT S09-02 - consider approval of the final plat for Adora Trails - Parcel 11A located at the northwest corner of Coldwater Boulevard and Constellation Way.

This item was approved with the Consent Calendar vote.

26. FINAL PLAT WA062 - consider approval of the final plat for 156th Street and Germann Road located at the southeast corner of that intersection.

This item was approved with the Consent Calendar vote.

27. SPECIAL EVENT LIQUOR LICENSE – consider approval of a Special Event Liquor License for the WHOO Foundation for a Charity Fundraiser on December 31, 2016 from 12:00 p.m. to 10:00 p.m. located at 1265 South Gilbert Road.

This item was approved with the Consent Calendar vote.

28. SPECIAL EVENT LIQUOR LICENSE – consider approval of a Special Event Liquor License for San Tan Charter School for a Fundraiser on November 19, 2016 from 5:00 p.m. to 11:00 p.m. located at San Tan Charter School, 3959 East Elliot Road.

This item was approved with the Consent Calendar vote.

29. MINUTES – consider approval of the minutes of the Special Meeting of October 18, 2016; Study Session of October 20, 2016; and Regular Meeting of October 20, 2016.

This item was approved with the Consent Calendar vote.

## **PUBLIC HEARING**

Mayor Jenn Daniels opened the public hearing for items 30, 31, 32, and 33. No one wished to speak and Mayor Jenn Daniels closed the public hearing.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember James Candland, to approve public hearing items 30, 31, 32, and 33. *Motion carried 6-0.*

30. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Casanova Brothers Pizza located at 959 North Val Vista Drive.

This item was approved with the Public Hearing Vote.

31. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Buddyz A Chicago Pizzeria located at 3611 East Baseline Road, Suite 102.

This item was approved with the Public Hearing Vote.

32. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Egg N Joe located at 3131 South Market Street, Suite 101.

This item was approved with the Public Hearing Vote.

33. ZONING Z16-12 - conduct hearing and consider adoption of an Ordinance with a text amendment to the Land Development Code of Gilbert, Arizona Chapter I Zoning Regulations, Division 2: Land Use Designations, Article 2.1 Single Family Residential Districts, Table 2.103 Land Use Regulations - Single Family Residential Districts, Article 2.2 Multi-Family Residential Districts, Table 2.203 Land Use Regulations- Multi-Family Residential Districts, Article 2.3 Commercial Districts, Table 2.303 Land Use Regulations- Commercial Districts, Article 2.4 Heritage Village Center Zoning District, Table 2.402 Land

Use Regulations- Heritage Village Center District, Article 2.5 Office Districts, Table 2.503 Land Use Regulations- Office Districts, Article 2.6 Employment Districts, Table 2.603 Land Use Regulations- Employment District, Article 2.8 Gateway Districts, Table 2.803 Land Use Regulations- Gateway Districts, Article 2.9 Use Regulations, Table 2.902 Use Regulations, Division 4: General Regulations, Article 4.5 Supplemental Use Regulations, Section 4.506 Reserved and Division 6: Use Definitions, Article 6.1 Use Definitions, and Glossary of General Terms related to the creation of a Use Definition for Vacation or Short-Term Rentals to provide consistency with recent legislation; and revisions to the Use Definition related to Hotels and Commercial Lodging and Bed and Breakfast Homes.

This item was approved with the Public Hearing Vote. *Ordinance No. 2597 was adopted.*

34. ZONING Z16-13 - conduct hearing and consider adoption of an Ordinance with a text amendment to the Town of Gilbert Land Development Code, Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations, Section 4.5014 Medical Marijuana Dispensaries, Offsite Cultivation Sites and Designated Caregiver Cultivation Locations, related to separation requirements between dispensaries and certain uses and the total number of dispensaries permitted within the Town. The effect of the amendment will be to increase the separation requirement between dispensaries and sensitive uses and to remove the cap of two total dispensaries permitted within the Town.

Planner Ashlee McDonald summarized the request to amend the Land Development Code by increasing the separation requirements between medical marijuana dispensaries and other sensitive uses, apply separation between medical marijuana facilities, and remove the cap of two total dispensaries in the Town. She provided a brief background including the history of zoning regulations for medical marijuana dispensaries and summarized the current proposal which mirrors the Code in surrounding municipalities.

Mayor Jenn Daniels opened the public hearing on item 34.

Mark Haile and Tim Hammer, Gilbert residents, did not wish to speak, but did request the item be continued.

Lindsay Schube, attorney with the Law Firm of Gammage and Burnham, voiced her request for a continuance of this item. She declared that she represents the only dispensary in Gilbert. She requested that while Section 4.5014 is open, she wished to discuss separation requirements, hours of operation, points of ingress and egress, and the sale of merchandise other than marijuana.

Paul Conant, Phoenix resident and attorney with the Conant Law Firm, PLC, declared he represents the land owner of the one current dispensary. He requested the opportunity to speak with the Legal and Planning Departments to share his thoughts on possible improvements, including changes in the hours of operation.

A. Melvin McDonald, Gilbert resident, advocated for longer dispensary hours and for a continuance before the passing of this ordinance.

Councilmember Victor Petersen voiced his agreement of continuing the item and providing the opportunity for further discussion. Councilmember Brigette Peterson agreed, acknowledging she is also in favor of continuing this item and allowing the stakeholders and public to express their opinions.

Councilmember Eddie Cook stated that after two prior efforts, there had been no Council support to continue the dialogue. He expressed the desire to move forward with the motion for approval, with the possibility of readdressing the topic once new Councilmembers have been elected.

Mayor Jenn Daniels asked Planner Ashlee McDonald to explain the history of the project, the public notification process, and the timing of the amendment. Planner Ashlee McDonald reaffirmed that this item had gone to public hearing several times. She maintained the code was amended in May 2016, the process included citizen review and initiation, and the public hearing was noticed in newspapers. She also indicated the timing of the amendment was due to upcoming changes to State Statute.

Mayor Jenn Daniels expressed thanks to the public for their feedback, but urged Council to stay focused on the current agenda item. She also voiced support of the staff recommendation to move forward with a motion to approve.

Vice Mayor Jared Taylor noted that he was in agreement with the comments made by Councilmember Eddie Cook.

Mayor Jenn Daniels closed the public hearing on item 34.

A MOTION was made by Councilmember Eddie Cook, to approve item 34.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Brigette Peterson, to amend the motion to return this item to the Planning Commission for review and to conduct meetings with stakeholder groups and for staff to review the three proposed changes as requested by the operating dispensary. *Motion failed 3-3 with Mayor Jenn Daniels, Vice Mayor Jared Taylor and Councilmember Eddie Cook casting the dissenting votes.*

The original motion was seconded by Vice Mayor Jared Taylor. *Motion carried 6-0. Ordinance No. 2598 was adopted.*

## ADMINISTRATIVE ITEMS

35. BOARDS AND COMMISSIONS – consider appointment of two alternate members to the Planning Commission with terms beginning November 14, 2016 and ending November 14, 2017.

This item was approved with the Consent Calendar vote. Mary Harris and Seth Banda were appointed to Planning Commission as alternate members with terms ending November 14, 2016 to November 14, 2017.

36. COUNCIL ADMINISTRATION - consider acceptance of the Budget Report and Contingency Report for the 1st Quarter of FY2017.

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Victor Petersen, to accept the Budget Report and Contingency Report for the 1st Quarter of FY2017. *Motion carried 6-0.*

37. 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) Regional Meetings
- d) Arts and Culture Board
- e) Environmental and Energy Conservation Advisory Board
- f) Human Relations Commission
- g) Industrial Development Authority
- h) Mayor's Youth Advisory Committee
- i) Parks, Recreation and Library Services Advisory Board
- j) Planning Commission
- k) Redevelopment Commission
- l) Town of Gilbert, AZ Public Facilities MPC
- m) Town of Gilbert, AZ Water Resources MPC
- n) Town of Gilbert, AZ Self-Insured Trust Fund for Health Benefits
- o) Utility Board

Vice Mayor Jared Taylor commented on the Gilbert Art Walk event and expressed enjoyment in seeing the rich, cultural environment it brings to the town.

## POLICY ITEMS

None.

## **FUTURE MEETINGS**

No discussion.

## **COMMUNICATIONS**

Report from the TOWN MANAGER on current events.

Town Manager Patrick Banger asked Public Works Director Jessica Marlow to introduce Susanna Struble, the new Assistant Town Engineer and Capital Improvement Projects Manager. Manager Susanna Struble spoke of her past experience and expressed excitement to now be working for the Town of Gilbert.

Report from the COUNCIL on current events.

Councilmember Brigette Peterson reported that the Valley Metro Rail Board named Scott Smith to a two year contract after conducting an extensive search.

Report from the MAYOR on current events.

Mayor Jenn Daniels noted that Valor Christian Church hosted a Desert Harvest Car Show to benefit Soldier's Best Friend, an organization that provides service or therapeutic companion dogs to military veterans. She expressed gratitude to this organization for their service to the community.

Mayor Jenn Daniels highlighted upcoming events including Gilbert Days Rodeo, Gilbert Days Parade, East Valley Veterans Day Parade, the Everyday Heroes event honoring foster families, and the Liberty Market Picnic Lunch benefitting Amyotrophic Lateral Sclerosis Disease (ALS).

Mayor Jenn Daniels wished Gilbert residents and Town staff a happy Thanksgiving from Council.

## **ADJOURN**

Mayor Jenn Daniels adjourned the meeting at 7:46 p.m.

**ATTEST:**

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Jenn Daniels, Mayor

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Lisa Maxwell, CMC, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Gilbert held on the 10<sup>th</sup> day of November 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Lisa Maxwell, CMC, Town Clerk

DRAFT

**MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING OF  
NOVEMBER 17, 2016 AT 8:30 AM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50  
EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA**

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**COUNCIL PRESENT:** Mayor Jenn Daniels, Councilmembers James Candland, Victor Petersen, Brigitte Peterson and Jordan Ray

**COUNCIL ABSENT:** Vice Mayor Jared Taylor and Councilmembers Eddie Cook

**STAFF PRESENT:** Manager Patrick Banger, Assistant Manager Marc Skocypec, Clerk Lisa Maxwell, Management Support Specialist Robin Stoneman, Attorney Michael Hamblin,

**AGENDA ITEM**

**NETWORKING OPPORTUNITY**

*Mayor Jenn Daniels and Councilmembers James Candland, Brigitte Peterson and Jordan Ray were in attendance.*

**CALL TO ORDER**

1. Discussion on socioeconomic demographics, community characteristics.

Management Support Analyst Amanda Elliot gave an overview of the history and demographics of the Town of Gilbert. She discussed development in the downtown Heritage District.

*Councilmember Jordan Ray left and a quorum was no longer in attendance.*

2. Discussion on land use and development plans.

*Councilmember Victor Petersen arrived after item 2 discussion and completed and before discussion on item 3 started.*

3. Discussion and overview of local government in each area including role of council and brief overview of services.

4. Further discussion on land use and development plans.

**ADJOURN**

**ATTEST:**

\_\_\_\_\_  
Jenn Daniels, Mayor

\_\_\_\_\_  
Robin Stoneman, Management Support Specialist

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Gilbert held on the 17<sup>th</sup> day of November 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Robin Stoneman, Management Support Specialist

DRAFT

**MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING OF  
NOVEMBER 17, 2016 AT 5:00 PM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50  
EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA**

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**COUNCIL PRESENT:** Mayor Jenn Daniels, Vice Mayor Jared Taylor, Councilmembers James Candland, Eddie Cook, Victor Petersen, Brigette Peterson and Jordan Ray

**COUNCIL ABSENT:** none

**STAFF PRESENT:** Manager Patrick Banger, Assistant Manager Marc Skocypec, Clerk Lisa Maxwell, Attorney Michael Hamblin

**AGENDA ITEM**

**CALL TO ORDER**

Mayor Jenn Daniels called the meeting to order at 5:04 p.m.

**PRESENTATIONS; PROCLAMATIONS**

1. PROCLAMATION/AGREEMENT - signing of the official proclamation and agreement between the Town of Gilbert and Antrim-Newtownabbey Borough, Northern Ireland.

Members of the Gilbert Town Council attended the Sister Cities Signing Ceremony between the Borough of Antrim-Newtownabbey, Northern Ireland, and the Town of Gilbert. The ceremony included: congratulatory speeches; reading and signing of the official proclamation between Gilbert and Antrim-Newtownabbey; and an exchange of gifts.

**ADJOURN**

Mayor Jenn Daniels adjourned the meeting at 5:50 p.m.

**The Mayor, Council and Antrim-Newtownabbey Borough Officials will attend a dinner and activity following the meeting.**

**ATTEST:**

\_\_\_\_\_  
Jenn Daniels, Mayor

\_\_\_\_\_  
Lisa Maxwell, CMC, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Gilbert held on the 17<sup>th</sup> day of November 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Lisa Maxwell, CMC, Town Clerk



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Leslie Giltner, Customer Service Manager, 503-6801

**MEETING DATE:** December 1, 2016

**SUBJECT:** Series 12 Restaurant Liquor License for Venezias Pizzeria located at 744 West Ray Road, Suite 101

**STRATEGIC INITIATIVE:** N/A

### **RECOMMENDED MOTION**

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Venezias Pizzeria located at 744 West Ray Road, Suite 101.

### **BACKGROUND/DISCUSSION**

Domenick Montanile is requesting approval of a Series 12 Restaurant Liquor License for Venezias Pizzeria located at 744 West Ray Road, Suite 101. This is a new license. Amendments were filed to add the suite number on the application.

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

If an audit or review of receipts shows that the business is not meeting the requirement that at least forty percent (40%) of its gross revenue be from the sale of food the applicant may be required to request approval for continuation of the license pursuant to A.R.S. §4-213(E).

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 or the Police Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-102 (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,

Leslie Giltner  
Customer Service Manager

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-102
- Attachment 2 – Liquor License Application

**Approved By**

Kyle Mieras

**Approval Date**

11/16/2016 5:34 PM

# 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.



29C

16 OCT 17 Lic. Lic. AM10:26

#1007ATT8  
Venezia's Pizza  
Montanile, Domenick

Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

RECEIVED

OCT 13 2016

TOWN OF GILBERT  
CUSTOMER SERVICE CENTER

Application for Liquor License  
Type or Print with Black Ink

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.  
A service fee of \$25 will be charged for all dishonored checks (A.R.S. § 44-6852)

SECTION 1 This application is for a:

- Interim Permit (Complete Section 5)
- New License (Complete Sections 2, 3, 4, 13, 14, 15, 16)
- Person Transfer (Complete Section 2, 3, 4, 12, 13, 14, 16)
- Location Transfer (Bars and Liquor Stores Only)  
(Complete Section 2, 3, 4, 11, 13, 14, 16)
- Probate/ Will Assignment/ Divorce Decree  
(Complete Sections 2, 3, 4, 9, 13, 14, 16)  
(Fee not required)
- Government (Complete Sections 2, 3, 4, 10, 13, 16)
- Seasonal

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)
- Tribe (Complete Section 6)
- Other (Explain) \_\_\_\_\_

SECTION 3 Type of license

1. Type of License: \_\_\_\_\_ LICENSE # \_\_\_\_\_

SECTION 4 Applicants

1. Individual Owner/Agent's Name: \_\_\_\_\_  
Last First Middle

2. Owner Name: \_\_\_\_\_  
(Ownership name for type of ownership checked on section 2)

3. Business Name: \_\_\_\_\_  
(Exactly as it appears on the exterior of premises)

4. Business Location Address: 744 W. Ray road ste 101 (Gilbert, AZ 85237) Maricopa  
(Do not use PO box) Street City State Zip Code County

5. Mailing Address: \_\_\_\_\_  
(All correspondence will be mailed to this address) Street City State Zip Code

6. Business Phone: \_\_\_\_\_ Daytime Contact Phone: \_\_\_\_\_

7. Email Address: \_\_\_\_\_

8. Is the Business located within the incorporated limits of the above city or town?  Yes  No

9. Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation?  Yes  No  
If yes, what City, Town or Tribal Reservation is this Business located in: \_\_\_\_\_

10. Total Price paid for Series 6 Bar, Series 7 Beer & Wine Bar or Series 9 Liquor Store (license only) \$ \_\_\_\_\_

AMENDMENT

Department Use Only				
Fees: _____	_____	_____	_____	\$ _____
Application	Interim Permit	Site Inspection	Finger Prints	Total of All Fees
Is Arizona Statement of Citizenship & Alien Status for State Benefits complete? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Accepted by: _____	Date: _____	License # _____		

62201

353844



Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix, AZ 85007-2934  
 www.azliquor.gov  
 (602) 542-5141

RECEIVED

OCT 17 2016

TOWN OF GILBERT  
 CUSTOMER SERVICE CENTER

16 OCT 13 11:49 AM 159

Application for Liquor License  
 Type or Print with Black Ink

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE**  
A service fee of \$25 will be charged for all dishonored checks (A.R.S. § 44-6852)

**SECTION 1** This application is for a:

- Interim Permit (Complete Section 5)
- New License (Complete Sections 2, 3, 4, 13, 14, 15, 16)
- Person Transfer (Complete Section 2, 3, 4, 12, 13, 14, 16)
- Location Transfer (Bars and Liquor Stores Only)  
 (Complete Section 2, 3, 4, 11, 13, 14, 16)
- Probate/ Will Assignment/ Divorce Decree  
 (Complete Sections 2, 3, 4, 9, 13, 14, 16)  
 (Fee not required)
- Government (Complete Sections 2, 3, 4, 10, 13, 16)
- Seasonal

**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)
- Tribe (Complete Section 6)
- Other (Explain) \_\_\_\_\_

**SECTION 3** Type of license

1. Type of License: SERIES 12 LICENSE # 1207A798

**SECTION 4** Applicants

1. Individual Owner/Agent's Name: MONTANILE DOMENICK  
Last First Middle

2. Owner Name: VENEZIA'S NEW YORK STYLE PIZZA-CHANDLER INC  
(Ownership name for type of ownership checked on section 2)

3. Business Name: VENEZIA'S PIZZERIA  
(Exactly as it appears on the exterior of premises)

4. Business Location Address: 744 W RAY ROAD GILBERT AZ 85281 MARICOPA  
(Do not use PO Box) Street City State Zip Code County

5. Mailing Address: 2055 E 5TH STREET #103 TEMPE AZ 85281  
(All correspondence will be mailed to this address) Street City State Zip Code

6. Business Phone: 480-220-6490 480-786-3200 Daytime Contact Phone: 480-220-6490

7. Email Address: DOM@VENEZIAS.COM

8. Is the Business located within the incorporated limits of the above city or town?  Yes  No

9. Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation?  Yes  No  
 If yes, what City, Town or Tribal Reservation is this Business located in: \_\_\_\_\_

10. Total Price paid for Series 6 Bar, Series 7 Beer & Wine Bar or Series 9 Liquor Store, (license only) \$ \_\_\_\_\_

Fees: <u>100</u>	Department Use Only <u>50</u>	Finger Prints <u>44 + 26</u>	Total of All Fees <u>\$ 220-</u>
<small>Application</small>	<small>Interim Permit</small>	<small>Site Inspection</small>	
Is Arizona Statement of Citizenship & Alien Status for State Benefits complete? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Accepted by: <u>MRS</u> Date: <u>10/13/2016</u> License # <u>1207A798</u>			

**SECTION 6 - continued**

**TRUST**

Name of Trust: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**TRIBE**

Name of Tribal Ownership: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**SECTION 7 Corporations/ Limited Liability Co**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD.

- Corporation Complete Questions 1, 2, 3, 4, 5, 6, and 7
- L.L.C. Complete Questions 1, 2, 3, 4, 5, 6, and 7

- Name of Corporation/ L.L.C: VENEZIA'S NEW YORK STYLE PIZZA-CHANDLER INC
- Date Incorporated/Organized: 2/21/2006 State where Incorporated/Organized: ARIZONA
- AZ Corporation or AZ L.L.C File No: 12617338 25 01 Date authorized to do Business in AZ: 2003-2/21/2006  
*(PM)*
- Is Corp/L.L.C. Non Profit?  Yes  No
- List Directors, Officers, Members in Corporation/L.L.C:

Last	First	Middle	Title	Mailing Address	City	State	Zip Code
MONTANILE	DOMENICK		PRESIDENT				
MONTANILE	JAIME ELIZABETH		SECRETARY				

(Attach additional sheet if necessary)

- List all Stockholders / percentage owners who own 10% or more:

Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code
MONTANILE	DOMENICK		50				
MONTANILE	JAIME ELIZABETH		50				

(Attach additional sheet if necessary)

- If the corporation/ L.L.C are owned by another entity, attach an Organizational **FLOWCHART** showing the structure of the ownership. Attach additional sheets as needed in order to disclose the Officers, Directors, Members, Managers, Partners, Stockholders and percentage owners of those entities.

**SECTION 13 Proximity to Church or School**

Questions to be completed by all In-state applicants.

A.R.S. § 4-207. (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building.  
**The above paragraph DOES NOT apply to:**

- a) Restaurant license (§ 4-205.02) Series 12
- b) Hotel/motel license (§ 4-205.01) Series 11
- c) Microbrewery Series 3
- d) Craft Distillery Series 18
- e) Government license (§ 4-205.03) Series 5
- f) Fenced playing area of a golf course (§ 4-207(B)(5))
- g) Wholesaler Series 4
- h) Farm Winery Series 13

1. Distance to nearest School: 250 FEET OR .1 MILES Name of School: LEARNING EDGE ACADEMY  
(If less than one (1) mile note footage) Address: 711 W RAY ROAD, GILBERT, AZ 85233

2. Distance to nearest Church: 2.1 MILES Name of Church: DESTINY CHURCH  
(If less than one (1) mile note footage) Address: 1120 S GILBERT RD, #112, GILBERT, AZ 85296

**SECTION 14 Business Financials**

1. I am the:  Lessee  Sub-lessee  Owner  Purchaser  Management Company

2. If the premise is leased give lessors: Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip

3. Monthly Rent/ Lease Rate: \$ \_\_\_\_\_

4. What is the remaining length of the lease? Yrs. \_\_\_\_\_ Months \_\_\_\_\_

5. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or Other: \_\_\_\_\_  
(Give details-attach additional sheet if necessary)

6. Total money borrowed for the Business not including lease? \$ 0  
 Please List Lenders/People you owe money to for business.

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip
NONE							

(Attach additional sheet if necessary)

7. What type of business will this license be used for (be specific)?  
PIZZA RESTAURANT

8. Has a license or a transfer license for the premises on this application been denied by the state with in the past (1) year?  Yes  No If yes, attach explanation.

9. Does any spirituous liquor manufacture, wholesaler, or employee have an interest in your business?  Yes  No

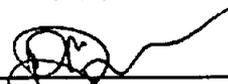
10. Is the premises currently license with a liquor license?  Yes  No

If yes, give license number and licensee's name:

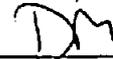
License #: \_\_\_\_\_ Individual Owner /Agent Name: \_\_\_\_\_  
(Exactly as it appears on license)

**SECTION 15 Restaurant or hotel/motel license applicants**

1. Is there an existing Restaurant or Hotel/Motel Liquor License at the proposed location?  Yes  No
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 provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02. (H) (2), a Restaurant is an establishment which derives at least forty (40) percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from sales of food and spirituous liquor on the licensed premises. By applying for this  Restaurant  Hotel/Motel, I certify that I understand that I must maintain a minimum of forty (40) percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit form with this application.

  
\_\_\_\_\_  
(Applicant's Signature)

5. 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.

  
\_\_\_\_\_  
(Applicant's Initials)

**SECTION 16 Diagram of Premises**

Check ALL boxes that apply to your business:

- |   |  |        |   |
|---|--|--------|---|
| <input checked="" type="checkbox"/> Entrances/Exits | <input checked="" type="checkbox"/> Liquor storage areas | Patio: | <input type="checkbox"/> Contiguous     |
| <input type="checkbox"/> Walk-up windows            | <input type="checkbox"/> Drive-through windows           |        | <input type="checkbox"/> Non Contiguous |

1. Is your licensed premises currently closed due to construction, renovation or redesign?  Yes  No  
If yes, what is your estimated completion date? \_\_\_\_\_  
Month/Day/Year
2. 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. Place for diagram is on section 16 number 6.
3. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored on the premises unless it is a restaurant (see # 3 above).
4. 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.
5. 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 the boundaries, entrances, exits, added or deleted doors, windows, service windows or increase or decrease to the square footage after submitting this initial diagram.

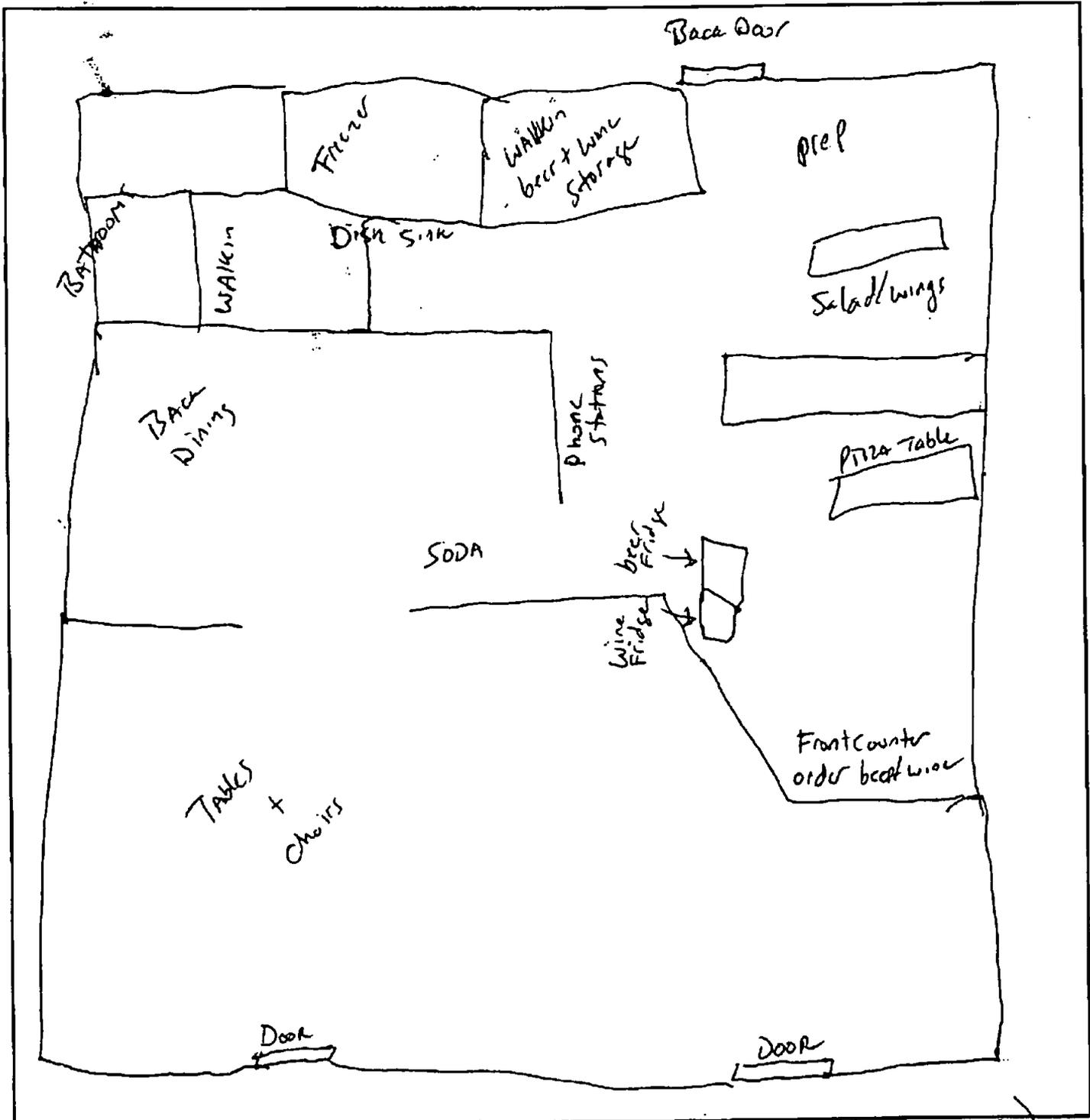
  
\_\_\_\_\_  
(Applicant's Initials)

SECTION 16 Diagram of Premises - continued

6. On the diagram please show only the areas where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, hi-top tables, dining tables, dining chairs, dance floor, stage, game room, and the kitchen. 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 the premises is attached to this application, please write the words "DIAGRAM ATTACHED" in the box provided for the diagram on the application.

DIAGRAM OF PREMISES



(3200 Sq. ft)

**SECTION 17 SIGNATURE BLOCK**

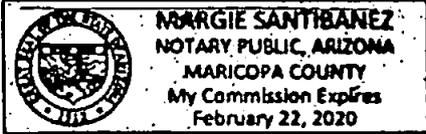
**NOTARY**

I, (Print Full Name) Domenica Montanile, hereby declare that I am the Owner/Agent filing this application as stated in Section 4 # 1. I have read this application and verify all statements to be true, correct and complete.

X [Signature]  
(Signature of CURRENT Individual Owner/Agent)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

My commission expires on:



13 of October, 2016  
Day Month Year  
[Signature]  
Signature of NOTARY PUBLIC

**A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice**

- B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.
- D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.
- E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.
- F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.



29C

Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

Local Governing Body Recommendation
A.R.S. § 4-201(C)

1. City or Town of: Gilbert Liquor License Application #: 1207A798
2. County of: Maricopa City/Town/County #: Gilbert
3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. § 4-207(D)(2).

4. The Gilbert Town Council at a Regular meeting held on the 15th of December 2016 considered the application of Domenick Morstanile for a license to sell spirituous liquor at the premises described in application 1207A798 for the license series #: type 12: Restaurant as provided by A.R.S § 4-201.

ORDER OF APPROVAL/DISAPPROVAL
IT IS THEREFORE ORDERED that the license APPLICATION OF [Name of applicant] to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended for [Approval, disapproval, or no recommendation].

TRANSMISSION OF ORDER TO STATE
IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.
Dated at [Location] on [Day] [Month] [Year].

62201

9/29/2015

353844

29C



10-18-16

*Venezia's Pizzeria  
Domenick Montanile  
2055 E. 5<sup>th</sup> St #103  
Tempe, AZ 85281*

RE: Liquor License – **State license #1207A798**

Dear Domenick:

The public hearing for the Liquor License application (**Series #12**) located at **744 W. Ray Rd #101**, Gilbert AZ **85233** is scheduled before the Gilbert Town Council on Thursday, **12-1-16** at 7:00 p.m. The public hearing will be held in the Council Chambers of the Gilbert Municipal Center located at 50 East Civic Center Drive, Gilbert, AZ 85296. **A representative must be present at the hearing.**

A public hearing notice for this liquor license will be posted at the above-referenced location and will be posted for the required 20 days. This will meet the Arizona Department of Liquor License & Control posting requirements.

The cost of the **Series #12, Restaurant** Liquor License is **\$750.00**. This fee is due before your Town Council Hearing. **All liquor licenses will expire yearly on the anniversary date of license issuance. A renewal notice will be sent to you prior to expiration. A late fee may be assessed for late payments and state approval forms will be held until payment is received.**

The Town may notify you of amendments (changes) to your license application that need to be filed with the Arizona Department of Liquor License and Control for approval. A copy of the amendments containing the State's stamp must be submitted to the Town by **11-02-16**. If the amendments are not submitted by the deadline, the public hearing may be continued to a future Council meeting. You will be notified shortly of any amendments that are due.

Please feel free to contact me directly at **480-503-6700** if you have any questions.

Sincerely,

**Michelle Larson  
Development Services**

---

Town of Gilbert Values: Service Excellence ♦ Protection ♦ Fairness ♦ Trust ♦ Innovation ♦ Communication

Area Code (480) 503-6700 Fax (480) 497-4923 TDD 497-4900

62201

5/27/04  
353844



29C

Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 10-18-16 Date of Posting Removal: 11-7-16

Applicant's Name: Montanile Domenick  
Last First Middle

Business Address: 744 W. Ray Rd #101 Gilbert 85233  
Street City Zip

License #: 1207A798

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Lorrie A. DeOrto Code Administrator 480-503-6834  
Print Name of City/County Official Title Phone Number

[Signature] 11-7-2016  
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

11/24/2015  
62201

353844



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Leslie Giltner, Customer Service Manager, 503-6801

**MEETING DATE:** December 1, 2016

**SUBJECT:** Series 12 Restaurant Liquor License for Even Stevens Sandwiches located at 384 North Gilbert Road, Suite 104

<p><b>STRATEGIC INITIATIVE:</b> N/A</p>
---

### **RECOMMENDED MOTION**

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Even Stevens Sandwiches located at 384 North Gilbert Road, Suite 104.

### **BACKGROUND/DISCUSSION**

Marc Goldsen is requesting approval of a Series 12 Restaurant Liquor License for Even Stevens Sandwiches located at 384 North Gilbert Road, Suite 104. This is a new license. Amendments were filed to correct the suite number on the application.

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

If an audit or review of receipts shows that the business is not meeting the requirement that at least forty percent (40%) of its gross revenue be from the sale of food the applicant may be required to request approval for continuation of the license pursuant to A.R.S. §4-213(E).

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 or the Police Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-102 (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,

Leslie Giltner  
Customer Service Manager

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-102
- Attachment 2 – Liquor License Application

**Approved By**

Kyle Mieras

**Approval Date**

11/16/2016 5:35 PM

# 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

OCT 19 2016



Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

TOWN OF GILBERT  
CUSTOMER SERVICE CENTER

AMENDMENT

16001 1417, Lic. RB 556

12D

Application for Liquor License  
Type or Print with Black Ink

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE  
A service fee of \$25 will be charged for all dishonored checks (A.R.S. § 44-6852)

SECTION 1 This application is for a:

- Interim Permit (Complete Section 5)
- New License (Complete Sections 2, 3, 4, 13, 14, 15, 16)
- Person Transfer (Complete Section 2, 3, 4, 12, 13, 14, 16)
- Location Transfer (Bars and Liquor Stores Only)  
(Complete Section 2, 3, 4, 11, 13, 14, 16)
- Probate/ Will Assignment/ Divorce Decree  
(Complete Sections 2, 3, 4, 9, 13, 14, 16)  
(Fee not required)
- Government (Complete Sections 2, 3, 4, 10, 13, 16)
- Seasonal

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)
- Tribe (Complete Section 6)
- Other (Explain) \_\_\_\_\_

SECTION 3 Type of license

1. Type of License: \_\_\_\_\_ LICENSE # 1207A784

SECTION 4 Applicants

1. Individual Owner/Agent's Name: Goldsen Marc Cullen  
Last First Middle

2. Owner Name: \_\_\_\_\_  
(Ownership name for type of ownership checked on section 2)

3. Business Name: Even Stevens Sandwiches  
(Exactly as it appears on the exterior of premises)

4. Business Location Address: 384 N Gilbert Road Ste. 104 Gilbert Arizona 85234 Maricopa  
(Do not use PO Box) Street City State Zip Code County

5. Mailing Address: \_\_\_\_\_  
(All correspondence will be mailed to this address) Street City State Zip Code

6. Business Phone: \_\_\_\_\_ Daytime Contact Phone: \_\_\_\_\_

7. Email Address: \_\_\_\_\_

8. Is the Business located within the incorporated limits of the above city or town?  Yes  No

9. Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation?  Yes  No

If yes, what City, Town or Tribal Reservation is this Business located in: \_\_\_\_\_

10. Total Price paid for Series 6 Bar, Series 7 Beer & Wine Bar or Series 9 Liquor Store (license only) \$ \_\_\_\_\_

Department Use Only				
Fees: _____	_____	_____	_____	\$ _____
Application	Interim Permit	Site Inspection	Finger Prints	Total of All Fees
Is Arizona Statement of Citizenship & Alien Status for State Benefits complete? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Accepted by: _____	Date: _____	License # _____		

62209

449942



120

RECEIVED

SEP 29 2016

Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

FILE SEP 26 11:41 AM DEPT 11112

Application for Liquor License
Type or Print with Black Ink

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE
A service fee of \$25 will be charged for all dishonored checks (A.R.S. § 44-6852)

SECTION 1 This application is for a:

- Interim Permit (Complete Section 5)
New License (Complete Sections 2, 3, 4, 13, 14, 15, 16)
Person Transfer (Complete Section 2, 3, 4, 12, 13, 14, 16)
Location Transfer (Bars and Liquor Stores Only)
Probate/ Will Assignment/ Divorce Decree
Government (Complete Sections 2, 3, 4, 10, 13, 16)
Seasonal

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)
Tribe (Complete Section 6)
Other (Explain)

SECTION 3 Type of license

1. Type of License: 12 Series

LICENSE #

1207A784

SECTION 4 Applicants

1. Individual Owner/Agent's Name: Goldsen Marc Cullen
2. Owner Name: Even Stevens Gilbert, L.L.C.
3. Business Name: Even Stevens Sandwiches
4. Business Location Address: 384 N. Gilbert Rd., Suite 2 Gilbert AZ 85234 Maricopa
5. Mailing Address: 2030 S. 900 E, Suite A Salt Lake City UT 84105
6. Business Phone: (801) 727-7234 Daytime Contact Phone: (480) 344-4053
7. Email Address: little@evenstevens.com

8. Is the Business located within the incorporated limits of the above city or town? Yes No
9. Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation? Yes No
If yes, what City, Town or Tribal Reservation is this Business located in:

10. Total Price paid for Series 6 Bar, Series 7 Beer & Wine Bar or Series 9 Liquor Store ( license only) \$

Fees: Application 100.00 Interim Permit 50.00 Site Inspection 60.00 Finger Prints Total of All Fees
Is Arizona Statement of Citizenship & Alien Status for State Benefits complete? Yes
Accepted by: Date: 09-26-16 License # 1207A784

**SECTION 5 Interim Permit**

- If you intend to operate business when your application is pending you will need an interim permit pursuant to ARS § 4-203.01
- There **MUST** be a valid license of the same type you are applying for currently issued to the location or for the replacement of a Hotel/Motel license with a Restaurant license pursuant to A.R.S. § 4-203.01.

1. Enter license number currently at the location: \_\_\_\_\_

2. Is the license currently in use?  Yes  No If no, how long has it been out of use? \_\_\_\_\_

Attach a copy of the license currently issued at this location to this application.

I, _____ (Print Full Name)	declare that I am the CURRENT OWNER, AGENT, OR CONTROLLING PERSON on the stated license and location.
X _____ (Signature of CURRENT Individual Owner/Agent)	State of _____ County of _____ The foregoing instrument was acknowledged before me this _____
My commission expires on: _____ Date	_____ of _____ / _____ Day Month Year
_____ Signature of NOTARY PUBLIC	

**SECTION 6 Individual, Partnership, J.T.W.R.O.S, Trust, Tribe Ownerships**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD.

Individual

Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code

Is any person other than above, going to share in profit/losses of the business?  Yes  No

If Yes, give name, current address, and telephone number of person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City	State	Zip Code	Phone #

Partnership

Name of Partnership: \_\_\_\_\_

General-Limited	Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							

J.T.W.R.O.S (Joint Tenant with Rights of Survivorship)

Name of J.T.W.R.O.S: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**SECTION 6 - continued**

**TRUST**

Name of Trust: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**TRIBE**

Name of Tribal Ownership: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**SECTION 7 Corporations/ Limited Liability Co**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD.

- Corporation Complete Questions 1, 2, 3, 4, 5, 6, and 7  
 L.L.C. Complete Questions 1, 2, 3, 4, 5, 6, and 7

1. Name of Corporation/ L.L.C: Even Stevens Gilbert, L.L.C.  
 2. Date Incorporated/Organized: 06/08/2016 State where Incorporated/Organized: Utah  
 3. AZ Corporation or AZ L.L.C File No: R20992851 Date authorized to do Business in AZ: 07/05/2016  
 4. Is Corp/L.L.C. Non Profit?  Yes  No  
 5. List Directors, Officers, Members in Corporation/L.L.C:

Last	First	Middle	Title	Mailing Address	City	State	Zip Code
Even Stevens	Sandwiches	LLC	Manager	2030 S. 900 E, Suite A,	Salt Lake City,	UT	84105
			Sole Member				

(Attach additional sheet if necessary)

6. List all Stockholders / percentage owners who own 10% or more:

Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code
Even Stevens	Sandwiches	LLC	100%	2030 S. 900 E, Suite A,	Salt Lake City,	UT	84105

(Attach additional sheet if necessary)

7. If the corporation/ L.L.C are owned by another entity, attach an Organizational FLOWCHART showing the structure of the ownership. Attach additional sheets as needed in order to disclose the Officers, Directors, Members, Managers, Partners, Stockholders and percentage owners of those entities.

**SECTION 13 Proximity to Church or School**

Questions to be completed by all in-state applicants.

A.R.S. § 4-207. (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) Series 12
- b) Hotel/motel license (§ 4-205.01) Series 11
- c) Microbrewery Series 3
- d) Craft Distillery Series 18
- e) Government license (§ 4-205.03) Series 5
- f) Fenced playing area of a golf course (§ 4-207(B)(5))
- g) Wholesaler Series 4
- h) Farm Winery Series 13

1. Distance to nearest School: \_\_\_\_\_ Name of School: \_\_\_\_\_  
(If less than one (1) mile note footage) Address: \_\_\_\_\_

2. Distance to nearest Church: \_\_\_\_\_ Name of Church: \_\_\_\_\_  
(If less than one (1) mile note footage) Address: \_\_\_\_\_

**SECTION 14 Business Financials**

1. I am the:  Lessee     Sub-lessee     Owner     Purchaser     Management Company

2. If the premise is leased give lessors: Name: MD Heritage, LLC  
 Address: 8700 Executive Woods Dr. #600, Lincoln, NE 68512  
Street City State Zip

3. Monthly Rent/ Lease Rate: \$ 8,186.67

4. What is the remaining length of the lease? Yrs. 10 Months \_\_\_\_\_

5. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or Other: Please see attached.  
(Give details-attach additional sheet if necessary)

6. Total money borrowed for the Business not including lease? \$ 0  
 Please List Lenders/People you owe money to for business.

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip

(Attach additional sheet if necessary)

7. What type of business will this license be used for (be specific)?  
Fast casual restaurant primarily seing and serving sandwiches, salads, craft beer pairings, breakfast and other menu items prototypical of an Even Stevens Sandwiches restaurant.

8. Has a license or a transfer license for the premises on this application been denied by the state with in the past (1) year?  Yes  No If yes, attach explanation.

9. Does any spirituous liquor manufacture, wholesaler, or employee have an interest in your business?  Yes  No

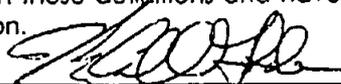
10. Is the premises currently license with a liquor license?  Yes  No

If yes, give license number and licensee's name:

License #: \_\_\_\_\_ Individual Owner /Agent Name: \_\_\_\_\_  
(Exactly as it appears on license)

**SECTION 15 Restaurant or hotel/motel license applicants**

1. Is there an existing Restaurant or Hotel/Motel Liquor License at the proposed location?  Yes  No
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 provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02. (H)(2), a Restaurant is an establishment which derives at least forty (40) percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from sales of food and spirituous liquor on the licensed premises. By applying for this  Restaurant  Hotel/Motel, I certify that I understand that I must maintain a minimum of forty (40) percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit form with this application.

  
\_\_\_\_\_  
(Applicant's Signature)

5. 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.

  
\_\_\_\_\_  
(Applicant's Initials)

**SECTION 16 Diagram of Premises**

Check ALL boxes that apply to your business:

- |   |  |   |                 |
|---|--|---|-----------------|
| <input checked="" type="checkbox"/> Entrances/Exits | <input checked="" type="checkbox"/> Liquor storage areas | Patio: <input checked="" type="checkbox"/> Contiguous | <u>NONE HCG</u> |
| <input type="checkbox"/> Walk-up windows            | <input type="checkbox"/> Drive-through windows           | <input type="checkbox"/> Non Contiguous               |                 |

1. Is your licensed premises currently closed due to construction, renovation or redesign?  Yes  No  
If yes, what is your estimated completion date? 09/26/2016  
Month/Day/Year
2. 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. Place for diagram is on section 16 number 6.
3. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored on the premises unless it is a restaurant (see # 3 above).
4. 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.
5. 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 the boundaries, entrances, exits, added or deleted doors, windows, service windows or increase or decrease to the square footage after submitting this initial diagram.

  
\_\_\_\_\_  
(Applicant's Initials)

SECTION 16 Diagram of Premises - continued

6. On the diagram please show only the areas where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, hi-top tables, dining tables, dining chairs, dance floor, stage, game room, and the kitchen. 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 the premises is attached to this application, please write the words "DIAGRAM ATTACHED" in the box provided for the diagram on the application.

DIAGRAM OF PREMISES

PLEASE SEE ATTACHED  
DIAGRAM



SECTION 17 SIGNATURE BLOCK

NOTARY

I, (Print Full Name) Marc Cullen Goldsen, hereby declare that I am the Owner/Agent filing this application as stated in Section 4 # 1. I have read this application and verify all statements to be true, correct and complete.

X [Signature]  
(Signature of CURRENT Individual Owner/Agent)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

My commission expires on:



26th of August, 2016  
Day Month Year  
[Signature]  
Signature of NOTARY PUBUC

**A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice**

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.

E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.

F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.

12D



Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

Local Governing Body Recommendation  
A.R.S. § 4-201(C)

- 1. City or Town of: Gilbert Liquor License Application #: 1207A784  
(Circle one) (Arizona application #)
- 2. County of: Maricopa City/Town/County #: Gilbert
- 3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. § 4-207(D)(2).

\_\_\_\_\_  
(Name of entertainment district) \_\_\_\_\_  
(Date of resolution to create the entertainment district)

A boundary map of entertainment district must be attached.

- 4. The Gilbert Town Council at a Regular meeting held on the 1st of December 2016 considered the application of Marc Cullen Goldsen for a license to sell spirituous liquor at the premises described in application 1207A784 for the license series #: type \_\_\_\_\_ as provided by A.R.S § 4-201.  
(Governing body) (Regular or special) (Day) (Month) (Year) (Name of applicant) (Arizona liquor license application #)  
(I.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL  
IT IS THEREFORE ORDERED that the license APPLICATION OF \_\_\_\_\_  
(Name of applicant)  
to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended  
for \_\_\_\_\_  
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE  
IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.  
Dated at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(Location) (Day) (Month) (Year)  
\_\_\_\_\_  
(Printed name of city, town or county clerk) \_\_\_\_\_  
(Signature of city, town or county clerk)



10-19-2016

*Even Stevens Sandwiches*  
*Marc Goldsen*  
*2030 S. 900 E. Suite A*  
*Salt Lake City, UT 84105*

RE: Liquor License – **State license #1207A784**

Dear Marc:

The public hearing for the Liquor License application (**Series #12**) located at **384 N. Gilbert Rd #104**, Gilbert AZ **85234** is scheduled before the Gilbert Town Council on Thursday, **December 1<sup>st</sup>, 2016** at 7:00 p.m. The public hearing will be held in the Council Chambers of the Gilbert Municipal Center located at 50 East Civic Center Drive, Gilbert, AZ 85296. **A representative must be present at the hearing.**

A public hearing notice for this liquor license will be posted at the above-referenced location and will be posted for the required 20 days. This will meet the Arizona Department of Liquor License & Control posting requirements.

The cost of the **Series #12, Restaurant** Liquor License is **\$750.00**. This fee is due before your Town Council Hearing. **All liquor licenses will expire yearly on the anniversary date of license issuance. A renewal notice will be sent to you prior to expiration. A late fee may be assessed for late payments and state approval forms will be held until payment is received.**

The Town may notify you of amendments (changes) to your license application that need to be filed with the Arizona Department of Liquor License and Control for approval. A copy of the amendments containing the State's stamp must be submitted to the Town by **11-2-16**. If the amendments are not submitted by the deadline, the public hearing may be continued to a future Council meeting. You will be notified shortly of any amendments that are due.

Please feel free to contact me directly at **480-503-6700** if you have any questions.

Sincerely,

**Michelle Larson**  
**Development Services**

Enclosures: **Criteria Sheet**

---

Town of Gilbert Values: Service Excellence ♦ Protection ♦ Fairness ♦ Trust ♦ Innovation ♦ Communication

Area Code (480) 503-6700 Fax (480) 497-4923 TDD 497-4900

62209

5/27/04  
449942



12D

Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 10-19-16 Date of Posting Removal: 11-08-16

Applicant's Name: Goldsen Marc Cullen  
Last First Middle

Business Address: 384 N. Gilbert Rd #104 Gilbert 85234  
Street City Zip

License #: 1207A784

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Lorente A. DeOrto Code Compliance Administrator 480-503-6834  
Print Name of City/County Official Title Phone Number

[Signature] 11-15-2016  
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

62209

11/24/2015

449942



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Leslie Giltner, Customer Service Manager, 503-6801

**MEETING DATE:** December 1, 2016

**SUBJECT:** Sampling Privileges for the existing Series 9 Liquor Store Liquor License located at 1363 North Arizona Avenue

**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 Liquor License located at 1363 North Arizona Avenue.

### **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.

Winco currently has a 9 Liquor Store Liquor License located at 1363 North Arizona Avenue.

The liquor store (series 9) 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. A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of delivery. Series 9 (liquor store) licensees and applicants may apply for unlimited sampling privileges by completing the Sampling Privileges form.

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, 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,

Leslie Giltner  
Customer Service Manager

Attachments/Enclosures:  
Attachment 1 –Sampling Privileges Form

**Approved By**

Kyle Mieras

**Approval Date**

11/21/2016 9:30 AM

RECEIVED

10-27-16



TOWN OF GILBERT  
CUSTOMER SERVICE CENTER

Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

9A

**DLIC USE ONLY**

Issuance fee: \$100.00
Issuance Date: 10-27-16
<input checked="" type="checkbox"/> Liquor Store (series 9)
<input type="checkbox"/> Beer and Wine Store (series 10)
CSR: MS

**SAMPLING PRIVILEGES APPLICATION  
SERIES 9 OR 10**

Applicant's Name:  Owner  Agent Nicholas Carl Guttilla License #: 09070598

Business Name: WinCo Foods #125

Business Location: 1363 N Arizona Ave Gilbert AZ Maricopa 85233

Mailing Address: Attn: Tax & License Dept - PO Box 5756 Boise ID Ada 83705

Business Phone Number: (623) 930-5071 Daytime Contact Number: (480) 304-8300

Email Address: psines@gamlaw.com

16 OCT 27 11:49 AM '16

**Series #10 Beer and Wine Bar Only:**

- I declare that my business qualifies as a
- Premises is 5,000 square feet or larger
  - At least 75% of shelf space is dedicated to beer and wine

**A.R.S. §4-206.01(J) Bar, Beer and Wine Bar or Liquor Store licenses; number permitted; fee; sampling privileges**

I (Signature), [Signature], 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 A.R.S. §4-206.01 at the licensed establishment, 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 \$75 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.

**LOCAL GOVERNING BOARD**

I, \_\_\_\_\_ recommend  APPROVAL  DISAPPROVAL

(Government Official Signature) (Title)

on behalf of \_\_\_\_\_

(City, Town, County) Phone Date

**DLIC USE ONLY**

Investigation Recommendation:  Approval  Disapproval by: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Director Signature required for Disapprovals: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

8/10/2016

61015

City of Gilbert

1535-004.06(263347)

398136



9A

Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 11-1-16 Date of Posting Removal: 11-21-16

Applicant's Name: Gutilla Nicholas Carl  
Last First Middle

Business Address: 1363 N. Arizona Ave Gilbert 85233  
Street City zip

License #: 09070598

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Leslie Giltner Asst Senr Mgr 480-503-6801  
Print Name of City/County Official Title Phone Number

Ruby Gitor 11-21-16  
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

61015

398136

## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Nathan Williams, AICP, Senior Planner, (480) 503-6805

**MEETING DATE:** December 1, 2016

**SUBJECT:** A16-02 - American Leadership Academy - NWC Higley Road and the Santan 202 Freeway.

**STRATEGIC INITIATIVE:** Community Livability  
The proposed annexation will contribute to the development of an unincorporated site within the Town of Gilbert.

### **RECOMMENDED MOTION**

There is no recommended motion; the purpose of the Public Hearing is to solicit input only.

### **BACKGROUND/DISCUSSION**

Annexation A16-02, American Leadership Academy: This annexation includes approximately 41.6 acres located at the NWC Higley Road and the Santan 202 Freeway. The blank petition was filed with the Maricopa County Recorder on November 8, 2016. The Notice of Public Hearing was posted on the property, published, and sent by first class mail to the chairman of the Maricopa County Board of Supervisors and to the owners of real and personal property, all as required by A.R.S. § 9-471. The petition will be available for signature on December 9, 2016 and, when the required number of signatures has been obtained, the annexation ordinance will be presented to Council for approval.

Following the annexation, this site is intended to be rezoned from Maricopa County Rural 43 zoning district to Town of Gilbert Business Park (BP) zoning district classification to accommodate future development. This planned rezoning conforms to the Gilbert General Plan.

Applicant is Iplan Consulting on behalf of the owners, American Leadership Academy and Higley & 202, LLC.

**PROPOSITION 207**

An agreement to “Waive Claims for Diminution in Value” Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

**LEGAL REVIEW**

The blank annexation petition and affidavit recorded with the Maricopa County Recorder on November 8, 2016 were reviewed for form by Attorney Jack Vincent.

**FINANCIAL IMPACT**

There is no financial impact resulting from the public hearing for the proposed annexation. The financial impact was reviewed by Justine Bruno, Management and Budget Analyst.

**TRAFFIC IMPACT**

This annexation will have a significant impact upon traffic in the immediate area and staff notes that the applicant is working with the Town of Gilbert Traffic Engineer for implementation of an approved Traffic Impact Study (TIS).

**WATER IMPACT**

This annexation is not expected to impact the Town’s forecasted demand for water resources.

**STAFF RECOMMENDATION**

No action is required at this time. The purposed of the agenda item is to take public comment only.

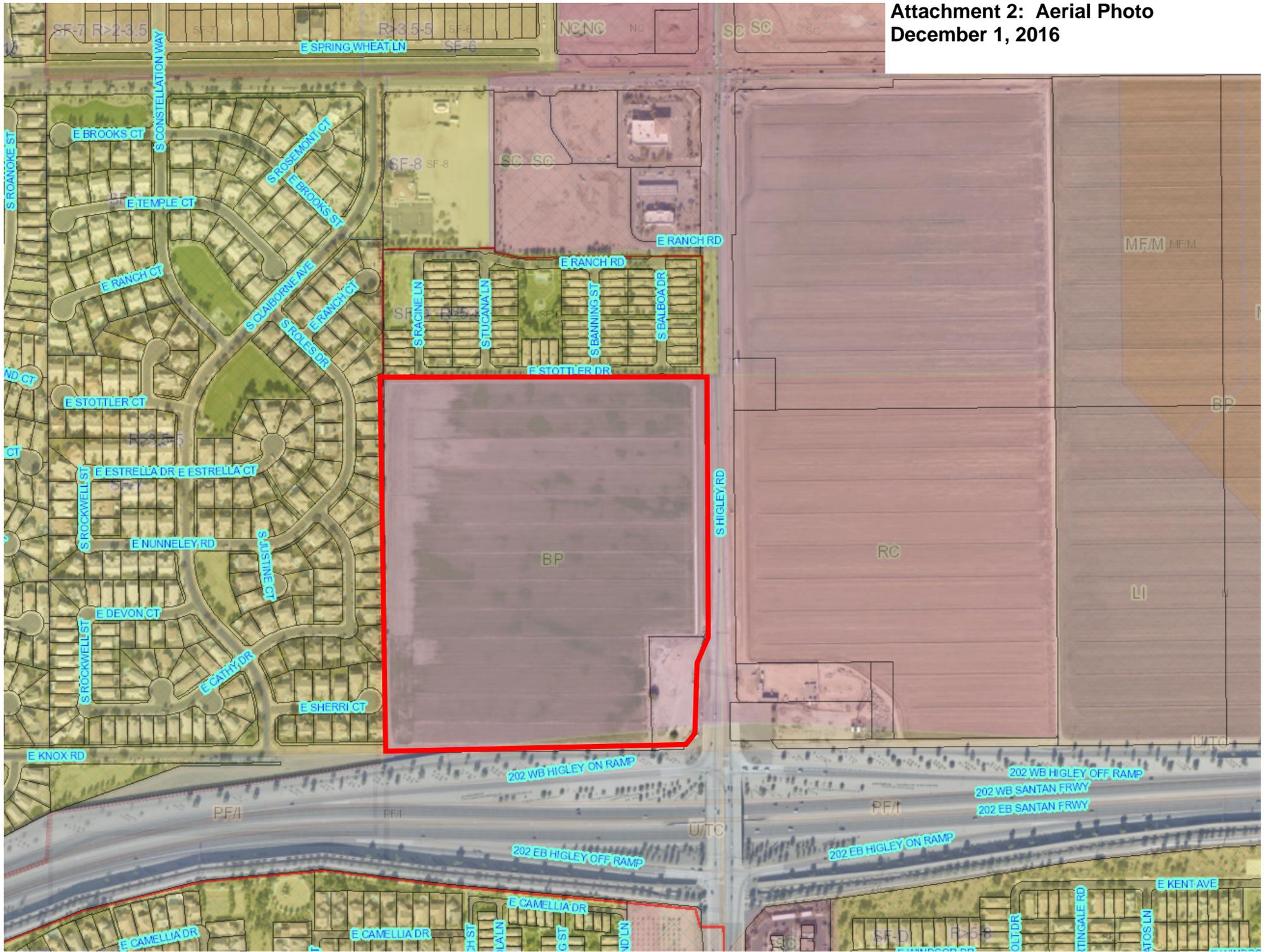
Respectfully submitted,



Nathan Williams, AICP  
Senior Planner

**Attachments:**

- 1) Copy of recorded blank Petition with map and legal description
- 2) Aerial photo



**Approved By**

**Approval Date**

Catherine Lorbeer

11/17/2016 7:54 AM

Linda Edwards

11/17/2016 1:56 PM

Kyle Mieras

11/17/2016 5:28 PM

Jack Vincent

11/21/2016 12:02 PM

Justine Bruno

11/20/2016 10:54 PM

**When recorded mail to:**

**Town of Gilbert  
Town Clerk  
50 East Civic Center Drive  
Gilbert AZ 85296**

**OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20160845603 11/16/2016 01:38 N  
ELECTRONIC RECORDING  
Gilbert1241-6-1-1--A**

This area reserved for County Recorder

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**CAPTION HEADING  
PETITIONER’S AFFIDAVIT – FILING FOR ANNEXATION**

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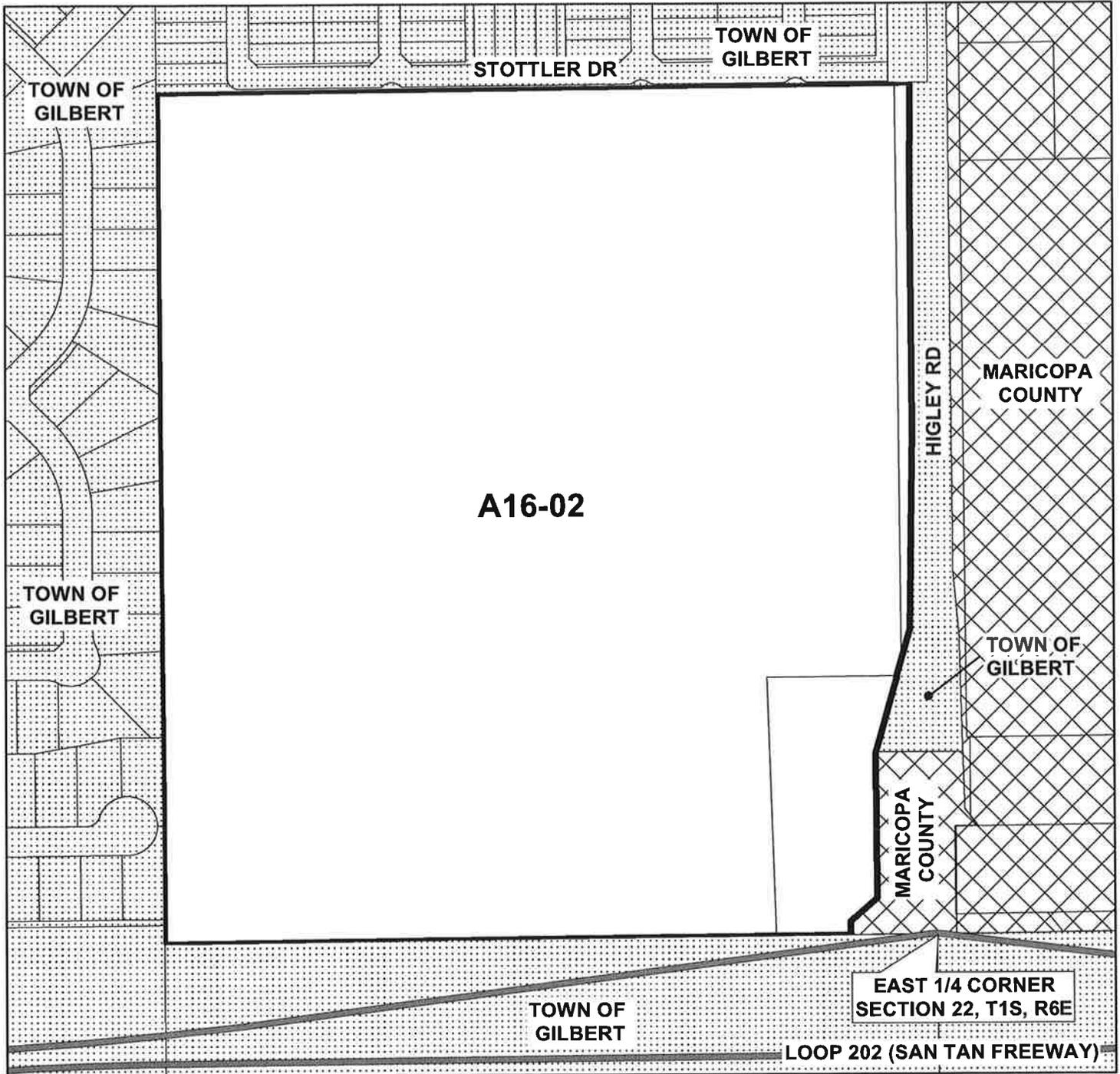
**DO NOT REMOVE**

Petitioner’s Affidavit – Filing for Annexation is being re-recorded to correct a Scrivener’s error on the Annexation Exhibit. The Annexation Exhibit for A16-02 created by the Town GIS Department has a short legal description portion that as recorded read “Southwest quarter of Section 22, T1S, R6E...” and has now changed to read the “Northeast quarter of Section 22, T1S, R6E...”

This correction was approved by Assistant Town Attorney Jack Vincent.

Petitioner’s Affidavit – Filing for Annexation was originally recorded on 11/08/2016 at Official Records of Maricopa County Recorder, Record # 20160825990.

**ANNEXATION A16-02  
NWC HIGLEY RD AND LOOP 202 (SAN TAN FREEWAY)**



A portion of the Northeast quarter of Section 22, T1S, R6E and of of the Gila and Salt River Base and Meridian Maricopa County, Arizona.

I, Jenn Daniels, 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.

\_\_\_\_\_  
Jenn Daniels, Mayor

\_\_\_\_\_  
Lisa Maxwell, Town Clerk



When Recorded Return To:  
Gilbert Planning Department  
Town of Gilbert Municipal Center  
90 East Civic Center  
Gilbert, Arizona 85296

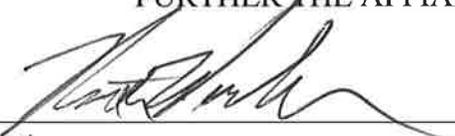
OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20160825990 11/08/2016 04:45 N  
ELECTRONIC RECORDING  
Gilbert1241-4-1-1--

PETITIONER'S AFFIDAVIT - FILING FOR ANNEXATION

AFFIANT, Nathan Williams, also identified as the Petitioner in Town of Gilbert's Annexation Case No. A16-02 pursuant to A.R.S. 9-471(A)(6), HEREBY SWEARS AND AFFIRMS THAT:

1. The Affiant has determined and verifies that no part of the territory proposed for annexation in Town of Gilbert's Annexation Case No. **A16-02** is already subject to an earlier filing for annexation under A.R.S. 9-471(A)(4).

FURTHER THE AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 8<sup>th</sup> day of November, 2016 by Nathan Williams.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

6-15-2020



When Recorded Return To:  
Planning Department  
Town of Gilbert Municipal Center  
90 East Civic Center  
Gilbert, Arizona 85296

## **ANNEXATION A16-02: American Leadership Academy**

### **TO THE HONORABLE MAYOR AND COUNCIL OF THE TOWN OF GILBERT, ARIZONA:**

We, the undersigned, owners of real and personal property in the area sought to be annexed, as described herein and shown on the attached map, request the Town of Gilbert to annex our property located within the following described area:

#### **ANNEXATION LEGAL DESCRIPTION FOR NORTHWEST CORNER OF HIGLEY ROAD AND SANTAN 202 FREEWAY**

A portion of the Northeast Quarter of Section 22, Township 1 South, Range 6 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the East Quarter corner of said Section 22, said point being a found Arizona Department of Transportation Brass Cap Flush, from which the Northeast Corner of said Section 22 bears North 00 degrees 26 minutes 31 seconds West, for a distance of 2634.00 feet, said point being a found Brass Cap in Handhole;

Thence South 89 degrees 26 minutes 21 seconds West, along the South line of the Northeast Quarter of Section 22, for a distance of 148.07 feet, to a point on the existing West Right-of-Way line of South Higley Road per Warranty Deed recorded as Document No. 2004-0257949, records of Maricopa County Arizona, said point being the POINT OF BEGINNING;

Thence continuing South 89 degrees 26 minutes 21 seconds West, along the South line of the Northeast Quarter of Section 22, for a distance of 1157.81 feet, to the Southwest corner of the Southeast Quarter of the Northeast Quarter of said Section 22, said point being a found half-inch rebar with Cap L.S. #44007;

Thence North 00 degrees 22 minutes 12 seconds West, along the West line of the East half of the Northeast Quarter of Section 22, for a distance of 1452.10 feet, to the Northwest corner of the South 135.38 feet of the Northeast Quarter of the Northeast Quarter of said Section 22;

Thence North 89 degrees 25 minutes 07 seconds East, along the North line of the South 135.38 feet of the Northeast Quarter of the Northeast Quarter of Section 22, for a distance of 1271.05 feet, to a point on the West 33 foot right-of-way line of Higley Road as recorded in Document No. 2015-0570279, records of Maricopa County, Arizona;

Thence South 00 degrees 26 minutes 31 seconds East, along said 33 foot West right-of-way line, for a distance of 541.17 feet, to a point on the North line of that certain described property conveyed to the Arizona Department of Transportation per Warranty Deed recorded as Document No. 2004-0257949, records of Maricopa County Arizona;

Thence South 00 degrees 59 minutes 24 seconds West, along the existing West right-of-way line of South Higley Road, for a distance of 397.72 feet;

Thence South 16 degrees 08 minutes 49 seconds West, along said existing West right-of-way line of South Higley Road, for a distance of 210.85 feet, to a found 3" Aluminum Cap Flush;

Thence South 00 degrees 26 minutes 01 seconds East, along said existing West right-of-way line of South Higley Road, for a distance of 246.45 feet, to a found 3" Aluminum Cap Flush;

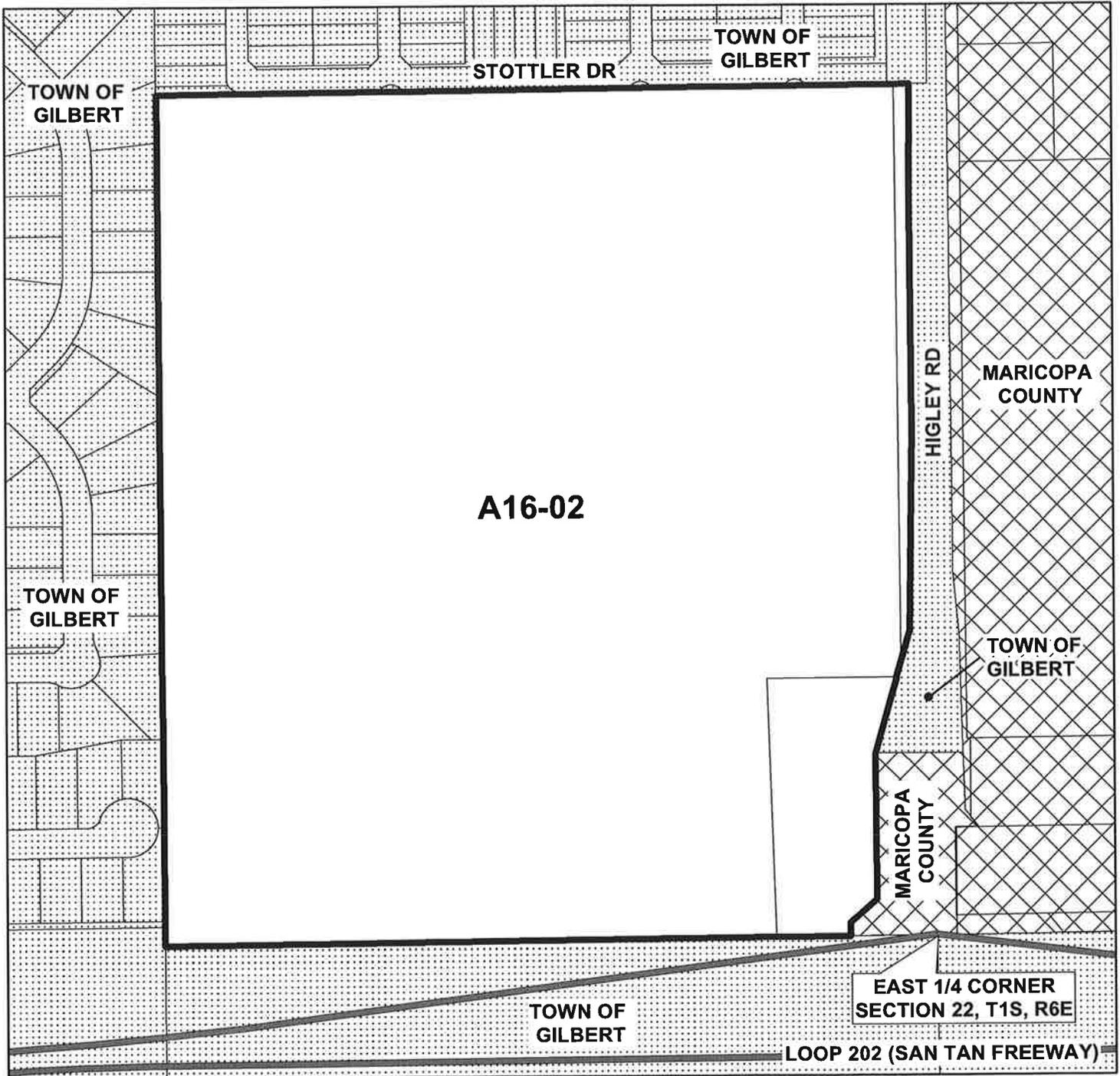
Thence South 47 degrees 39 minutes 35 seconds West, along said existing West right-of-way line of South Higley Road, for a distance of 60.39 feet, to a found 3" Aluminum Cap Flush;

Thence South 00 degrees 33 minutes 40 seconds East, along the existing West right-of-way line of South Higley Road, for a distance of 25.19 feet, to the POINT OF BEGINNING.

Said property contains 41.628 Acres (1,813,328 S.F.) more or less.

	<b>Name (Print)</b>	<b>Signature</b>	<b>Date</b>	<b>Tax Parcel No.</b>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____
9.	_____	_____	_____	_____
10.	_____	_____	_____	_____

**ANNEXATION A16-02  
NWC HIGLEY RD AND LOOP 202 (SAN TAN FREEWAY)**

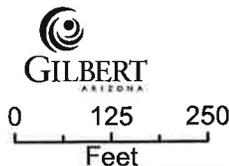


A portion of the Southwest quarter of Section 22, T1S, R6E and of of the Gila and Salt River Base and Meridian Maricopa County, Arizona.

I, Jenn Daniels, 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.

\_\_\_\_\_  
Jenn Daniels, Mayor

\_\_\_\_\_  
Lisa Maxwell, Town Clerk





## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Robin Stoneman, Management Support Specialist, 503-6866

**MEETING DATE:** December 1, 2016

**SUBJECT:** Boards and Commissions - Town of Gilbert, Arizona Public Facilities  
Municipal Property Corporation

**STRATEGIC INITIATIVE:** Community Livability

This item supports the Strategic Initiative of Community Livability by encouraging public involvement in the decision-making process to assure Gilbert remains “Clean, Safe and Vibrant.”

### **RECOMMENDED MOTION**

A motion to appoint two regular members to the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation with terms beginning December 31, 2016 and ending January 1, 2020.

### **BACKGROUND/DISCUSSION**

The Town of Gilbert, Arizona Public Facilities Municipal Property Corporation currently has two regular openings. Staff advertised the opening through local newspapers, Town publications, the Government Access Cable Channel, and the Town’s web page with an application deadline of November 6, 2016. Four applications were received.

Cathryn Creaser, Lyman Davis, Nabeel Ebrahim and Paula Hatch, were interviewed by Council in Executive Session on December 1, 2016.

### **FINANCIAL IMPACT**

None.

### **STAFF RECOMMENDATION**

Appointments to Boards and Commissions are at the discretion of the Council. Staff offers no recommendation on such appointments.

Respectfully submitted,

Robin Stoneman  
Management Support Specialist

**Approved By**

Lisa Maxwell

**Approval Date**

11/21/2016 10:46 AM



## Council Communication

**TO:** Honorable Mayor and Councilmembers  
**FROM:** Robin Stoneman, Management Support Specialist, 503-6866  
**MEETING DATE:** December 1, 2016  
**SUBJECT:** Boards and Commissions - Fire and Police Public Safety Retirement System Local Pension Board

**STRATEGIC INITIATIVE:** Community Livability

This item supports the Strategic Initiative of Community Livability by encouraging public involvement in the decision-making process to assure Gilbert remains “Clean, Safe and Vibrant.”

### **RECOMMENDED MOTION**

A motion to appoint one regular member to the Police and Fire Public Safety Retirement System Local Pension Boards with terms beginning November 30, 2017 and ending November 29, 2020.

### **BACKGROUND/DISCUSSION**

Police and Fire Public Safety Retirement System Local Pension Boards currently have an opening for one regular position. Staff advertised the opening through local newspapers, Town publications, the Government Access Cable Channel, and the Town’s web page with an application deadline of November 6, 2016. Four applications were received.

Christopher Arvayo, Nabeel Ebrahim, Mark Larkin and Marci Norton were discussed by Council in Executive Session on December 1, 2016. The law requires that the same person be appointed to both the Police and Fire Public Safety board

### **FINANCIAL IMPACT**

None.

**STAFF RECOMMENDATION**

Appointments to Boards and Commissions are at the discretion of the Council. Staff offers no recommendation on such appointments.

Respectfully submitted,

Robin Stoneman  
Management Support Specialist

**Approved By**

Lisa Maxwell

**Approval Date**

11/21/2016 10:47 AM