AG Contract No.: KR 04-0391TRN
ADOT ECS File No.: JPA 04-014
Project No.: TEA-GIL-0 (011) A
Project: Powerline Trail; Tremaine Street
Section: Eastern Canal to Higley Road
TRACS No.: SL507 01C

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF GILBERT

THIS AGREEMENT is entered into July 20, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF GILBERT, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. Congress has authorized appropriations for improvements, but not limited to, twelve eligible categories of transportation enhancement activities.

4. Such project within the boundary of the Town has been selected by the Town; the field survey of the Project has been completed; and the plans, estimates and specifications have been prepared and as required, submitted to the Federal Highway Administration (FHWA) and the State for its approval.

5. The States interest in the Project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the Project are authorized to be expended.

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).

NO. 26973
Filed with the Secretary of State
Date Filed: 07/20/04
Janice K. Brewer
Secretary of State
By: Diane D. Greenwald

7. The work embraced in this Agreement is the construction of a multi use path, landscaping, irrigation, lighting and signage paralleling Tremaine Road from Eastern Canal to Higley.

Estimated Construction Cost	$550,320.00
Estimated Federal Transportation Enhancement Funds @ 94.3%	$500,000.00
Estimated Town Matching Funds @ 5.7%	$ 30,223.00
Estimated Additional Town Funds @ 100%	$ 20,097.00
**** Estimated Total Town Cost***	***$ 50,320.00***

*Includes 15% of Construction Cost = Construction Engineering Cost

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Reimburse the Town with federal funds for approved actual expenditures related to the construction of the project, addressed under this Agreement, within 30 days of receipt of an invoice, contingent upon FHWA authorization of federal funds.

b. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

c. The State will enter into a Project Agreement with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the authorized federal funds available, including construction engineering and administration costs.

2. The Town shall:

a. Agree to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

b. If such Project is approved for construction by FHWA and the funds are available for construction, the Town hereby agrees to be the authorized agent for the Project, and with the aid and consent of the State and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the State and the FHWA, enter into a contract with a firm on behalf of the Town to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town.

c. Be responsible for any unforeseen conditions or circumstances increased of said costs required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to incur and will pay for said increased costs.

d. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

e. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of the right-of-way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

f. Arrange to have furnished and installed in its name, all necessary water services from water mains to the designated locations within the rights-of-way.

g. Furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at the Town's expense.

h. At the conclusion of the contractor maintenance and warranty period, referred to in the construction contract as Landscaping Establishment, maintain the landscaping, including all testing, adjusting, repairing and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system.

i. Provide all electrical power necessary to maintain the multi use pathway.

j. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices. This includes keeping all areas free of weeds, undesirable grasses and litter. Applying irrigation water, furnishing and applying insecticide/herbicide sprays, dust to combat diseases and other pests. Pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the Project.

k. Not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual"

l. Allow free public access to the Project improvements during normal business hours.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Town will bear all cost associated therewith.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act,

including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation Joint Project Administration 205 S. 17th Avenue - 616E Phœnix, AZ 85007 FAX (602)-712-7424	Town of Gilbert Town Manager's Office 50 E. Civic Center Drive Gilbert, AZ 85296-3463

11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF GILBERT

By_____
STEVEN M. BERMAN
Mayor

STATE OF ARIZONA
Department of Transportation

By_____
SUSAN TELLEZ
Contract Administrator

ATTEST:

By_____
CATHY TEMPLETON
Town Clerk

JPA 04-014

APPROVAL OF THE TOWN OF GILBERT

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF GILBERT and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25th day of May, 2004.

City Attorney

MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING, TUESDAY, MAY 25, 2004 AT 7:00 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT:	Mayor Berman, Councilmembers Crozier, Petersen, Presmyk, Skousen (teleconference), and Urie
COUNCIL ABSENT:	Vice Mayor Morrison
STAFF PRESENT:	Manager Pettit, Assistant Manager Skocypec, Deputy Clerk Roberts, Attorney Goodwin, Attorney Smiley, Planning Director Swanson
OTHERS:	Brian Powell, Tribune; Senta Scarborough, Arizona Republic

CALL TO ORDER OF REGULAR MEETING

Mayor Berman called the meeting to order at 7:18 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor Gary Norton of Superstition Springs Community Church gave the invocation. Scouts led the Pledge of Allegiance and introduced themselves.

ROLL CALL

Deputy Clerk Roberts called roll and declared a quorum present.

PRESENTATIONS; PROCLAMATIONS

1. Oath of Office administered to Cynthia Barnes-Pharr for the Parks and Recreation Advisory Board.

Mayor Berman administered the Oath of Office to Cynthia Barnes-Pharr for the Parks and Recreation Advisory Board.

2. Recognition of Richard King for service on the Human Relations Commission.

Mayor Berman recognized Richard King for service on the Human Relations Commission.

2A. Presentation of Student Citizen of the Month Awards.

Mayor Berman and Councilmember Urie presented Student Citizen of the Month awards for April 2004 to:

Meaghan Shaw, Jonelle Reynolds, Jerad Cudiamat, Cody Montierth, Ryan Spinelli, Colten Brooks, Heather West, Zachary Turilli, Emily McCormack, Ashley Reeves, Nestor Dimas, Nathan Engstrom, Danielle Lazorchak, Jonason Pauley, Ariana Valenzuela, Austin Burnam, Nicholas Beck, Cheryl Quist, Hayden Higgins, Jocelyn Figueroa, Alyssa Evensen, Tamela

Samuel, Jerika Newitt, 'Drew LaMorgese, Keaton Powers, Christopher Koczara, Collin Braithwaite, Kaitlyn Myers, Matthew Pananos, Amanda Shaw, Lindsey Wiggins, and Lisa Reynolds.

COMMUNICATIONS FROM CITIZENS

Charles Chaillel, 321 E. Constitution Drive, Gilbert, addressed the Council to express gratitude for the work completed at the Gilbert Senior Citizens Center. He added that Gilbert's Center was one of the friendliest centers he has visited. Rose Isaac, 904 N. Constellation Way, Gilbert, addressed the Council to also thank them for the work on the Senior Center.

Vicky Roe, 3030 E. Lexington, Gilbert, addressed the Council on the issue of motorized scooters. She stated there is concern in the Morrison Ranch subdivision with misuse of the scooters. Children under the age of thirteen are riding and are not wearing protective clothing or helmets. Also the riders are not following the guidelines of the law and there is a lack of supervision. She expressed a concern that riders are out during the late evening when it is getting dark and the chances of an accident are increasing. She considered scooters to be noisy and a nuisance and costing the Town expenses in police responses to complaints.

Manager Pettit advised that this issue is scheduled for discussion at the June 8 meeting.

CONSENT CALENDAR

A MOTION was made by Councilmember Peterson, seconded by Councilmember Presmyk, to approve Consent Items 4, 5, 6, 8, 8A, 9, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, and 28; and remove Items 7, 10, 19 from the Consent Calendar. Item 15 was previously removed from the agenda due to some textural changes. *Motion carried 6-0.*

4. **ANNEXATION A03-13** – consider adoption of an Ordinance approving the annexation of approximately 80 acres at Felty Farms located at the northeast corner of Lindsay and Ocotillo roads. A public hearing was held April 13, 2004.

This item was approved with the Consent Calendar. Ordinance No. 1564 was adopted.

5. **EXTENSION OF PREMISES** – consider approval of a temporary Extension of Premises for Buffalo Wild Wings Grill and Bar located at 970 South Gilbert Road for June 12, 2004.

This item was approved with the Consent Calendar.

6. **AGREEMENT** – consider approval of an agreement with the Higley Unified School District No. 60, Mark W. Dobson, and the Roosevelt Water Conservation District in an amount not to exceed $63,100 for the installation of the Higley/Warner/Williams Field Roads Sewer, Water, and Reclaimed Water Extensions, Project WW052, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

7. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the Gilbert Unified School District for construction of a swimming pool at Greenfield Junior High School located at the southeast corner of Greenfield and Elliot Roads and authorize the Mayor to execute the required documents.

Councilmember Crozier advised he pulled the item from the Consent Calendar as he wanted to highlight the importance of the amenity to the community even though the Town is facing tight budget issues at the present time. Councilmember Skousen commented on the importance of keeping our commitment to the School District.

A MOTION was made by Councilmember Crozier, seconded by Councilmember Petersen to approve an Intergovernmental Agreement with the Gilbert Unified School District for construction of a swimming pool at Greenfield Junior High School located at the southeast corner of Greenfield and Elliot and authorize the Mayor to execute the required documents. *Motion carried 6-0.*

8. INTERGOVERNMENTAL AGREEMENT – consider approval of an Intergovernmental Agreement with the Arizona Department of Transportation in an amount not to exceed $50,320 for the construction of the Powerline Trail and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

8A. INTERGOVERNMENTAL AGREEMENT – consider approval of an amendment to the Intergovernmental Agreement with the Maricopa County Library District for the operation of the Southeast Regional Library and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

9. CONTRACT – consider approval of a contract with the Boys and Girls Club of the East Valley in an amount not to exceed $125,000 for support for the period of July 1, 2004 to June 30, 2005 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

10. CONTRACT – consider approval of a Construction Manager at Risk Contract with Haydon Building Corporation for a guaranteed maximum price amount of $6,773,791.62 for Pecos Road Realignment and Improvements, Project ST052, and authorize the Mayor to execute the required documents.

Councilmember Crozier stated he pulled this item from the Consent Calendar to request clarification on whether coordination would take place for road closures during the Pecos Road Project and whether there would be traffic flow for east/west and north/south traffic. He also asked about a map or plan of coordination.

Manager Pettit responded that road closure coordination would occur to the extent the Town could accommodate. Deputy Manager Ryall advised that traffic control plans are created which list restrictions at a macro level and closures would not occur at the same time on Germann on Pecos to allow home access. She continued that Terry Utz with the Town's Traffic Engineering Department is in contact with his counterpart in Chandler and both are paying close scrutiny to road closure issues. A meeting regarding the Santan Freeway is held every Friday to discuss traffic impacts and is well attended.

A MOTION was made by Councilmember Crozier, seconded by Councilmember Petersen, to approve a Construction Manager at Risk Contract with Haydon Building Corporation for a guaranteed maximum price amount of $6,773,791.62 for Pecos Road Realignment and Improvements, Project ST052, and authorize the Mayor to execute the required documents.
Motion carried 6-0.

11. CONTRACT – consider approval of a contract with Heinfeld, Meech & Co., P.C. in an amount not to exceed $59,710 for Audit Services and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

12. CONTRACT – consider approval of a Project/Construction Management Services Contract with Kitchell Capital Expenditures Managers in an amount not to exceed $358,765 for Project Construction Management Services for the South Area Service Center and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

13. CONTRACT – consider waiving the bidding requirements and approve a contract with Sunland Asphalt in an amount not to exceed $180,000 for Novachip Wearing Course System for Val Vista Road, Baseline Road to Raleigh Bay, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar.

14. GRANT – consider acceptance of a Grant from the Governor's Office of Highway Safety in the amount of $5,575 for the purchase and required materials for car seat installation.

This item was approved with the Consent Calendar.

15. CHANGE ORDER – consider approval of Change Order No. 2 with Carollo Engineers to increase the scope of work on the Permit Applications for the Arizona Department of Water Resources and the Arizona Department of Environmental Quality for the Riparian Preserve, the Vadose Zone Injection Well Project, and the South Recharge Site Project.

This item was removed from the agenda; no action was taken.

16. CHANGE ORDER – consider approval of Change Order No.1 with Ricor, Inc. in an amount not to exceed $129,585 for Ray Road Improvements from the Eastern Canal to realigned Greenfield Road, Project ST018.

This item was approved with the Consent Calendar.

17. CHANGE ORDER – consider approval of Change Order No. 2 with Hubbard Engineering in an amount not to exceed $33,705 for the Val Vista Drive Improvement Design, Project ST024.

This item was approved with the Consent Calendar.

18. CHANGE ORDER – consider approval of Change Order No. 9 with D L Withers extending the contract completion date to March 15, 2004 at no additional cost for the Public Safety Complex.

This item was approved with the Consent Calendar.

19. PURCHASE – consider approval of an advance purchase of up to ten 2005 Crown Victoria Police Patrol Vehicles from Five Star Ford off the State Bid List in an amount not to exceed $258,568.90.

Councilmember Crozier stated he pulled this item from Consent Calendar as he wanted clarification on whether these were new vehicles to support additional personnel.

Manager Pettit responded they were both replacement and additional vehicles. Since these cars are only manufactured once a year the Town needs to place an order to ensure timely delivery.

Mayor Berman asked whether fuel "bladders" were a standard installation in these vehicles. Manager Pettit advised that Ford had made some modifications and the "bladders" are installed later at the option of the local government. They are not a factory option or requirement by Ford. Mayor Berman stated he would like the Town to obtain a price on the modifications. Manager Pettit agreed to obtain a second report.

A MOTION was made by Councilmember Crozier, seconded by Councilmember Presmyk to approve an advance purchase of up to ten 2005 Crown Victoria Police Patrol Vehicles from Five Star Ford off the State Bid List in an amount not to exceed $258,568.90. *Motion carried 6-0.*

20. BUDGET/PERSONNEL – consider approval to change a part-time Administrative Assistant position in the Planning Department to full-time, effective immediately, and approve a General Fund Contingency Transfer of $2,000.

This item was approved with the Consent Calendar.

21. **FEES** – consider adoption of a Resolution establishing a storage fee for confiscated A-Frame Signs, pursuant to Section 3.24B(17)(k) of the Unified Land Development Code.

This item was approved with the Consent Calendar. Resolution No. 2500 was adopted.

22. **FEES** – consider adoption of a Resolution establishing fees and charges for Planning Department services and publications for Fiscal Year 2004-2005.

This item was approved with the Consent Calendar. Resolution No. 2501 was adopted.

23. **FINAL PLAT S463** – consider approval of the replat of Lots 2 and 3 at Allen Ranch to Allen Ranch Lot 3A Replat located at the northeast corner of Gilbert and Pecos Roads.

This item was approved with the Consent Calendar.

24. **FINAL PLAT S550B** – consider approval of the final plat for Agritopia Phase 2A located at the northwest corner of Ray and Higley Roads.

This item was approved with the Consent Calendar.

25. **FINAL PLAT S565** – consider approval of the final plat for Santan Lakeside Estates Phase II located at the northwest corner of Recker Road and Santan Boulevard.

This item was approved with the Consent Calendar.

26. **FINAL PLAT SP834F** – consider approval of the final plat for the Wall Company; a replat of Lots 2, 3, and 4 of Fiesta Ranch Commerce Park located at the northeast corner of McQueen and Guadalupe Roads.

This item was approved with the Consent Calendar.

27. **FINAL PLAT SP840F** – consider approval of the final plat for Gilbert Ranch Village Unit II, Phase 5 located at the northeast corner of Val Vista and Williams Field Roads.

This item was approved with the Consent Calendar.

28. **MINUTES** – consider approval of the minutes of the Regular Meeting of May 11, 2004,

This item was approved with the Consent Calendar.

PUBLIC HEARINGS

Vice Mayor Petersen reported that Items 31 and 32 would be removed for discussion.
Mayor Berman opened the public hearing for items 29, 30, 33, and 34. No one wished to speak and Mayor Berman closed the public hearing. It was noted that Item 30 was continued to June 8, 2004.

A MOTION was made by Vice Mayor Morrison, seconded by Councilmember Presmyk, to approve public hearing items 29, 33, and 34 and continue item 30 to June 8, 2004 meeting. *Motion carried 6-0.* Manager Pettit pointed out that there were people present to speak on Item 31.

29. GENERAL PLAN GP04-01 AND ZONING Z04-1 - conduct hearing and consider:

a) Adoption of a Resolution amending the land use designation of approximately 15 acres at the northeast corner of Lindsay and Ocotillo Roads from Residential greater than 2-3.5 dwelling units per acre to SC (Shopping Center); and

b) Approval of the findings and adoption of an Ordinance rezoning approximately 80 acres at the northeast corner of Lindsay and Ocotillo Roads from Maricopa County Rural-43 to Town of Gilbert (R1-6, R1-8) Single Family Residential and (C-2) General Commercial with a (PAD) Planned Area Development overlay.

This item was approved with the public hearing vote. Resolution No. 2502 and Ordinance No. 1565 were adopted.

30. GENERAL PLAN GP03-9 AND Z03-34 – conduct hearing and consider:

a) Adoption of a Resolution amending the land use designation of approximately 6 acres at the northeast corner of Higley and Ray Roads from SC (Shopping Center) to Residential greater than 5-8 dwelling units per acre for Higley Park; and

Approval of the findings and adoption of an Ordinance rezoning approximately 129 acres in the Gateway Character Area for Higley Park located at the northeast corner of Higley and Ray Roads from Maricopa County R-43 to R-CH, R-2, and C-2 Zones with a Planned Area Development Overlay. A continuance was requested for GP03-9 and Z03-34 to June 8, 2004.

This item was continued to June 8, 2004 with the public hearing vote.

31. ZONING Z03-45 – conduct hearing and consider adoption of an Ordinance rezoning approximately 6.6 acres located east of the southeast corner of Baseline and Lindsay Roads from (C-1) Neighborhood Commercial to (NCC) Neighborhood Convenience Commercial.

Senior Planner Moon addressed Council and stated this was a zoning change for 6.6 acres from C-1 Neighborhood Commercial to NCC Neighborhood Convenience Commercial. Mr. Moon explained that in 1999 the property was rezoned by Ordinance No. 1161 from R-43 Rural Residential to C-1 Neighborhood Commercial with a PAD overlay. The Ordinance contained 41 conditions, many of which are also contained in the NCC zoning category. The Planning and Zoning Commission reviewed the case on May 5, 2004 and recommended approval by the Town Council. Staff was requested by the Commission to meet with property owners to review the conditions. Senior Planner Moon clarified that staff met with concerned neighbors of the surrounding property and advised them that the UTAZ project was for professional office use,

including medical offices, title companies and financial institutions. The residents expressed concerns over the height of buildings and setback requirements allowed by NCC. Mr. Moon advised that under the existing C-1 zoning the setback is 60 feet from rear property line and the proposed NCC allows setbacks of 25 feet.

Councilmember Crozier asked what setbacks the applicant is requesting. Senior Planner Moon responded 25 feet. Mayor Berman thanked Mr. Moon for his report.

Mayor Berman opened the public hearing.

Charles David Bosworth, 1539 N. Porter Place, Gilbert, addressed the Council and stated that he had some concerns with the change to NCC. He requested that if the project did not go forward that the property be rezoned back to C-1 with all original stipulations in place. He also asked whether an additional 5 feet could be added to the 25 feet setback requirement and that the eight foot barrier wall be constructed immediately to allow for dust control.

Discussion took place on landscape buffering and Planning Director Swanson advised that Design Review Board would be reviewing landscape buffer requirements between the office project and large lot residential. He added that a setback change would not be possible with NCC zoning. Councilmember Skousen asked whether reversion to the original C-1 zoning with conditions would apply if this project did not go forward. Attorney Goodwin advised that such a request would not be appropriate with the motion for this zoning. A new zoning application would have to be made, publicly posted and considered by the Planning Commission and Town Council.

Councilmember Urie cautioned residents to be diligent in attending meetings regarding rezoning. Discussion on the wall height took place and Planning Director Swanson advised the eight foot separation wall would be part of the site plan presented to Design Review for approval.

Mr. Bosworth again expressed his wish for the eight foot barrier wall to be constructed prior to the development of the property. Councilmember Presmyk asked what would be gained by this request. Mr. Bosworth responded that due to the smaller setback, construction would be closer to residential properties and the wall would lessen the amount of dust. He also had concerns over construction noise which he believed would be lessened if the wall was built sooner.

Rod Burnell, 1519 N. Porter Place, Gilbert, addressed the Council and stated much effort was put into the original Ordinance No. 1161 concerning setbacks and buffer zones and he was concerned with the setbacks proposed in the new zoning request. He also expressed concern that the wall would not have any definition and that landscaping would be inadequate.

Councilmember Crozier stated that the original C-1 zoning classification was more intense than the NCC use presented by this project. Mr. Burnell responded that the original zoning has many restrictions allowing less desirable businesses to be built on the south side of the property.

Councilmember Crozier added that the original project as a whole would have allowed a drive-through restaurant or a convenience store with gasoline facilities. Councilmember Crozier

continued that the proposed UTAZ office complex would be a very quiet neighbor with no noise at night or weekends.

Mr. Burnell presented a few photographs of another UTAZ development at Lindsay and Pecos which did not portray a desirable look for the block wall and landscaping. He requested that more care be taken with the buffer zone for this project.

Stephen Beck, UTAZ Development Corporation, 3850 E. Baseline, Suite 128, Mesa, addressed the Council on behalf of the applicant. He stated that the photographs were not an accurate portrayal of how the project would look as landscaping had only just begun and the adjacent use was a construction yard.

Discussion took place on setbacks. Mr. Beck advised that on the project under construction generally setbacks average 20 feet with two rows of trees as buffer landscaping. The trees would be staggered against an eight foot block wall. Due to the depth of the property that is under consideration tonight, the additional 5 foot setback requested by the neighbors would not be possible. He pointed out that the development would consist of only 18 percent building coverage for reduced density, and that the company has a track record in Gilbert of being a good corporate neighbor. He continued that there was not enough room on the site to allow an additional five foot setback, but the project did conform to NCC zoning with less of an impact than prior zoning, and a number of buyers were already interested in purchasing property on the site. He continued that the offices would be used Monday through Friday from 8:00 a.m. until 5:00 p.m. but would be closed on the weekends. Councilmember Crozier asked about the height of the buildings and the type of wall that would be constructed. Mr. Beck responded that the buildings would be less than 25 feet, all single stories and the wall would be grey block masonry. Councilmember Crozier asked whether raising the wall to ten feet had been considered. Planning Director Swanson advised that Code allows for walls six to eight feet high. Councilmember Crozier asked about the size of trees and Mr. Beck replied that the current plan indicates 15 gallon, but an increase to 24 inch box trees would be requested at the Design Review hearing.

Mayor Berman closed the public hearing.

Consensus was reached that the Design Review Board would be responsible for landscaping issues. Planning Director Swanson confirmed that this case had already been recommended for approval by the Planning and Zoning Commission, and that the Design Review Board meeting would be held June 10 at 5:30 p.m. in Room 300.

A MOTION was made by Councilmember Presmyk, seconded by Councilmember Skousen, to adopt Ordinance No. 1566 for Z03-45, rezoning approximately 6.6 acres located east of the southeast corner of Baseline and Lindsay Roads from (C-1) Neighborhood Commercial to (NCC) Neighborhood Convenience Commercial. The Council noted that the applicant had agreed to make every effort to construct the wall as soon as practicable during the project and would work with the neighbors to minimize the impact of construction and that 24 inch box trees would be included in the buffer landscaping. *Motion carried 6-0.*

32. CODE OF GILBERT – conduct hearing and consider a finding:

Option 1. That the presence of the Razor Wire Fence at 1001 North Gilbert Road, Bar 4 Self Storage is necessary for the health, safety, and welfare of the citizens through protection of their property as stored at the facility; or

Option 2. That there is no public health safety or welfare purpose, and uphold the citation requiring removal of the fencing.

Manager Pettit advised that a complaint had been filed on Bar 4 Self Storage because the top of the block wall includes razor wire fencing. The Code of Gilbert, Chapter 42 prohibits the use of razor wire in a non-industrial zone, therefore it is up to the Council to decide whether to make a finding that the presence of the razor wire fence is necessary for the health, safety and welfare of the citizens through protection of their property, or whether the Town should work with Bar 4 Mini Storage to remove the wire.

Councilmember Skousen asked whether the razor wire fencing was installed on the entire wall surrounding the business. Manager Pettit advised that the Town received information that the razor wire was installed all the way around the block wall.

Councilmember Crozier asked whether the business had any crime problems. Manager Pettit referred Council to the April 14, 2002 letter from the company stating that razor wire was installed due to problems with vandalism and loss of property, but that since the installation of the wire, criminal activity has been curtailed. Councilmember Crozier asked whether any police reports had been submitted. Manager Pettit advised that the owner's representation was taken at face value.

Councilmember Petersen requested clarification on whether the business was located in an industrial zone. Manager Pettit advised that this particular zone includes industrial and is surrounded by commercial and residential. Mayor Berman asked whether the objection was related to aesthetics. Manager Pettit responded that the objection was mainly aesthetics because the wire can be viewed from surrounding properties.

Mayor Berman opened the public hearing.

Mike VanHorn, 1001 N. Gilbert Road, Gilbert, addressed the Council and stated he is the manager of the business and was surprised to learn of a complaint, due to the long time-frame the wire has been in place. He continued that his business stores thousands of dollars of property and the wire has prevented break-ins. He stated that the wire cannot be seen from surrounding homes and that the only way a person would become injured is if they were breaking into the property.

Councilmember Skousen asked whether the wire was outside of the wall and Mr. VanHorn responded that it was inside the property wall.

Mayor Berman closed the public hearing.

Councilmembers Crozier and Petersen agreed that private property should be protected from theft. Councilmember Urie was concerned that if approval was given to keep the wire that this would set precedence. Manager Pettit advised that installation of this kind of wire fencing is required to meet the test, and this does not allow someone the right to install it, therefore there is no precedent.

A MOTION was made by Councilmember Presmyk, seconded by Councilmember Petersen, to approve Option 1, to find that the presence of the Razor Wire Fence at 1001 North Gilbert Road, Bar 4 Self Storage is necessary for the health, safety, and welfare of the citizens through protection of their property as stored at the facility. Councilmember Skousen requested that a stipulation be included to only allow razor wire within the inside walls of the property. *Motion carried 6-0.*

33. **CODE OF GILBERT** - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert Chapter 14 Businesses, Article II Business Licenses by amending Section 14-36 Required; Exemptions related to exempting Massage Practitioners and Rolfers from Town Business License requirements; amending Chapter 14 Businesses, Article XI Massage, Division 2 Licenses by amending Sections 14-351 Types Required, 14-352 Application; Contents, 14-355 Massage Practitioner License; Special Requirements; 14-356 Rolfer License; Special Requirements, and 14-359 Termination; Grounds all related to eliminating Town Licensing Business Licensing Requirements for Massage Practitioners and requiring licenses from the State of Arizona.

This item was approved with the public hearing vote. Ordinance No. 1567 was adopted.

34. **WASTEWATER** – conduct hearing and consider directing staff to publish a notice to change wastewater rates effective August 15, 2004, and establish July 6, 2004, as a date of public hearing and adoption of increased wastewater rates.

This item was approved with the public hearing vote.

ADMINISTRATIVE ITEMS

35. **BOARDS AND COMMISSIONS** – consider the appointment of two regular members and one alternate member with terms ending April 17, 2005 to the Arts Advisory Board.

A MOTION was made by Councilmember Presmyk, seconded by Councilmember Petersen, to appoint Robert Edgar and Tracy Leonard to the Arts Advisory Board with terms ending April 17, 2005 and appoint Cheryl Williams as an alternate with the same term expiration. Staff was directed to amend the ordinance to increase membership from nine to eleven members and appoint Nancy Genys and Amanda Marvin to the two additional positions on condition of adoption of the ordinance and with their appointment becoming effective immediately upon the effective date of the ordinance. *Motion carried 6-0.*

36. **LIBRARY SERVICES** – discussion and direction on planning for the South Area - Branch Library.

Assistant Manager Skocypec advised that the current Capital Improvements Plan, (CIP), which has been in place for several years, includes a library to be constructed in the southern area of Gilbert. An allocation of funds has been set aside in "Beyond 5 Years" which means it is not included in the current five year financial planning, but is included in the CIP. The Town has looked at exploring opportunities to accelerate the construction of facilities and through informal discussions and conversations with different groups it has been determined there is a common desire for centralized library services to be provided in the south planning area within a 2 – 3 year horizon.

Assistant Manager Skocypec continued on the issue of funding and advised that since the South Area Branch Library has not been planned within the next five years, any related capital or operating costs have not been included in any of the five year financial planning discussions. The Southeast Regional Library was built using bonds and currently the CIP includes the new facility to be funded through general obligation bonds, but is also eligible to use System Development Fees (SDFs). Mr. Skocypec asked for direction from Council on whether the Town would be willing to accelerate the facility to a 24 to 36 month horizon and to convert the current funding of the South Area Branch Library from General Obligation Bonds to System Development Fees. The other option would be to continue the current plan of building a stand-alone facility at both higher capital and operating costs at some point in the future "Beyond 5 Years". A budget of $5,000,000 has been allocated for the project.

Discussion took place and concerns were raised that if the library was a shared facility with the School District, the intermingling of students and the general public may not work well and could limit hours of availability to the general public. Also the question was asked whether the Internet had caused a drop in library use. Assistant Manager Skocypec responded that he did not have the data to support an answer, but in discussions with the County Library District, it appeared that while circulating materials may be static, the overall use of the library is still a strong resource. He would continue research on this issue and provide information to Council.

Councilmember Crozier voiced a concern that since the Town is struggling to fund essential services that the project be kept in the "Beyond 5 Years" horizon.

Councilmember Presmyk stated he felt the Town might not be in a position to build a stand-alone library at some point in the future and suggested that the Town at least pursue the opportunity by entering into joint agreements with the high schools to enlarge their libraries.

Assistant Manager Skocypec clarified that discussions have not yet occurred with the Gilbert School District and Chandler School District has indicated that the next high school could be opened as early as 2007.

Discussion continued and concerns were raised concerning partnering with the School District, the fact that the Town has a current agreement with the Southeast Regional Library, funding issues and the use of SDFs.

Assistant Manager Skocypec responded that he felt the Council was interested in such a project, but had concerns over the details and that he would be happy to prepare further details to present to Council in two to four weeks to enable the Council to come to consensus on the subject.

Councilmember Petersen asked whether the Town had considered partnering with Queen Creek. Assistant Manager Skocypec responded that it could be an option and he would gladly enter into discussion with Queen Creek officials.

Mayor Berman directed staff to obtain as much information as possible for presentation at a future meeting.

37. **BOARDS, COMMISSIONS, AND COMMITTEES** reports from Council Liaisons for the:

a) Council subcommittee on Boards and Commissions
b) Arts Advisory Board
c) Building and Construction Regulations Code Board of Appeals
d) Community Activities Board
e) Congress of Neighborhoods Committee
f) Design Review Board
g) Economic Development Advisory Board
h) Human Relations Commission
i) Mayor's Youth Advisory Committee
j) Parks and Recreation Advisory Board
k) Planning and Zoning Commission
l) Redevelopment Commission
m) Gilbert Public Facilities MPC
n) Gilbert Water Resources MPC
o) Gilbert Self-Insured Trust Fund
p) Regional Meetings

Councilmember Petersen reported that the Council subcommittee on Boards and Commissions has conducted interviews for Arts and the Economic Development Advisory Boards.

Councilmember Presmyk thanked the Wildflower Restaurant for their participation in a fundraiser for the Arts Advisory Board.

Mayor Berman advised that the Community Activities Board is working with the GPC on 4th of July arrangements. The event is to be held at Highland High School, with fireworks at 9:00 p.m.

Councilmember Petersen reported that the Design Review Board meets June 10, 2004.

Councilmember Presmyk advised interviews took place this evening for the Economic Development Advisory Board and there were some great candidates.

Councilmember Skousen said the Parks and Recreation Advisory Board and Planning and Zoning Commission will meet next week.

Councilmember Urie reported the Redevelopment Commission would meet on Thursday.

Councilmember Presmyk advised that the Gilbert Self-Insured Trust Fund would meet June 3, 2004.

Councilmember Crozier advised that the Aviation Board meeting was cancelled.

POLICY ITEMS

None.

FUTURE MEETINGS

Manager Pettit reminded the Council that the Retreat had been planned for August 20 and 21 and he suggested canceling the regular meeting on August 17, but maintaining the regular meeting of August 3.

Consensus was reached to cancel the regular meeting of August 17, 2004.

COMMUNICATIONS

38. Report from the Mayor on current events.

Mayor Berman reminded everyone to be mindful of children around water.

39. Report from members of the Council on current events.

None.

40. Report from the Town Manager on current events.

None.

ADJOURNMENT

A MOTION was made by Councilmember Presmyk, seconded by Councilmember Skousen, to adjourn the meeting. Motion carried 7-0. Mayor Berman adjourned the meeting at 10:00 p.m.

Mayor Steven M. Berman

ATTEST:

Susan Roberts

Susan Roberts, CMC, Deputy Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Gilbert held on the 25th day of May 2004. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 9th day of June 2004.

Susan Roberts

Susan Roberts, CMC, Deputy Town Clerk

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR04-0391TRN (**JPA 04-014**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 12, 2004

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

RLR/mjf
Attachment
853761