



AGENDA

6:00 P.M.

SPECIAL CITY COUNCIL MEETING

MONDAY, NOVEMBER 24, 2014

MEETING LOCATION: SAFFORD LIBRARY PROGRAM ROOM ♦ 808 S 7TH AVENUE, SAFFORD, ARIZONA

*Pursuant to Section 2.04.100 of the City of Safford Municipal Code, the Council may meet in a Council Special Meeting which shall be open to the general public. **No call to the public shall be authorized.***

- *A copy of agenda background material provided to Council members, with the exception of material relating to possible executive sessions, is available for public inspection at the City Clerk's Office, 717 Main Street;*
- *Monday – Thursday 7:00 a.m. – 6:00 p.m. and on the City's website at: www.cityofsafford.us*
- *The City Council reserves the right to take action upon any item on the agenda.*
- *Pursuant to Title II of the Americans with Disabilities Act (ADA), persons with a disability may request reasonable accommodations by contacting City Hall at (928)432-4000, forty-eight (48) hours prior to the meeting.*

1. **WELCOME AND CALL TO ORDER:** (Reminder: Please turn off cell phones)
2. **ROLL CALL:**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Mayor Gibbs will lead the Pledge of Allegiance to the Flag.
4. **OPENING PRAYER:** Reverend Gail Carlsen will offer the Opening Prayer.
5. Swearing in of Elected Mayor and Council Members:
Mayor: Chris Gibbs
Council Members: Mary Bingham, Gene Seale and Arnold Lopez

Refreshments will be served
6. Selection of Vice Mayor
7. **BOARDS AND COMMISSIONS:** The Mayor and Council Members may appoint council members to various community committees and boards:
 - 1) Airport:
 - 2) PAC Committee for the development of Safford Regional Airport
Master Plan Update:
 - 3) Boys and Girls Club:
 - 4) Chamber of Commerce
 - 5) Development Review Committee
 - 6) Graham County Community Foundation
 - 7) League of Arizona Cities and Towns –
Executive Committee
Resolutions Committee
 - 8) Library Board:
 - 9) Loss Control and Safety:
 - 10) Mt. Graham Safe House:
 - 11) Pride of Safford:
 - 12) SEAGO:
 - 13) Transportation Issues Group



AGENDA

6:00 P.M.

SPECIAL CITY COUNCIL MEETING

MONDAY, NOVEMBER 24, 2014

MEETING LOCATION: SAFFORD LIBRARY PROGRAM ROOM ♦ 808 S 7TH AVENUE, SAFFORD, ARIZONA

In accordance with Section 2.04.120 of the City Code of the City of Safford, and Arizona Revised Statutes §§38-431.01 et seq., and 38-431.02 et seq., notice is hereby given to the general public that the City of Safford will hold the above stated Special City Council Meeting open to the public on the date and time specified above at the Safford Library Program Room, 808 South 7th Avenue, Safford, Arizona. Members of the City of Safford Council may attend either in person or by telephone conference call. If authorized by a majority vote of the Common Council of the City of Safford, and pursuant to Arizona Revised Statutes, §38-431.03 et seq., the Council may adjourn the meeting at any time and move into Executive Session for consultation with the attorneys of the public body. Executive Session will not be open to the public.

8. NEW/OLD BUSINESS:

1. The Mayor and City Council will discuss the process of appointing a “Lay Member” for the Safford Fire Department.

INFORMATION/ACTION

9. CONTRACTS/AGREEMENTS/BIDS:

1. Approve a land lease agreement with Logan West Mine Supply and Service LLC at the Safford Industrial Park on 3.25 acres. The Agreement is a ten year lease with two renewable terms of five years each. **INFORMATION/ACTION**

2. Review with the Mayor and City Council the draft agreement with the Highline Canal Company in regards to the Joint Use Areas on which the Shared-Use Pathway is placed within the Canal Company’s easements. Staff recommendation is to approve the agreement authorizing the Mayor to sign on behalf of the City.

INFORMATION/ACTION

10. EXECUTIVE SESSION: The Mayor and City Council will enter executive session pursuant to the Authority under:

 X A.R.S. §38-431.03(A)(7) PROPERTY NEGOTIATIONS

1. To discuss and seek direction from the Council regarding the sale of City owned property.
2. Review November 10, 2014 executive session minutes.

 X A.R.S. §38-431.03(A)(2) EXEMPT RECORDS

11. ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION:

12. MEETINGS/ACTIVITIES HELD OR TO BE HELD BY COUNCIL OR CITY STAFF:

13. COUNCIL OR STAFF REQUESTS FOR AGENDA ITEMS:

14. FUTURE MEETINGS/ANNOUNCEMENTS:

- Thursday, November 27, 2014 Thanksgiving Holiday
- Friday, November 28, 2014 Merry Main Street Event
- Saturday, December 6, 2014 Christmas Light Parade
- Monday, December 8, 2014 Council Meeting (only December meeting)
- Wednesday, December 24, 2014 Close at noon for Christmas Holiday
- Thursday, December 25, 2014 Christmas Day Holiday

15. ADJOURN:



CITY COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Georgia Luster, City Clerk
SUBJECT: Swearing in of the Mayor and City Council Members
DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action:

Georgia Luster, City Clerk, will swear in Wyn “Chris” Gibbs as Mayor and Mary Bingham, Gene Seale and Arnold Lopez as Council Members for the City of Safford. She will also present a Certificate of Election to each.

Background:

Analysis:



CITY COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Horatio Skeete, City Manager
SUBJECT: Selection of the Vice Mayor
DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action:

The Mayor and Council may wish to select a Vice Mayor.

Background:

Analysis:



CITY COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Horatio Skeete, City Manager
SUBJECT: Appointment of Council Members to Various Community Committees and Boards
DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action:

Appoint Council Members to various community committees and boards.

Background:

Appointment of Council Members to various community committees and boards.
Current liaisons are:

| | |
|---|----------------|
| Airport | Ken Malloque |
| PAC Committee for the development of Safford Regional Airport Master Plan Update | Ken Malloque |
| Boys and Girls Club | Arnold Lopez |
| Chamber of Commerce | Chris Gibbs |
| Development Review | Jim Howes |
| Downtown Association | Arnold Lopez |
| Graham County Community Foundation | TBD |
| League of Arizona Cities and Towns – Executive Committee | Chris Gibbs |
| Resolutions Committee | Gene Seale |
| Library Board | Gene Seale |
| Loss Control and Safety | Jim Howes |
| Mt. Graham Safe House | Mary Bingham |
| Pride of Safford | Mary Bingham |
| SEAGO | Richard Ortega |
| Transportation Issues Group | Chris Gibbs |



CITY COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Mayor Gibbs
SUBJECT: Process of appointing a “Lay Member” to the Pension Board of the Safford Fire Department
DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action:

At the November 6th meeting of the Pension Plan Board of Trustees, the Board requested to appoint a “Lay Member” to the Pension Board. Pursuant to ***Arizona Revised Statutes §9-954(c), for an incorporated city, the mayor, with the Council’s consent, shall appoint lay members.*** The Pension Board recommends the Council discuss the process for appointing a “Lay Member”.

Background:



CITY COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Dustin Welker, Planning and Community Development Director
SUBJECT: Logan West Mine Supply and Service LLC
DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action: Approve a land lease agreement with Logan West Mine Supply and Service LLC at the Safford Industrial Park on 3.25 acres. The agreement is a ten year lease with two renewable terms of five years each.

Background: The Logan Corporation is based in West Virginia and has been in business for over 100 years. Their business plan for Safford is to supply plate steel, processed steel, ground engaging castings, manganese castings, and various other mine wear components to all of the Freeport properties in Arizona and New Mexico plus all of the ASARCO/Grupo Mexico properties in Arizona and Northern Mexico. Logan is a certified dealer for several manufactured products from all over the globe and they would plan on initially performing some light manufacturing such as cutting steel plate.

Analysis: Logan Corporation is a national company that supplies to all types of mining sectors throughout the world. Attracting quality jobs, such as these, is an essential element to growing the economic base in Safford.

LOGAN WEST MINE SUPPLY AND SERVICE AGREEMENT

This LOGAN WEST MINE SUPPLY AND SERVICE AGREEMENT (“**Lease**”) is made and entered into as of this 1st day of December, 2014 (the “**Effective Date**”), by and between THE CITY OF SAFFORD, a municipal corporation of the State of Arizona (“**CITY**”), and LOGAN WEST MINE SUPPLY AND SERVICE, an LLC (“**LESSEE**”).

Recitals

WHEREAS, the City owns property located on Graham County Parcel no. 103-09-032, and wishes to lease 3.25 acres as described in Exhibit 1 (the “**Property**”);

WHEREAS, the Lessee desires to rent the property in order to construct office space, warehousing, and manufacturing facilities and related improvements (collectively, the “**Improvements**”) as described on Exhibit 2 in order to operate a mine supplying and manufacturing operation (the “**Business**”);

WHEREAS, the City desires to promote employment in the City and the Lessee desires to bring jobs to the City; and

WHEREAS, the City is authorized under A.R.S. § 9-500.11 to use public resources to promote economic development activities such as leasing real property where the City Council has found and determined that such activities will assist in the creation of or retention of jobs in the City; and

WHEREAS, the City Council hereby finds and determines that by entering into this Lease, together with the requirement that if employment level targets set forth in Section 3 of this Lease are not satisfied the rental payment shall increase to fair market value, that the obligations of the Lessee hereunder will assist in the creation of jobs in the City; and

WHEREAS, the value of additional employment arising out of the operation of the Business offsets the employment incentives set forth in Section 2 of this Lease by enhancing the economic welfare of the inhabitants of the City as expressly permitted by A.R.S. § 9-500.11

NOW, THEREFORE, in consideration of the obligations hereunder the parties hereby enter into this Lease.

1. Term. The term of this Lease (the “**Term**”) shall begin on December 1, 2014 (the “**Effective Date**”) and shall end on the date that is ten (10) years after the first day of the month in which the Effective Date occurs (the “**Termination Date**”). The Term may be renewed for two (2) consecutive renewal terms of five (5) years each. For each of the renewal terms, no later than one hundred and eighty (180) days prior to the then scheduled Termination Date, the Lessee shall notify the City whether the Lessee desires to renew the Lease. If no later than ninety (90) days prior to the then scheduled Termination Date the parties mutually agree upon the terms of a renewed Lease, such mutual agreement shall be documented in an amendment to this Lease. If the parties are not able to agree upon the terms of a renewed Lease no later than ninety (90) days prior to the then scheduled Termination Date, this Lease shall terminate upon the then scheduled Termination Date.

2. Rent. In consideration of the satisfaction of the employment targets set forth in Section 3 of this Lease, Lessee shall not be required to make any rent payments for the month in which the Effective Date occurs and for eleven (11) months thereafter. Commencing on the date that is the anniversary of the first day of the month in which the Effective Date occurs, rental payments (collectively, the “**Rent**”) shall be due on the first day of the month in the monthly amount of \$1,178.75. That monthly amount shall be adjusted on the sixth (6th), the eleventh (11th) and the sixteenth (16th) anniversary of the first day of the month in which the Effective Date occurs. The adjustment shall be based on consumer price index for the Western Region Consumer Price index.

3. Employment Targets. If the Business does not employ at least fifteen (15) employees with a salary of at least \$50,000, the Lessee shall pay the City the amount of \$14,157 on the sixth (6th) anniversary of the first day of the month in which the Effective Date occurs.

4. Property. The Lessee accepts the Property “as –is” without any representation or warranty from the City or any of its officials, officers, employees, agents or representatives regarding the Property. Lessee acknowledges that (a) it has been advised by the City to satisfy itself with respect to the condition of the Property and its suitability for the Lessee’s intended use and (b) the Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relates to its occupancy of the Property.

5. Improvements. The Lessee shall construct the Improvements in accordance with plans approved in writing by the City within twelve (12) months of the Effective Date. The Lessee shall provide the City such performance and payments bonds as required by Arizona Revised Statutes Title 34. In connection with the construction of the Improvements, the City shall provide expedited plan review and all utility infrastructure shall be provided to the property line of the Property. Lessee shall pay for the installation and all costs of meters, taps and utilities on the Property.

6. Assignment and Subletting – Use of Property.

6.1 This Lease shall not be assigned or transferred by Lessee or by operation of law or otherwise; nor shall Lessee sublet the Property or any portion thereof.

6.2 The Property shall be used only for the Business and for no other purpose.

6.3 Lessee shall, at its sole cost, comply with and faithfully observe all requirements of municipal, county, state, and federal authorities pertaining to the use of the Property, as well as the requirements and regulations of the Board of Fire Underwriters and Lessee’s insurance companies.

7. Utilities. In addition to all Rent to be paid by Lessee to City, Lessee agrees to assume and to pay, as its obligation, the cost of all utilities used in connection with the occupancy of the Property and the conduct of the Business, such utilities to include, by way of illustration but not by way of limitation, the cost of electricity, water, sewer, solid waste collection, gas, power, and any other cost and charges on account of utilities and services furnished by third parties. City shall not be responsible for any failure or interruption of utility services to the Property.

8. Default. If any default is made in the timely payment of Rent, or if any default is made in the performance or compliance with any other term or condition hereof, this Lease, at the option of City, shall terminate and City may re-enter the Property and remove all persons therefrom. The City shall provide prior written notice of any default or breach and termination of the Lease. No re-entry by City shall be deemed a termination unless notice of termination is given in writing.

9. Taxes. Real property taxes assessed against the Property shall be the obligation of the Lessee.

10. Indemnity and Insurance.

10.1 The City shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy, and enjoyment of the Property and Improvements by Lessee or any person thereon or holding under Lessee, and that Lessee will indemnify and save harmless the City from all liability whatsoever on account of any such real or claimed damage or injury from all liens, claims, and demands arising out of the use of the Property and its Improvements or any repairs or alterations which Lessee may make upon said Property and its Improvements, but Lessee shall not be liable for damage or injury occasioned by the negligence of City and its designated agents, servants, or employees. This obligation to indemnify shall survive termination of this Lease and shall include reasonable legal counsel and investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made or may be made.

10.2 City and Lessee hereby waive any rights each other may have against the other on account of any loss or damage occasioned to City or Lessee, as the case may be, their respective property, the Property, or its contents or to other portions of the Property arising from any risk generally covered by fire and extended coverage insurance policies then in use in Arizona where the Property is situated; and the parties each, on behalf of their respective insurance companies insuring the property of either the City or Lessee against any such loss, waive any right of subrogation that such companies may have against the City or Lessee, as the case may be.

10.3 From and after the date of delivery of the Property to Lessee, Lessee will maintain, at its expense, the following types of insurance:

10.3.1 Comprehensive general public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence insuring against any and all liability of the insured with respect to said Property or arising out of the maintenance, use, or occupancy thereof. All insurance shall specifically insure the performance by Lessee of the indemnity agreement in this paragraph 10. Said insurance shall be the primary insurance as respects to Lessee and not participating with any other available insurance. In no event shall the limits of said policies be considered as limiting the liability of Lessee under this Lease.

10.3.2 All policies of insurance to be provided by Lessee hereunder shall be issued by insurance companies acceptable to the City and qualified to do business in Arizona and shall be issued in the names of City and Lessee for the mutual joint benefit and protection of the City, and executed copies of such policies of insurance or certificates thereof shall be delivered to the City within ten (10) days after delivery of possession of the Property to Lessee and thereafter new policies or renewal certificates within thirty (30) days prior to the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance delivered to the City must contain a provision that the company writing said policy will give to City twenty (20) days' notice in writing in advance of any cancellation or lapse of the effective date of any reduction in the amounts of insurance. All policies shall be written as primary policies, not contributing with and not in excess of coverage which the City may carry.

11. Quiet Enjoyment. City hereby covenants and agrees with Lessee, its permitted successors and assigns, that Lessee, upon paying rents and keeping and performing the covenants and conditions of this Lease, peaceably and quietly shall occupy and hold possession of the Property for the term of this Lease without any interference by the City.

12. Attorney's Fees. In any action brought concerning the rights or obligations of either party, the prevailing party shall recover from the other their reasonable attorney's fees and costs incurred.

13. Dangerous Materials. Lessee shall not keep or have on the Property any article or anything of a toxic, dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire or other hazard on the Property or that might be considered hazardous or extra hazardous by any reasonable insurance company.

14. Right of Inspection. The City and its agents shall have the right at all times during the term of this Lease to enter the Property for the purpose of inspecting the Property and all Improvements thereon.

15. Holdover by Lessee. Should Lessee remain in possession of the Property without the consent of the City after the expiration or other termination of the Lease, rent shall accrue for Lessee's unlawful occupancy at the rate of ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per month.

16. Maintenance. Lessee shall be responsible to perform all ordinary and necessary maintenance at Lessee's sole expense and shall at Lessee's sole expense maintain all glass, heating, cooling, plumbing, and the interior of the Improvements. Any and all maintenance work which may from time to time be necessary to be performed shall be performed by licensed, insured, competent, and skilled technicians acceptable to the City, and qualified to do business in Arizona in a good, timely, and workmanlike manner.

17. Binding Effect. The agreements, covenants, conditions, and terms contained in this Lease shall extend to and be binding upon the City, and upon Lessee, its heirs, personal representatives, and permitted successors and assigns.

18. Notices. Notices shall be deemed given when sent in writing and shall be deemed served where deposited by first class mail, postage prepaid, to the City or Lessee, as the case may be, at the address set forth below.

| | | | |
|-------|--------------------------|---------|-----------------------------------|
| City: | <u>City of Safford</u> | Lessee: | <u>Logan West Mine Supply and</u> |
| | <u>PO Box 272</u> | | <u>Service LLC</u> |
| | <u>Safford, AZ 85548</u> | | <u>20 McJunkin Road</u> |
| | | | <u>Nitro, WV 25143</u> |

19. Partial Invalidity. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and such other provision shall remain in full force and effect. If any provision of this Lease is capable of two constructions one of which would render this provision void and one of which would render this provision valid, the provision shall be interpreted in the manner which could render it valid.

20. Time of Essence. Time is of the essence in this Lease and the terms and conditions hereof.

21. Conflict of Interest. This Lease is subject to termination pursuant to A.R.S. §38-511.

Logan West Mine Supply and Service LLC

City of Safford:

Carl Dow Waite
Executive Vice President

Mayor Chris Gibbs

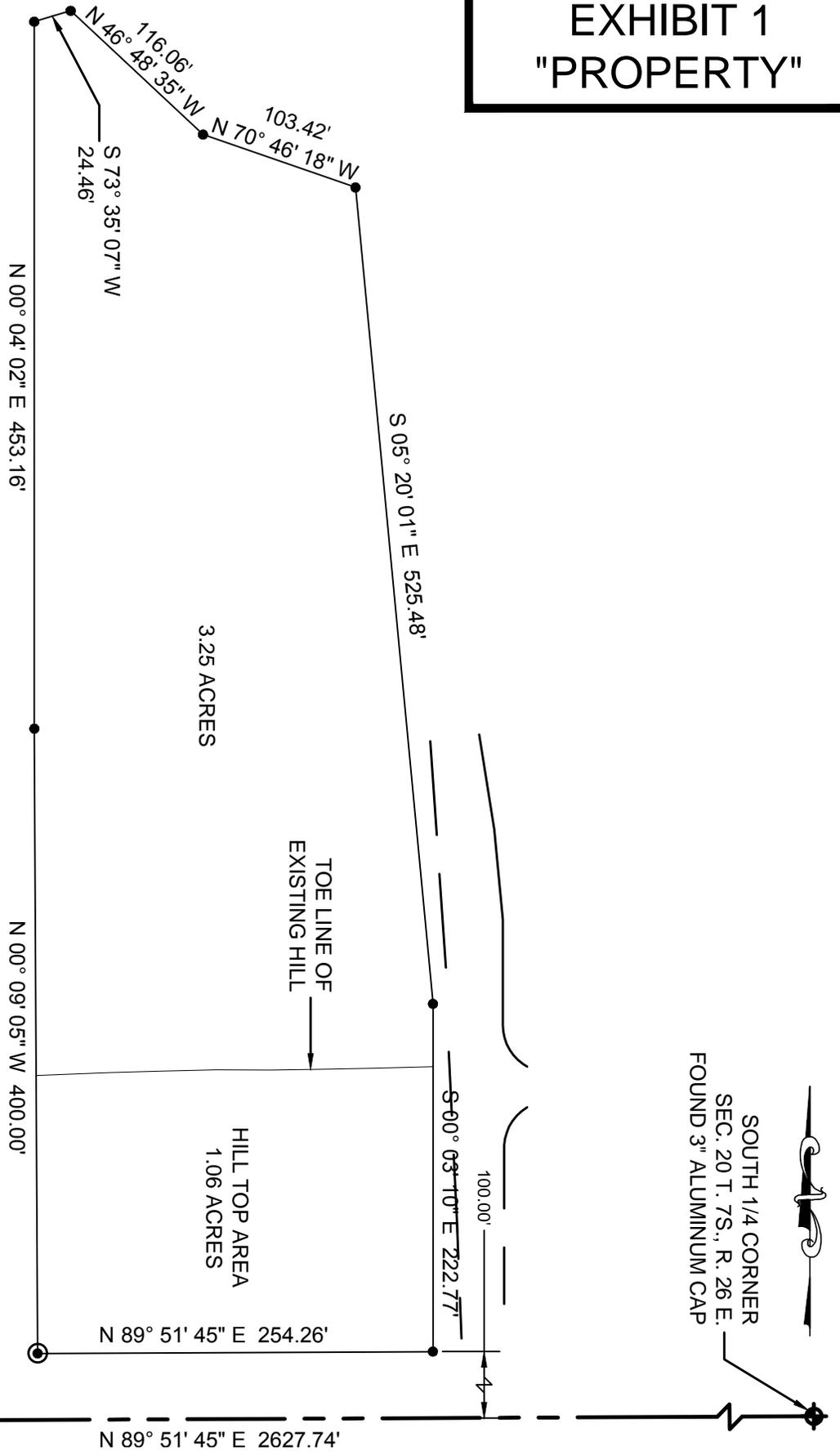
ATTEST:

Georgia Luster, City Clerk

Approved as to Form:

Bill Sims, City Attorney

EXHIBIT 1 "PROPERTY"



LEGEND

- FOUND 1/2" REBAR RLS 46649
- ⊙ FOUND 1/2" REBAR RLS 16296
- ⊕ FOUND MONUMENTATION AS NOTED

H:\ENGINEER\Exhibits\Industrial Park Exhibit.dwg, 11/17/2014 3:26:01 PM

DRAWN BY: C.F.N.

SCALE: 1" = 100'

DATE: OCT. 2014

CHECKED BY: R.W.

PROPERTY EXHIBIT 'A'



PART OF SE 1/4 OF SW 1/4

SECTION 20

TOWNSHIP 7 SOUTH

RANGE 26 EAST

Exhibit 2
Improvements

- Construct a minimum 2,400 sq. ft. steel building on a concrete pad.
- Construct a paved parking area connecting to Industrial Park Loop with a minimum 15 parking spaces.
- Grade property to provide proper water discharge in coherence with the existing drainage system agreeable to the City of Safford Engineer.
- Install gravel on areas not covered by structures or pavement.



CITY COUNCIL COMMUNICATION

TO: Mayor and Council

**FROM: Randy Petty, P. E.
City Engineer**

**SUBJECT: Pathway Project
Agreement with Highline Canal Company**

DATE: Monday, November 24, 2014 at 6:00 p.m.

Purpose and Recommended Action: Review with the Mayor and Council the draft agreement with the Highline Canal Company in regards to the Joint Use Areas on which our Shared-Use Pathway are place within the Canal Company's easements. Staff recommendation is to approve the agreement authorizing the Mayor to sign on behalf of the City of Safford.

Background: In 1935, the U.S. District Court entered a consent decree (Globe Equity No. 59) for all diversions of the mainstream of the Gila River. It awarded rights to use water on lands within the Gila River Indian Reservation with a priority date of "time immemorial" and also awarded rights to the San Carlos Apache Tribe. In addition, rights and priority dates were established for non-Indian land in the San Carlos Project area, including the Safford Valley. The Arizona Courts would acknowledge that the Highline Canal Company has a right to an easement to operate the canal, in which a portion of it flows on City property on which our Pathways are situated. Quoting one decision from 1922, "Where a permanent easement has once been acquired over the lands of another, and the ditch or canal has once been constructed, the owner of the primary easement has the right, as a secondary easement, to go upon the lands and remove obstructions from the ditch, and to make other repairs necessary, consistent with the full enjoyment of the easement." The canal company wanted some assurances from the City that the City recognizes their rights and will allow them to maintain the canals in a safe and efficient matter. Our position has been that the canal company had to share the use of the easement; hence the agreement.

The City has the right to construct upon our property this Shared-Use Path and we recognize that the Highline Canal Company has rights to full enjoyment of their canal. This project, during both planning and design, has always realized these rights of the canal company and has made provisions to ensure their rights to access and maintenance of the canal were not violated. Our general feelings have always been that we can co-exist for both the enjoyments of users of our pathways and the rights of the canal company. The canal company's concerns were access to the canal for their periodic and emergency maintenance and for the safety of users of the pathway.

Analysis: Discussions for this agreement began between the City of Safford and the Highline Canal Company in July of 2013. After many discussions between the City Manager, City Engineer, the City Attorney, the Utility Director, the Public Works Director, the Highline Canal Company and their Attorneys the agreement presented to Council has been approved by the Canal Company and the City feels it is an amenable agreement that the City can live with, without undue pressures.

The agreement applies to the section of pathway between the Graveyard Wash Channel and 14th Avenue and along the Graveyard Wash to ensure the canal company has access to maintain their siphon at the intersection of the Wash and the Highline Canal (See Attached Exhibits). The agreement outlines each party's rights along the canal, the placement of utilities across the canal, maintenance responsibilities, each party's liability due to the sharing of the space, and contact names and means of contacts.

**AGREEMENT BETWEEN HIGHLINE CANAL COMPANY AND CITY OF SAFFORD
FOR USE OF EASEMENT PROPERTY**

This AGREEMENT BETWEEN HIGHLINE CANAL COMPANY AND CITY OF SAFFORD FOR USE OF EASEMENT PROPERTY (the “**Agreement**”) is by and between the City of Safford (“**Safford**”) and the Highline Canal Company of the Gila Valley Irrigation District, an Arizona non-profit corporation (the “**Highline Canal Company**”) and is dated as of the last date this Agreement is executed by a party (“**Effective Date**”).

1. BACKGROUND

1.1. The Highline Canal Company and its predecessor have been delivering irrigation water through its canal (the “**Canal**”) to farms in Graham County for over 115 years.

1.2. Since 1935, the Highline Canal Company (together with other canal companies) has been diverting water from the Gila River and delivering it through the Canal to farms under the authority of the Decree entered by the United States District Court for the District of Arizona, Cause No. CV 31-59-TUC-SRB aka Globe Equity No. 59.

1.3. The Highline Canal Company periodically and regularly uses the land adjacent to the Canal to inspect, maintain, and repair the Canal.

1.4. The Highline Canal Company claims that it has an easement for the Canal and corridors of land adjacent to and on both sides of the Canal of a width reasonably necessary to inspect, maintain, repair, and upgrade the Canal (the “Highline Easement”).

1.5. The Highline Easement is located, in part, within the city limits of Safford and crosses property currently owned by Safford.

1.6. Safford built and plans to expand in the future a shared use path (PROJECT #: TEA - SAF - 0(204) A, the “Shared Use Path”) for use of the public for walking, jogging, bicycling, skating and similar recreational activities. The Shared Use Path is located entirely on land owned by Safford and at least partially located within the Highline Easement.

1.7. Safford and the Highline Canal Company wish to enter into this Agreement to acknowledge the Highline Easement and to address issues that may arise relating to the use of the Shared Use Path by members of the public for walking, jogging, bicycling, skating and similar recreational activities without unreasonably interfering with Highline Canal Company’s easement to use, inspect, maintain, repair, and upgrade the Canal.

WHEREFORE, the parties agree as follows:

2. ACKNOWLEDGMENT AND TERM

2.1. Safford acknowledges the Highline Easement. Safford also agrees that the Highline Easement extends over an area adjacent to the Canal that is at least 25 feet wide. The Parties also agree that the Shared Use Path is (or will be) located on the Highline Easement, as more particularly depicted in the description on Exhibit “A” (the “Joint Use Area”—the picture and cross-hatched area on Exhibit A is included for purposes of reference and convenience; in the event of a conflict, the legal description controls):

- 2.1.1. An area 25 feet south of the Canal, beginning immediately east of 8th Avenue and continuing to the point where the Canal enters an inverted syphon (south of 24th Street);
- 2.1.2. An area 25 feet south of the Canal between 8th Avenue and 12th Avenue;
- 2.1.3. An area 25 feet north of the Canal between 12th Avenue and 14th Avenue
- 2.1.4 An area on the south side of the Graveyard Wash from State Highway 191 (1st Avenue) and the Highland Canal Siphon. This area is not along the Highline Canal, but is used by the Canal Company to maintain the siphon at the intersection of the Highline Canal and the Graveyard Wash.

2.2. This Agreement shall continue as long as (i) the Canal continues to be used by the Highline Canal Company or its successor, and (ii) the Shared Use Path continues to exist in the Joint Use Area.

3. SCOPE

3.1. The Highline Canal Company has the right to use the Canal for delivery of water and to enter and access the Joint Use Area and do any or all of the following within the Joint Use Area: (i) entry for routine inspection, maintenance, clearing, Canal use, and operational purposes; (ii) construction, relocation, upgrading (including lining or replacement by pipe), and major maintenance of the Canal, including removing debris, vegetation, and obstacles from the Canal after an irrigation season; and (iii) operation and maintenance of related electric or water distribution and transmission facilities, and maintenance roads (collectively, the “**Permitted Uses**”).

3.2. Safford has the right to construct and maintain a Shared Use Path on the Joint Use Area that shall be made available for use by the general public as recreational users for purposes such as biking, walking, hiking, skating and similar activities as defined by A.R.S. § 33-1551(C)(5), as may be amended. The south edge of pavement of the Shared Use Path shall be, where reasonably possible, at least seven (7) feet from the current edge of the banks of the Canal. Notwithstanding anything contained herein to the contrary, and without limiting any other provisions or the non-exclusive nature hereof, Safford has the

right to use, occupy, and construct other improvements in the Joint Use Area (that are, where reasonably possible) at least seven (7) feet from the current edge of the banks of the Canal) for recreational users so long as such improvements do not interfere with Highline Canal Company's Permitted Uses. In this Agreement the Shared Use Path and such improvements are collectively referred to as the "**Improvements.**"

3.3. *Other Improvements:*

- 3.3.1. Notwithstanding anything contained herein to the contrary, and without limiting any other provisions or the non-exclusive nature hereof, Safford has the right to use, occupy, and construct (or permit the use, occupation, and construction of) other improvements in the Joint Use Area for uses other than recreational use, provided the Highline Canal Company consents in advance to such other improvements in writing, which consent shall not be unreasonably denied or delayed.
- 3.3.2. Safford shall not construct or permit to be constructed (or replaced) any gas lines, electrical transmission lines, other conduits for energy, telephone lines, cable TV lines, or other data transmission lines, which are not at least four (4) feet below the bottom of the Canal and are not capped with a six (6") inch thick concrete cap (4,000 psi compressive strength) or are not at least twenty-five (25) feet above the surface of the Canal or otherwise constructed in compliance with municipal and industrial standards and sufficient to reasonably protect the lines and the interests of the parties under the circumstances described in this Agreement (including not causing the canal to leak).
- 3.3.3. Safford shall cause the existing gas pipeline crossing the Canal at the location immediately to the east of where South 14th Avenue turns north (\approx latitude N $32^{\circ}48.766'$ and longitude W $109^{\circ}43.479'$) to be replaced with a pipeline that is buried below a concrete cap (6" is thickness using concrete with a compressive strength of not less than 4,000 psi) that is at least four (4) feet below the bottom of the Canal to avoid the risk that it will be damaged during canal maintenance, constructed in compliance with municipal and industrial standards, and sufficient to reasonably protect the pipeline and the interests of the parties under the circumstances described in this Agreement (including not causing the canal to leak). Safford may request that the Highline Canal Company consent in writing to a modification of the requirements of this section, and the Highline Canal Company may not unreasonably delay or withhold such consent.
- 3.3.4. The parties shall cooperate with each other regarding the timing and other aspects of any construction required by section 3.3.3 so as not to unreasonably interfere with the Permitted Uses or the uses of the Shared Use Path by Safford. Safford shall cause the construction required by section 3.3.3 to occur as soon as reasonably practical.

4. MAINTENANCE RIGHTS AND RESPONSIBILITIES

4.1. **Highline**

- 4.1.1. The Highline Canal Company shall use reasonable care in conducting the Permitted Uses. As used in this section 4.1, “reasonable care” means the care that the Highline Canal Company normally exercises when operating, using, maintaining, relocating, constructing, or upgrading the Canal throughout the Highline Easement; i.e., the Highline Canal Company may use the same equipment and practices within the Joint Use Area that it uses elsewhere within the Highline Easement, except that the Highline Canal Company’s duty to use reasonable care when conducting Permitted Uses in the Joint Use Area includes providing notice to Safford when required pursuant to section 4.3 below.
- 4.1.2. The parties acknowledge that the Highline Canal Company has the right to operate its heavy equipment over and across the Joint Use Path in the Joint Use Area. The parties recognize that such operations and other Permitted Uses may cause damages to the Joint Use Path and other Improvements even when conducted with reasonable care, which may include the deposit of debris on the Shared Use Path. The Highline Canal Company shall have no liability for such damages (including the deposit of debris) if: (i) the Highline Canal Company’s conduct of its Permitted Uses is undertaken in the ordinary course of its operations of the Highline Canal Company; (ii) the Highline Canal Company removes from the Shared Use Path all items of debris as quickly as reasonably possible (except gravel, silt, twigs, and mud that do not prevent access to the Shared Use Path) resulting from such Permitted Uses; and (iii) the Highline Canal Company uses reasonable care to attempt to minimize the extent of such damage. Without limiting the generality of the foregoing, the Highline Canal Company may (as reasonably incidental to or in connection with the operation of the canal, maintenance or stabilization of canal banks) leave or deposit mud, rocks, and gravel on the bank of the Canal.
- 4.1.3. The Highline Canal Company shall not be responsible for the costs of repairing or replacing any Improvements that are damaged as a result of the Highline Canal Company’s Permitted Uses, unless such damage is due to the gross negligence or willful misconduct of the Highline Canal Company or its agents or employees.

4.2. **Safford**

- 4.2.1. Safford shall maintain the Improvements in the Joint Use Area in reasonably good and safe condition, including, without limitation, grading, compacting, surfacing, and draining the Shared Use Path.

- 4.2.2. So long as the Highline Canal Company gives any notice required by section 4.3, Safford shall repair any damages caused by Permitted Uses for which the Highline Canal is not responsible as provided in section 4.1. including, without limitation, removing gravel, silt, twigs, and mud left in the Joint Use Area as permitted by section 4.1.
- 4.2.3. Safford shall construct locking gates at the following locations:
1. Two gates on the section of pathway between 8th Avenue and the Graveyard Wash, one on either side which will prohibit use during times the Canal is being maintained.
 2. Two gates on the section of pathway between 12th Avenue and 8th Avenue, one on either side which will prohibit use during times the Canal is being maintained.
 3. Two gates on the section of pathway between 14th Avenue and 12th Avenue, one on either side which will prohibit use during times the Canal is being maintained.

The gates will prohibit vehicular access but will allow pedestrian access through access points immediately adjacent to the gate that prohibits vehicular access. These gates shall be closed only during times the section of Canal is being maintained. Safford shall provide the Highline Canal Company keys for such gates. Upon the installation of such gates, Safford will remove any bollards from the Joint Use Area.

- 4.2.4. Safford shall be solely responsible for repairing any damages to the Improvements that occur as a result of the Canal overflowing its banks during or after storms, except to the extent the damages result from the gross negligence of the Highline Canal Company.

4.3. **Notice**

- 4.3.1. *Planned routine maintenance:* The Highline Canal Company shall give Safford at least two days prior written notice of planned routine maintenance that will temporarily (expected to be less than 24 hours) and materially disrupt Safford's or the general public's use and enjoyment of the Safford's Improvements in the Joint Use Area.
- 4.3.2. *Planned major maintenance:* The Highline Canal Company shall give Safford at least 10 days prior written notice of any construction, maintenance, lining, relocation, replacement by pipe, or removal of debris, vegetation, or obstacles from the Canal that will materially disrupt Safford's or the general public's use the Improvements (including the Shared Use Path) in the Joint Use Area for any period more than 24 hours; provided, however, that such notice may

be given in a shorter period if 10 days' notice is impracticable under the circumstances.

- 4.3.3. *Emergency maintenance:* The Highline Canal Company is not required to give notice in the event of an emergency where no notice is reasonably feasible and provided further that in an emergency situation telephonic notice followed by written notice shall be given as soon as practicable.
- 4.3.4. *Routine operations, inspection, and maintenance:* Notice shall not be required for any routine Permitted Uses that do not materially disrupt Safford's or the general public's use of the Joint Use Path. Without limiting the generality of the foregoing, so long as any blocking of use of the Joint Use Path is incidental to routine Permitted Uses and is only as long as reasonably necessary, without giving notice to Safford employees. Agents of the Highline Canal Company may: (i) drive vehicles in the Joint Use Area for purposes of inspection and maintenance, (ii) perform routine Canal operations and maintenance in the Joint Use Area, (iii) work from the Joint Use Area to keep Canal clear, and (iv) work from the Joint Use Area to remove obstacles from the Canal. Any of the foregoing activities that involve the use of heavy equipment (e.g., backhoes, excavators, dozers, trenchers or loaders, but not including pick-ups) in the Joint Use Area shall not be considered routine Permitted Uses, but will instead require notice as required by Sections 4.3.1 - 4.3.3 whichever applies. If heavy equipment is required to remove obstacles (such as trash, tree limbs, rocks, discarded furniture, construction debris, or other things that impede the flow of water) from the Canal, it shall be considered an emergency, and notice shall be given as provided in section 4.3.3.
- 4.3.5. *Notice after completion:* After completing any activity that required notice pursuant to 4.3.1, 4.3.2, or 4.3.3, the Highline Canal Company shall give prompt telephonic notice followed by written notice to Safford that the activity has been completed.
- 4.3.6. *Obligations following notice:* Upon receiving any notice under sections 4.3.1, 4.3.2, 4.3.3, or 4.3.4 Safford shall either lock the access points or position barriers to prevent vehicular access at those gates described in Section 4.2.3 that provide access to that portion of the Joint Use Area for which the Highline Canal Company has provided notice as required by this Section 4.3.

4.3.7. *Addresses and phone numbers:* Except where telephonic notices are expressly permitted, notices required or permitted to be given under this Agreement shall be in writing and shall be served by hand-delivery (with signed receipt), certified mail (return receipt requested), or fax (with confirmation of receipt) at the following addresses:

City of Safford:

Attn: Public Works Director
City of Safford
220 W. Discovery Park Blvd.
PO Box 272
Safford AZ 85548
Telephone: 928-432-4170
Fax: 928-428-7914
After Hours: 928-965-9668

Highline Canal Company:

Attn: R. Neal Montierth
Highline Canal Company
2586 Highway 70
Thatcher AZ 85552
Fax: 928-428-4353

Either party may change the phone numbers, fax numbers, and addresses at which it receives notice by giving notice to the other party, which notice shall be effective five days after receipt.

4.4. Written notices shall be effective when received, except that notices received (or deemed received) after 5:00 p.m. MST, on a City of Safford business day shall be deemed to be received at 9:00 a.m. on the next day that is a City of Safford business day. City of Safford business days shall be those days identified as City of Safford business days on the City of Safford website.

5. Indemnification

5.1. Safford shall indemnify the Highline Canal Company, its employees, officers, and agents from all claims, liabilities, damages, or losses (collectively “Liabilities” or “Liability”) arising out of or related to the use of the Joint Use Area by any person except to the extent the Liability results from gross negligence or intentional misconduct by the Highline Canal Company, and also except that Safford’s indemnification obligation shall not apply to the extent that the Liability arises from the Highline Canal Company’s failure to satisfy its obligations under Section 4.1 of this Agreement. It shall be deemed to be

gross negligence for the Highline Canal Company not to give notice when it is required to do so by section 4.3.1, 4.3.2, 4.3.3, or 4.3.4.

5.2. The Highline Canal Company shall indemnify Safford, its employees, officers, and agents from all claims, liabilities, damages, or losses (collectively “Liabilities” or “Liability”) arising out of or related to the use of the Joint Use Area by any person to the extent the Liability results from gross negligence or intentional misconduct by the Highline Canal Company, except that the Highline Canal Company’s indemnification obligation shall not apply to the extent that the Liability arises from Safford’s failure to satisfy its obligations under Section 4.2 of this Agreement. It shall be deemed to be gross negligence for the Highline Canal Company not to give notice when it is required to do so by section 4.3.1, 4.3.2, 4.3.3, or 4.3.4.

5.3. No party shall have any obligation to indemnify the other party (or its employees, officers, and agents) except as provided by this section 5.

6. This Agreement constitutes a covenant running with the land and shall be recorded in the Office of the County Recorder, Graham County, Arizona. The Agreement is binding on and shall inure to the benefit of successors and assigns.
7. Except as otherwise expressly provided by this Agreement, all remedies at law or equity are available to the parties and the identification of a particular remedy shall not negate the availability of any other remedy. All of remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more remedies shall not constitute a waiver or election with respect to any other available remedy.
8. The obligations and rights of the parties regarding maintenance and notice (section 4) and indemnification (section 5) apply to the Joint Use Area only.
9. There are no third-party beneficiaries to this Agreement.
10. This Agreement may be executed in counterparts.

Highline Canal Company of the Gila Valley Irrigation District

By: _____
Bret Whitmer, President of the Highline Canal
Company of the Gila Valley Irrigation District

Dated: _____

STATE OF ARIZONA)
)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, Bret Whitmer, President of the Highline Canal Company of the Gila Valley Irrigation District, on behalf of the Company.

Notary Public

Commission expires:

City of Safford

By: _____
City Manager

Dated: _____

STATE OF ARIZONA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, _____ of the City of Safford, on behalf of the City.

Notary Public

Commission expires:

Approved as to form:

William J. Sims III
City Attorney, City of Safford

L. Anthony Fines/David A Brown
Attorney for the Highline Canal Company