CITY OF BENSON
CITY COUNCIL
DECEMBER 28, 2017 – 7:00 P.M.
SPECIAL MEETING

A SPECIAL MEETING OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
WILL BE HELD ON DECEMBER 28, 2017 AT 7:00 P.M.,
AT BENSON CITY HALL,
120 W. 6TH STREET, BENSON, ARIZONA

_____
Vicki L. Vivian, CMC, City Clerk

A G E N D A

The Council may discuss, direct, consider and take possible action as indicated below pertaining to the following:

CALL TO ORDER: The Call to Order will consist of the Mayor calling the Council to order. The Mayor or his designee shall then lead those present in the Pledge of Allegiance before introducing the invocation speaker, who will offer the invocation.

ROLL CALL: The City Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes.

PUBLIC HEARING: The governing body of the City of Benson, Arizona, will hold a public hearing on December 28, 2017 at 7:00 p.m. at Benson City Hall, 120 W. 6th Street, Benson, Arizona. The purpose of the public hearing will be the consideration of the application for formation of three (3) tax levying community facilities districts. Persons who object to the inclusion of their land in the district(s), to the formation of the districts or to the contents of the General Plan may file a written objection with the undersigned at the following address before the time set for the hearing.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) and (4), discussion and consultation for legal advice with the public body's attorneys about the following matters all related to the proposed Villages at Vigneto Development: the Revitalization District Act at A.R.S. §§ 48-6801, *et seq.*; the Community Facility District Act at §§ 48-701, *et seq.*; the pending application to form Revitalization Districts; the pending Development Agreements; legal questions concerning the report by Hilltop Securities; and the pending application to form Community Facilities Districts.

NEW BUSINESS:

1. Discussion and possible action regarding the renewal of a contract for an Airport Services Coordinator with David Thompson – **Bradley J. Hamilton, P.E./City Engineer, Public Works Director** *

2. Discussion and possible action regarding Resolution 37-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of an Intergovernmental Agreement between the State of Arizona for the Department of Administration – General Accounting Office, and the City for hosting and publication of the City's financial data – **William Stephens, City Manager** *

3. Discussion and possible action regarding Resolution 38-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 1, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager** *

4. Discussion and possible action regarding Resolution 39-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 2, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager** *

5. Discussion and possible action regarding Resolution 40-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 3, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager** *

6. Discussion and possible action regarding Resolution 41-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 4, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager** *

7. Discussion and possible action regarding Resolution 42-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 5, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

8. Discussion and possible action regarding Resolution 43-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 6, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

9. Discussion and possible action regarding Resolution 44-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 7, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

10. Discussion and possible action regarding Resolution 45-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 1 in the City of Benson, Arizona – **William Stephens, City Manager ***

11. Discussion and possible action regarding Resolution 46-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 2 in the City of Benson, Arizona – **William Stephens, City Manager ***

12. Discussion and possible action regarding Resolution 47-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 3 in the City of Benson, Arizona – **William Stephens, City Manager ***

13. Discussion and possible action regarding Resolution 48-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 4 in the City of Benson, Arizona – **William Stephens, City Manager ***

14. Discussion and possible action regarding Resolution 49-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 5 in the City of Benson, Arizona – **William Stephens, City Manager ***

15. Discussion and possible action regarding Resolution 50-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 6 in the City of Benson, Arizona – **William Stephens, City Manager ***

16. Discussion and possible action regarding Resolution 51-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 7 in the City of Benson, Arizona – **William Stephens, City Manager ***

17. Discussion and possible action regarding Resolution 52-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 1, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

18. Discussion and possible action regarding Resolution 53-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 2, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

19. Discussion and possible action regarding Resolution 54-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 3, and El Dorado Benson relating to the development of The Villages at Vigneto – **William Stephens, City Manager ***

20. Discussion and possible action regarding Resolution 55-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 1 in the City of Benson, Arizona – **William Stephens, City Manager ***

21. Discussion and possible action regarding Resolution 56-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 2 in the City of Benson, Arizona – **William Stephens, City Manager ***

22. Discussion and possible action regarding Resolution 57-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 3 in the City of Benson, Arizona – **William Stephens, City Manager ***

23. Discussion and possible action to ratify the vote of Mayor and Council taken on December 11, 2017 to not refer the petitions for formation of special taxing districts to Stifel Nicolaus for review – **Paul Loucks, City Attorney**

ADJOURNMENT

POSTED this 22nd day of December, 2017

Material related to the City Council meeting is available for public review the day before and the day of the meeting, during office hours, at the City Clerk's Office located at 120 W. 6th Street, Benson, Arizona, 520-586-2245 x 2011.

All facilities are handicapped accessible. If you have a special accessibility need, please contact Vicki L. Vivian, City Clerk, at (520) 586-2245 or TDD: (520) 586-3624, no later than eight (8) hours before the scheduled meeting time.

Any invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

Executive Sessions – Upon a vote of the majority of the City Council, the council may enter into Executive Sessions pursuant to Arizona Revised Statues §38-431.03 (A)(3) to obtain legal advice on matters listed on the Agenda.

* Denotes an Exhibit in addition to the Council Communication

** Call to the Public

Arizona Revised Statutes §38-431.01(H) provides that "A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action." As such, a Call to the Public, if on the agenda, is provided as a courtesy.

In order to speak during the Call to the Public, please complete the Call to the Public form requesting to do so.

*** Consent Agenda

The Consent Agenda will be the first item under New Business and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring Council discussion. A single motion will approve all items on the Consent Agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Councilmember may remove any issue from the Consent Agenda, and that issue will be discussed and voted upon separately, immediately following the Consent Agenda under its proper regular category of New Business.

NOTICE TO PARENTS: Parents and legal guardians have the right (with certain exceptions) to consent before the City of Benson makes a video or voice recording of a minor child. A.R.S. §1-602(A)(9). Regular and Special Meetings of the Mayor and Council for the City of Benson are recorded, and that recording is usually posted on the City's website. If you permit your child to participate in a Regular or Special Meeting of the Mayor and Council for the City of Benson, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the City Clerk.

LEGAL NOTICE

CITY OF BENSON
CITY COUNCIL
PUBLIC HEARING
DECEMBER 28, 2017 – 7:00 P.M.

NOTICE OF INTENTION TO FORM
VILLAGES AT VIGNETO
COMMUNITY FACILITIES DISTRICT NOS. 1, 2 AND 3

_____
Vicki L. Vivian, CMC, City Clerk

To whom it may concern:

The governing body of the City of Benson, Arizona, will hold a public hearing on December 28, 2017 at 7:00 p.m. at Benson City Hall, 120 W. 6th Street, Benson, Arizona. The purpose of the public hearing will be the consideration of the application for formation of three (3) tax levying community facilities districts. Persons who object to the inclusion of their land in the district(s), to the formation of the districts or to the contents of the General Plan may file a written objection with the undersigned at the following address before the time set for the hearing.

ADDRESS: Benson City Hall – 120 W. 6th Street, Benson, Arizona 85602

Posted this 6th day of December, 2017
Published this 6th and 13th day of December, 2017

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 1

From: Bradley J. Hamilton, P.E. Director of Public Works/City Engineer

Subject:

Discussion and possible action regarding the renewal of a contract for an Airport Services Coordinator with David Thompson

Discussion:

In July of 2016, the City released a Request for Proposal (RFP) an Airport Services Coordinator. The City received 3 proposals for this service. The lowest qualified proposal was submitted by David Thompson. Staff feels that it is in the City's best interest to renew the contract. Mr. Thompson has asked for an increase in the monthly fee from $611 to $2,111 for the new year. This is still less that the next higher proposal the City received.

Staff Recommendation:

Approval of the renewal of a contract for an Airport Services Coordinator with David Thompson

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into between City of Benson, a body politic and corporate (the "City"), and David Thompson, a single man (the "Coordinator").

RECITALS

WHEREAS, CITY requires the services of a contractor qualified to serve as the City's Airport Coordinator; and,

WHEREAS, COORDINATOR is qualified and willing to provide such services; and

WHEREAS, pursuant to the City's Request for Proposals to locate a qualified contractor, the COORDINATOR submitted the Proposal most advantageous to the City.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL

This Contract shall commence on ~~November 1, 2016~~December 28, 2017 and shall terminate on ~~October~~ December 31, 2018~~7~~ unless sooner terminated or further extended pursuant to the provisions of this Contract. The City shall have the option to extend this Contract for four (3~~4~~) additional one-year periods or any portion thereof. Any modification or extension shall be by formal written amendment executed by the parties hereto.

ARTICLE II - SCOPE

COORDINATOR shall perform the scope of services set forth Exhibit A, attached hereto. COORDINATOR shall perform all its work in accordance with the terms of the contract and to the best of the COORDINATOR's ability. COORDINATOR shall employ suitably-trained and skilled professional personnel to perform all consultant services under this Contract.

Any software COORDINATOR licenses (or purchases) COORDINATOR obtains shall be titled in the City's name. At the termination of this Agreement, COORDINATOR shall transfer any licenses improperly licensed to the City without charge.

ARTICLE III - PAYMENT

In consideration of the services specified in this Contract, the City agrees to pay COORDINATOR a monthly fee of $2,1~~6~~11, inclusive of all services listed in COORDINATOR's scope.

ARTICLE IV - INSURANCE

COORDINATOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

a) Commercial General Liability in the amount of $1,000,000.00 combined, single limit Bodily Injury and Property Damage. City of Benson is to be named as an additional insured for all operations performed within the scope of the Agreement between City of Benson and COORDINATOR;

b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Agreement with limits in the amount of $1,000,000.00 combined single limit or $1,000,000.00 Bodily Injury, $1,000,000.00 Property Damage;

c) If this Agreement involves professional services, professional liability insurance in the amount of $1,000,000.00; and,

d) If required by law, workers' compensation coverage including employees liability coverage. COORDINATOR shall provide City with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days' written notice of cancellation, non-renewal or material change.

ARTICLE V - INDEMNIFICATION

COORDINATOR shall indemnify, defend, and hold harmless City, its elected officials, officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto arising out of any act, omission, fault or negligence by the COORDINATOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract. The amount and type of insurance requirements separately set forth in this agreement will in no way be construed as limiting the scope of indemnity in this Section. COORDINATOR's duty to defend shall be a separate and distinct obligation from the duty to indemnify the City and is enforceable regardless of fault or negligence. COORDINATOR's indemnification and defense duties shall survive the termination of this agreement.

ARTICLE VI - COMPLIANCE WITH LAWS

COORDINATOR shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Cochise County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply but do not require an amendment.

ARTICLE VII - INDEPENDENT CONTRACTOR

The status of the COORDINATOR shall be that of an independent contractor. Neither COORDINATOR, nor COORDINATOR's officers, agents or employees shall be considered employees of City of Benson or be entitled to receive any employment-related fringe benefits under the City of Benson employment or merit system. COORDINATOR shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold City harmless from any and all liability which City may incur because of COORDINATOR's failure to pay such taxes. COORDINATOR shall be solely responsible for program development and operation.

ARTICLE VIII - SUBCOORDINATOR

COORDINATOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the COORDINATOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract shall create any obligation on the part of City to pay or see to the payment of any money due any subcontractor, except as may be required by law.

ARTICLE IX - ASSIGNMENT

COORDINATOR shall not assign its rights to this Contract, in whole or in part, without prior written approval of the City. Approval may be withheld at the sole discretion of City, provided that such approval shall not be unreasonably withheld.

ARTICLE X - NON-DISCRIMINATION; ADA

COORDINATOR shall not discriminate against any City employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out COORDINATOR's duties pursuant to this Contract. COORDINATOR shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein. COORDINATOR further shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XI - AUTHORITY TO CONTRACT

COORDINATOR warrants its right and power to enter into this Contract. If any court or administrative agency determines that City does not have authority to enter into this Contract, City shall not be liable to COORDINATOR or any third party by reason of such determination or by reason of this Contract.

ARTICLE XII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XIII - TERMINATION; CANCELLATION

City reserves the right to terminate this Contract at any time and without cause by serving upon COORDINATOR 30 days' advance written notice of such intent to terminate. In the event of such termination, the City's only obligation to COORDINATOR shall be payment for services rendered prior to the date of termination.

This Contract may be terminated at any time without advance notice and without further obligation to the City when the COORDINATOR is found by City to be in default of any provision of this Contract.

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining City or other public entity obligations under this Contract. In the event of such termination, City shall have no further obligation to COORDINATOR, other than to pay for services rendered prior to termination.

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

ARTICLE XIV - NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

CITY:

City Manager, William Stephens
City of Benson
P.O. Box 2223
Benson AZ 85602
(520) 586-2245
www.cityofbenson.com

COORDINATOR:

David Thompson
237 E. La Cuesta Drive
Benson AZ 85602
(520) 586-2287
(503) 519-1101 (cell)
ytdriver@gmail.com

ARTICLE XV - NON-EXCLUSIVE CONTRACT

COORDINATOR understands that this Contract is nonexclusive and is for the sole convenience of CITY. The City reserves the right to obtain like services from other sources if the Coordinator is unable to provide satisfactory service.

ARTICLE XVI - OTHER DOCUMENTS

COORDINATOR and CITY in entering into this Contract have relied upon information provided in COORDINATOR's proposal. This document together with the City's Request for Proposal are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract or the Request for Proposal.

ARTICLE XVII - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE XVIII - SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE XIX - BOOKS AND RECORDS

COORDINATOR shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of CITY.

In addition, COORDINATOR shall retain all records relating to this contract at least 5 years after termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE XX - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered, or extended only by a written amendment executed by the parties. Although the terms of this contract may vary from those contained in the Proposal or solicitation, the parties agree that all such variances were the product of negotiations following award.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date of the City's execution below.

COORDINATOR

_____ DATE: _____

CITY OF BENSON

_____ DATE: _____

TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Mesch Clark Rothschild
City Attorney, by GARY COHEN

To: Bradley Hamilton, Airport Manager, City of Benson, Az

cc: William Stephens, City Manager, City of Benson, Az

Date: November 22, 2017

Subject: Contract for Benson Municipal Airport Coordinator

Brad: As you know, the contract for Airport Coordinator expired at the end of October, 2017.

During the 2016 / 2017 season we were able to accomplish many goals at the airport: the gate operation and signage, all field operation lighting and signs are operational, crack seal was accomplished, lines, taxi and tie down markings were renewed and on field Wi-Fi was brought to the airport. Tie down fees were established and a pay/collection system was initiated. We were able to acquire our own field maintenance equipment and storage in order to stop paying the county for services on field.

This 2017 / 2018 should require much less expenditure since all systems are up and running and in good shape. The challenges that we face this year will be in customer relations regarding construction on field and the upcoming development of our UAV/UAS TESTING programs.

My previous contract was for a monthly payment of $500 plus the cost to me for insurance required of $111 totaling $611 per month. By keeping track of the hours required and the personal expenses of doing the job I found that it was costing me an average of $2360 per month as Airport Coordinator.

I would like to propose the following: An increase of $1,500 per month and the insurance cost of $111 bringing my monthly payment to $2111. This does not meet the actual loss, but I feel that it is a fair compromise.

This season more time can be utilized to make daily decisions, manage customers and solve minor problems relieving you of most small burdens and allowing you to focus on your more important responsibilities with the city.

I appreciate your consideration and understanding of my position regarding this contract.

Respectfully:

Dave Thompson, acting Airport Coordinator

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 2

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 37-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of an Intergovernmental Agreement between the State of Arizona for the Department of Administration – General Accounting Office, and the City for hosting and publication of the City's financial data

Discussion:

The attached Interagency Agreement will renew the contract with the Arizona Department of Administration-General Accounting Office to provide hosting and publication of the City's financial data on the State of Arizona's official transparency website - Arizona OpenBooks (www.openbooks.az.gov) through December 31, 2025.

Effective January 1, 2013, A.R.S.§ 41-725 requires local governments to report all revenues and expenditures over $5,000 on a website free of charge. This website must present this information in an intuitive manner to the user and it must allow the user to search, aggregate, and download the information. It must contain the manner of payment, funding source, date and amount of payment, payee name, and applicable contract information. The website would exclude sensitive and confidential information, such as individual tax payments, information subject to attorney-client confidentiality, or any other information designated confidential by law. This information must be updated quarterly.

The Finance Department has looked into different options for complying with this new requirement and the most efficient and cost-effective option is to host our information on the State's transparency website. By using the State's transparency reporting website, we will avoid the time and costs associated with developing our own website and it is available to us now. The state is offering their website as an option to all cities, counties, and school districts. The GAO is anticipating a large number of participants.

Though the contract reads the costs include an initial set-up fee of $2,000 in addition to the annual operating costs of $1,000 a year (for 8 years), the City Clerk confirmed the initial set-up fee was actually paid in 2013 and will not be charged again. Therefore, Staff is asking to have the motion include the stipulation to only pay the annual fee for operating costs.

Staff Recommendation:

Approval of the Interagency Openbooks Service Agreement Number 2018-2025-05 between the Arizona Department of Administration-General Accounting Office (ADOA-GAO) and the City of Benson for hosting and publication of the City's financial data on ADOA-GAO's website with the stipluation to only pay the annual fee for operating costs

RESOLUTION 37 - 2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA FOR THE DEPARTMENT OF ADMINISTRATION – GENERAL ACCOUNTING OFFICE, AND THE CITY FOR HOSTING AND PUBLICATION OF THE CITY'S FINANCIAL DATA

WHEREAS, State law requires local governments to report all revenues and expenditures over $5,000 on a website that may be accessed by members of the public free of charge;

WHEREAS, the State of Arizona is under a similar obligation, and it has created a website that allows it to publish both its own information and the information of local governments on the same website;

WHEREAS, this type of service sharing between governmental agencies promotes access by members of the public while offering local governments an affordable method of comply with their obligations; and

WHEREAS, the State of Arizona for the Department of Administration – General Accounting Office is willing to host the City's data pursuant to the terms of the accompanying Intergovernmental Agreement, and the City is willing to have its data hosted pursuant to the same terms.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, that the City enter into the Interagency Service Agreement between the Arizona Department of Administration – General Accounting Office (ADOA-GAO) and the City of Benson for hosting and publication of the City's financial data on ADOA-GAO's website. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

ARIZONA OPENBOOKS SERVICE AGREEMENT

Douglas A Ducey
Governor

Craig Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
GENERAL ACCOUNTING OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 302
PHOENIX, ARIZONA 85007

ADOA-GAO OPENBOOKS SERVICE AGREEMENT
Number 2018-2025-05

In accordance with Arizona Revised Statutes, Sections (A.R.S. §§) 41-703 and 41-711, this Agreement is entered into by and between **The City of Benson** , a **Local Governmental** body (hereinafter referred to as "**LOCAL GOVERNMENT**"), and the **Arizona Department of Administration, General Accounting Office** (hereinafter referred to as "**ADOA-GAO**"), governing the hosting and publication of **LOCAL GOVERNMENT** data on **ADOA-GAO**'s website established under A.R.S. § 41-725 and called OpenBooks.az.gov, Arizona's official financial transparency web site hereinafter "**OPENBOOKS**'), and shall be effective as indicated in Section 1 - Term of Agreement.

1. Term of Agreement

This Agreement shall be effective upon **the date the last party signs this Agreement** through **December 31, 2025.** This Agreement may be terminated in accordance with Section 4.

2. Scope of Services

The **LOCAL GOVERNMENT** is requesting that **ADOA-GAO** provide **LOCAL GOVERNMENT** data hosting, publication and support services (**SERVICES**) in connection with the **LOCAL GOVERNMENT** having its financial data published on **OPENBOOKS** managed by **ADOA-GAO**.

To effectively provide these SERVICES both **ADOA-GAO** and the **LOCAL GOVERNMENT** agree to perform their respective responsibilities set forth in **SCHEDULE A** attached to this agreement.

3. Fees

LOCAL GOVERNMENT shall pay **ADOA-GAO** an **INITIAL SETUP FEE** of two thousand dollars ($2,000) in advance of the first calendar year of **SERVICES** and an **ANNUAL FEE FOR OPERATING COSTS** for each calendar year **SERVICES** are to be provided. The **ANNUAL FEE FOR OPERATING COSTS** for the calendar year ending

December 31, 2018, is one thousand dollars ($1,000), payable in advance. Each subsequent year's **ANNUAL FEE FOR OPERATING COSTS**, also payable in advance, shall be in the amount communicated by **ADOA-GAO** to the **LOCAL GOVERNMENT** by way of an Amendment **not later than ninety (90) days before the beginning of the year to which it applies**.

4. Termination

Either party may terminate this Agreement upon sixty (60) calendar days written notice to the other party. If the termination is initiated by **ADOA-GAO, ADOA-GAO** shall refund to the **LOCAL GOVERNMENT** any unamortized **ANNUAL FEE FOR OPERATING COSTS** at the time the termination becomes effective. If the termination is initiated by the **LOCAL GOVERNMENT,** no refund shall be forthcoming.

If a termination is initiated by the **LOCAL GOVERNMENT** and, with the prior consent of the **LOCAL GOVERNMENT**, the **ADOA-GAO** has acquired capital equipment or resources necessary to fulfill the **ADOA-GAO**'s responsibilities to the **LOCAL GOVERNMENT** as set forth in the Scope of Services, the **LOCAL GOVERNMENT** shall be responsible to reimburse the **ADOA-GAO** for any unamortized or unrecovered costs on or before the date the contract is terminated.

This agreement may be terminated by either party in accordance with A.R.S. § 38-511.

5. Force Majeure

(a) Either party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when and to the extent that such delay or failure is a result of causes beyond the control and without the fault or negligence of the party unable to perform. Such causes include, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, or embargoes.

(b) The party whose performance is so affected shall promptly notify the other party of all pertinent facts and take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof.

(c) It is understood and agreed that settlement of strikes or other labor disputes shall be at the sole discretion of the party encountering the strike or other dispute and that the inability of **ADOA-GAO** or its Subcontractors to meet the requirements of this Agreement as a result of labor strikes or disputes shall not be deemed to be a Force Majeure.

6. Indemnification

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to

as "**CLAIMS**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such **CLAIMS,** which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

7. Confidentiality

(a) A.R.S. § 41-725, which is incorporated by reference, defines certain information as confidential and not to be released to the public by way of publication on **OPENBOOKS**. By virtue of this Agreement, **ADOA-GAO** and **LOCAL GOVERNMENT**, their employees, and agents may have access to certain confidential and/or proprietary information of the other party, as defined below. **ADOA-GAO** and **LOCAL GOVERNMENT** agree to use Confidential Information received from the other Party only as expressly permitted in the Agreement and in furtherance of the purposes expressed in the Agreement. Neither **ADOA-GAO** nor **LOCAL GOVERNMENT** will disclose to any third party the other party's Confidential Information, in whole or in part, except as otherwise herein provided.

(b) **LOCAL GOVERNMENT** may provide, intentionally or otherwise, confidential data as described in A.R.S. § 41-725, the Health Insurance Portability and Accountability Act or other relevant federal or state laws or local ordinances, ostensibly for posting on **OPENBOOKS**. **ADOA-GAO** is not responsible for reviewing **LOCAL GOVERNMENT** data for confidentiality purposes and is held harmless by **LOCAL GOVERNMENT** for any damages arising from **ADOA-GAO**'s posting such confidential information on **OPENBOOKS**.

8. Limitation of Liability

ADOA-GAO shall under no circumstances be liable for:

(a) Posting or displaying on **OPENBOOKS** confidential, sensitive, incorrect, inaccurate, misleading, libelous, pejorative information provided by **LOCAL GOVERNMENT**.

(b) Providing access in response to the **LOCAL GOVERNMENT**'s direction to any Entity Administrator or Entity User.

(c) Failure to revoke access to any Entity Administrator or Entity User at the request of the **LOCAL GOVERNMENT** provided that the revocation is effected within three (3) business days.

9. Miscellaneous

It is mutually agreed by the parties that:

(a) In the event of a dispute, the parties agree to use arbitration to the extent

required by A.R.S. § 12-1518. The laws of the State of Arizona shall govern any interpretation of this Agreement and venue shall be in Maricopa County, Arizona.

(b) This Agreement shall be governed and interpreted by the laws of the State of Arizona. Purchases made in furtherance of this Agreement are subject to the Arizona Procurement Code (A.R.S. § 41-2501, et seq.) and the administrative rules promulgated thereunder (AAC R2-7-101, et seq.).

(c) Any amendments to this Agreement must be in writing and signed by both parties.

(d) All requests for additional services shall be in writing and signed by both parties and subject to current established **ADOA-GAO** billing rates.

(e) Additional capital equipment or other resources to be acquired by the **ADOA-GOA** to fulfill its responsibilities to the **LOCAL GOVERNMENT** as set forth in the Scope of Services and for which the **LOCAL GOVERNMENT** may be required to reimburse the **ADOA-GAO** shall be agreed to in writing by the **LOCAL GOVERNMENT**.

(f) **ADOA-GAO** reserves the right, at its sole reasonable discretion, to deny access as Entity Administrator or Entity User.

(g) This agreement is subject to the provisions of A.R.S. § 38-511.

(h) All notices pertaining to this Agreement shall be addressed or faxed to the parties respectively as follows:

ADOA-GAO:	
Arizona Department of Administration General Accounting Office (GAO) 100 N. 15th Avenue, Suite 302 Phoenix, AZ 85007	ATTN: OpenBooks Staff Phone Number: 602-542-5601 Email: OpenBooks@azdoa.gov
LOCAL GOVERNMENT:	
The City of Benson 120 W. 6th Street P.O. Box 2223 Benson, AZ 85602	ATTN: Debra Trate Finance Director Phone Number: 520-586-2245 Email: dtrate@bensonaz.gov

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDING BETWEEN THE PARTIES, AND IT SUPERSEDES ALL PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER DOCUMENTS OR COMMUNICATIONS BETWEEN THE PARTIES RELATIVE TO THE SUBJECT MATTER HEREIN COVERED, UNLESS SUCH DOCUMENTS OR COMMUNICATIONS ARE SPECIFICALLY INCLUDED BY REFERENCE.

IN WITNESS WHEREOF, the parties have executed this Agreement:

LOCAL GOVERNMENT:	**ADOA**:
The City of Benson	Arizona Department of Administration
By: _____	By: _____
Toney D. King, Sr., Mayor	**Craig Brown**, Director
Date: _____	Date: _____

Print SA

Between the Arizona Department of Administration General Accounting Office
And LOCAL GOVERNMENT

SCHEDULE A

Roles and Responsibilities

The respective roles of ADOA-GAO and a LOCAL GOVERNMENT related to that service are outlined in the section below.

ADOA-GAO Responsibilities:

- Provide consultation with the LOCAL GOVERNMENT project team member concerning the requirements of the A.R.S. § 42-725, confidentiality issues, file layout and overall process.
- Provide main point of contact for all communications related to the project.
- Prepare and provide LOCAL GOVERNMENT timely written notice of any SA ADDENDUM.
- Invoice LOCAL GOVERNMENT for initial setup fee and annual fee for operating costs.
- Confirm and communicate schedules.
- Notify the appropriate contacts of issues that require resolution.
- Coordinate the change process.
- Oversee content and maintenance of the OpenBooks.az.gov website (PROD).
- Provide an LOCAL GOVERNMENT User Guide on the use of the Administrative Tool and the Secure Account Service (SAS) Login Utility.
- Define LOCAL GOVERNMENT's system roles (Entity Administrator and Entity User).
- Authorize and maintain LOCAL GOVERNMENT's access to the system via SAS.
- Evaluate and grant or deny LOCAL GOVERNMENT requests for access to or roles in OPENBOOKS; activate and deactivate accounts.
- Provide and maintain technological infrastructure.
- Host and maintain Transparency Application Databases containing the State of Arizona and LOCAL GOVERNMENT data.
- Provide diagnosis of and initialize efforts to correct issues/problems with OPENBOOKS software application, Transparency Application Database, OpenBooks.az.gov website and technology infrastructure within three (3) business days of the discovery of such problems.
- Maintain two Transparency Application databases (PROD and TEST).
- Delete LOCAL GOVERNMENT incorrect postings within three (3) business days of receiving notification by email from LOCAL GOVERNMENT.
- Comply with all laws, statutes, ordinances, rules and regulations applicable to any Arizona State government body or authority;
- Diligently complete SERVICES.

ADOA-GAO Does <u>NOT</u> Have the Responsibility to:

- Defend LOCAL GOVERNMENT's compliance with A.R.S. § 41-725 subsections (C) through (E).
- Respond to the LOCAL GOVERNMENT's constituency about the LOCAL GOVERNMENT's data or the use of OPENBOOKS.

SCHEDULE A (Continued on Next Page)

SCHEDULE A (Continued from Preceding Page)

LOCAL GOVERNMENT Responsibilities:

- Provide ADOA-GAO with required information for posting to OPENBOOKS in accordance with A.R.S. § 41-725 subsections (C) through (E).
- Accept and properly execute the Service Agreement and any annual ADDENDUM or Amendment prepared by ADOA-GAO in a timely manner, but no more than ninety (90) days.
- The LOCAL GOVERNMENT chief executive officer shall designate, using the processes and forms prescribed by ADOA-GAO, one or more Entity Administrators.
- The Entity Administrator shall designate, using the processes and from prescribed by the ADOA-GAO, one or more Entity Users.
- The LOCAL GOVERNMENT Entity Administrator(s) and User(s) shall be authorized to interface and liaise with ADOA-GAO personnel.
- Obtain administrative login access via SAS.
- Request and maintain authorized user roles for Entity Administrator and Entity User.
- Notify ADOA-GAO of any Administrator or User changes within 48 hours of such changes.
- Adhere to the data specification (file layout).
- Adhere to the guidance in the LOCAL GOVERNMENT User Guide.
- Adhere to State of Arizona Security requirements.
- Review data to assure compliance with confidentiality requirements, including those in A.R.S. § 41-725.
- Make payments in accordance to the Service Agreement and any Amendments.
- Upload the LOCAL GOVERNMENT data into the system as directed.
- Update and administer content data.
- Take reasonable measures to maintain the timeliness and accuracy of the LOCAL GOVERNMENT data presented on OpenBooks.az.gov.
- Notify ADOA-GAO of any required file deletions as soon as practicable.
- Cooperate with ADOA-GAO in the identification, diagnosis and resolution of issues/problems with the OPENBOOKS software application, Transparency Application Database, OpenBooks.az.gov website, and technology infrastructure.

SCHEDULE A (Remainder of Page Intentionally Left Blank)

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 3

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 38-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 1, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 38-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 1, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 1 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 1

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 1

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 1) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 1, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 1.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 1, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 1 (RD-1)

Block 4 of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, Page 23-Maps) and those portions of Sections 31, 32, and 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, and those portions of Sections 4, 5, 6, 7, 8, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 4429.51 feet along the East line of said Section 33 to the intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 64 degrees 29 minutes 38 seconds West, 120.55 feet;

Thence South 88 degrees 09 minutes 16 seconds West, 364.88 feet;

Thence South 66 degrees 53 minutes 32 seconds West, 155.11 feet;

Thence South 11 degrees 01 minutes 33 seconds West, 152.59 feet;

Thence South 65 degrees 49 minutes 59 seconds West, 174.13 feet;

Thence North 82 degrees 50 minutes 46 seconds West, 323.03 feet;

Thence South 77 degrees 27 minutes 14 seconds West, 102.64 feet;

Thence South 45 degrees 39 minutes 27 seconds West, 233.02 feet;

Thence South 49 degrees 59 minutes 18 seconds West, 169.07 feet;

Thence South 19 degrees 00 minutes 54 seconds West, 109.22 feet;

Thence South 01 degrees 58 minutes 57 seconds West, 118.77 feet;

Thence South 09 degrees 53 minutes 21 seconds West, 62.03 feet;

Thence South 39 degrees 53 minutes 19 seconds West, 250.31 feet;

Thence South 07 degrees 15 minutes 47 seconds West, 129.45 feet;

Thence South 15 degrees 16 minutes 55 seconds West, 146.11 feet;

Thence South 39 degrees 04 minutes 33 seconds West, 235.09 feet;

Thence South 66 degrees 00 minutes 14 seconds West, 77.91 feet;

Thence South 30 degrees 35 minutes 58 seconds West, 90.41 feet;

Thence South 50 degrees 44 minutes 30 seconds West, 239.03 feet;

Thence South 82 degrees 55 minutes 26 seconds West, 142.40 feet;

Thence South 62 degrees 37 minutes 56 seconds West, 123.35 feet;

Thence South 64 degrees 48 minutes 35 seconds West, 199.70 feet;

Thence South 74 degrees 05 minutes 59 seconds West, 294.77 feet;

Thence North 88 degrees 25 minutes 10 seconds West, 182.02 feet;

Thence South 32 degrees 34 minutes 08 seconds West, 101.02 feet;

Thence South 69 degrees 14 minutes 45 seconds West, 182.38 feet;

Thence South 83 degrees 32 minutes 20 seconds West, 249.51 feet;

Thence South 69 degrees 03 minutes 42 seconds West, 189.06 feet;

Thence South 37 degrees 06 minutes 52 seconds West, 315.65 feet;

Thence South 49 degrees 24 minutes 21 seconds West, 389.28 feet;

Thence South 73 degrees 07 minutes 20 seconds West, 365.03 feet;

Thence South 51 degrees 36 minutes 19 seconds West, 203.81 feet;

Thence South 66 degrees 32 minutes 03 seconds West, 632.60 feet;

Thence South 24 degrees 33 minutes 15 seconds West, 340.85 feet;

Thence South 70 degrees 12 minutes 37 seconds West, 189.43 feet;

Thence North 86 degrees 07 minutes 05 seconds West, 270.60 feet;

Thence North 84 degrees 43 minutes 30 seconds West, 223.92 feet;

Thence South 59 degrees 21 minutes 11 seconds West, 166.03 feet;

Thence South 48 degrees 55 minutes 30 seconds West, 251.52 feet;

Thence South 48 degrees 23 minutes 00 seconds West, 458.34 feet;

Thence South 82 degrees 49 minutes 52 seconds West, 204.15 feet;

Thence South 47 degrees 32 minutes 28 seconds West, 317.29 feet;

Thence South 48 degrees 33 minutes 53 seconds West, 290.73 feet;

Thence South 82 degrees 35 minutes 18 seconds West, 186.90 feet;

Thence South 65 degrees 11 minutes 55 seconds West, 284.93 feet;

Thence South 84 degrees 16 minutes 14 seconds West, 165.53 feet;

Thence South 86 degrees 09 minutes 29 seconds West, 80.23 feet;

Thence South 73 degrees 38 minutes 07 seconds West, 297.47 feet;

Thence South 71 degrees 13 minutes 38 seconds West, 132.56 feet;

Thence South 49 degrees 20 minutes 13 seconds West, 159.69 feet;

Thence South 20 degrees 02 minutes 06 seconds West, 73.82 feet;

Thence South 68 degrees 22 minutes 41 seconds West, 267.80 feet;

Thence South 54 degrees 06 minutes 04 seconds West, 163.64 feet;

Thence South 18 degrees 16 minutes 45 seconds West, 160.11 feet;

Thence South 13 degrees 17 minutes 24 seconds West, 288.12 feet;

Thence South 44 degrees 04 minutes 45 seconds West, 357.07 feet;

Thence South 59 degrees 01 minutes 55 seconds West, 388.00 feet;

Thence South 46 degrees 57 minutes 57 seconds West, 294.67 feet;

Thence South 64 degrees 30 minutes 40 seconds West, 194.38 feet;

Thence South 00 degrees 05 minutes 15 seconds West, 77.89 feet;

Thence South 27 degrees 26 minutes 09 seconds West, 50.55 feet;

Thence South 58 degrees 08 minutes 52 seconds West, 168.89 feet;

Thence South 87 degrees 16 minutes 29 seconds West, 135.06 feet;

Thence South 74 degrees 29 minutes 57 seconds West, 73.06 feet;

Thence South 72 degrees 14 minutes 45 seconds West, 100.20 feet;

Thence South 38 degrees 05 minutes 55 seconds West, 129.88 feet;

Thence South 26 degrees 19 minutes 47 seconds West, 246.55 feet;

Thence South 83 degrees 40 minutes 48 seconds West, 214.30 feet;

Thence North 89 degrees 55 minutes 04 seconds West, 226.97 feet;

Thence North 85 degrees 49 minutes 38 seconds West, 201.73 feet;

Thence South 71 degrees 37 minutes 39 seconds West, 50.95 feet;

Thence South 88 degrees 44 minutes 54 seconds West, 89.15 feet;

Thence North 70 degrees 15 minutes 30 seconds West, 145.97 feet;

Thence North 70 degrees 55 minutes 51 seconds West, 105.53 feet;

Thence South 67 degrees 40 minutes 36 seconds West, 191.44 feet;

Thence South 52 degrees 36 minutes 12 seconds West, 107.79 feet;

Thence South 31 degrees 01 minutes 44 seconds West, 156.75 feet;

Thence South 44 degrees 18 minutes 50 seconds West, 92.77 feet;

Thence South 37 degrees 17 minutes 53 seconds West, 154.80 feet;

Thence South 05 degrees 37 minutes 31 seconds West, 68.68 feet;

Thence South 34 degrees 03 minutes 44 seconds West, 86.80 feet;

Thence South 55 degrees 22 minutes 17 seconds West, 40.65 feet;

Thence South 64 degrees 19 minutes 50 seconds West, 276.12 feet;

Thence South 65 degrees 55 minutes 52 seconds West, 122.93 feet;

Thence South 56 degrees 47 minutes 37 seconds West, 138.59 feet;

Thence South 23 degrees 40 minutes 36 seconds West, 143.21 feet;

Thence South 35 degrees 59 minutes 15 seconds West, 71.98 feet to the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 13 seconds East, 679.96 feet;

Thence South 89 degrees 57 minutes 49 seconds East, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 60.00 feet;

Thence North 89 degrees 57 minutes 46 seconds West, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 311.62 feet;

Thence South 89 degrees 57 minutes 48 seconds East, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 90.00 feet;

Thence North 89 degrees 57 minutes 48 seconds West, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 808.47 feet to the intersection with the line common to said Sections 6 and 7;

Thence North 00 degrees 02 minutes 49 seconds East, 5277.56 feet to the intersection with the line common to said Sections 6 and 31;

Thence North 00 degrees 11 minutes 49 seconds East, 4167.51 feet;

Thence departing said East right-of-way North 57 degrees 00 minutes 00 seconds East, 1250.67 feet along the Southern exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23B - Cochise County records) to the Southwest corner of Block 4 of said THE CANYONS AT RANCH WHETSTONE subdivision;

Thence the following courses along the exterior boundary of said Block 4;

Thence North 01 degrees 11 minutes 21 seconds East, 197.16 feet;

Thence South 88 degrees 55 minutes 15 seconds East, 838.06 feet to a point of curvature;

Thence along a curve to the right, having a radius of 925.00 feet and a central angle of 053 degrees 41 minutes 43 seconds, 866.87 feet to the said Southern exterior boundary;

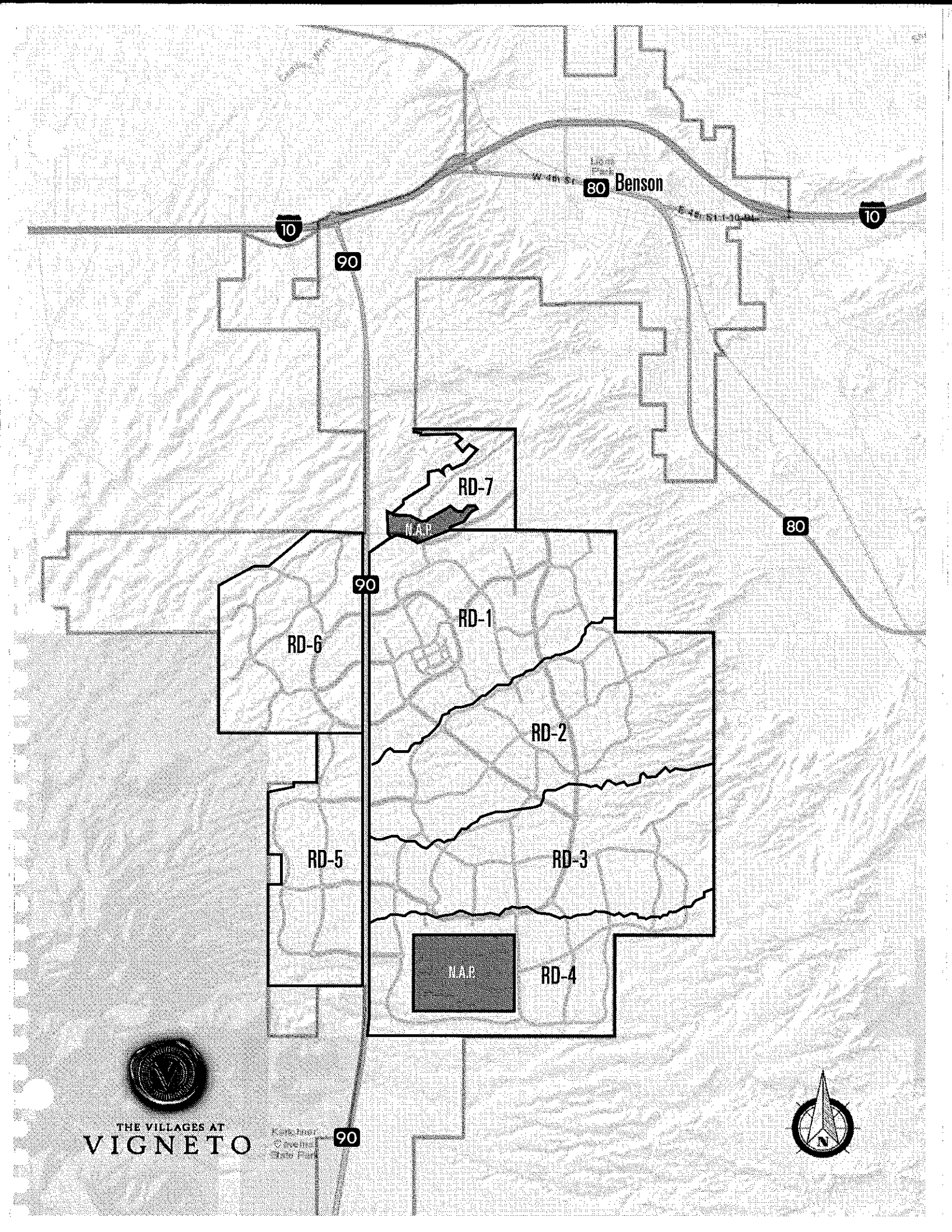
Thence South 86 degrees 00 minutes 00 seconds East, 121.89 feet along said Southern exterior boundary;

Thence North 67 degrees 00 minutes 00 seconds East, 1527.20 feet along said Southern exterior boundary to the North line of said Section 32;

Thence North 89 degrees 27 minutes 57 seconds East, 3637.48 feet along the North line of said Section 32 to the Northeast corner thereof, also being the Northwest corner of said Section 33;

Thence South 89 degrees 25 minutes 51 seconds East, 5314.82 feet along the North line of said Section 33 to the POINT OF BEGINNING;

Net area of RD-1 is 108,545,692 square feet (2,491.866 acres) more or less.


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 4

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 39-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 2, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 39-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 2, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 2 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 2

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 2

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 2) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 2, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 2.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 2, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 2 (RD-2)

Those portions of Sections 3, 4, 5, 7, 8, 9, 10, 17, 18, Township 18 South, Range 20 East, Gila and Salt River Meridian, and Section 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 3;

Thence South 00 degrees 13 minutes 48 seconds West, 2628.45 feet along the East line of said Section 3 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 57 seconds West, 2638.43 feet along said East line of Section 3 to the Southeast corner thereof, also being the Northeast corner of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 1619.55 feet along the East line of said Section 10 to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 75 degrees 40 minutes 21 seconds West, 1456.66 feet;

Thence North 81 degrees 41 minutes 27 seconds West, 612.55 feet;

Thence South 59 degrees 44 minutes 29 seconds West, 349.86 feet;

Thence North 42 degrees 36 minutes 39 seconds West, 230.87 feet;

Thence North 48 degrees 08 minutes 07 seconds West, 131.95 feet;

Thence South 37 degrees 46 minutes 36 seconds West, 91.24 feet;

Thence South 46 degrees 34 minutes 18 seconds West, 302.64 feet;

Thence South 45 degrees 34 minutes 17 seconds West, 317.71 feet;

Thence South 85 degrees 33 minutes 00 seconds West, 385.90 feet;

Thence North 68 degrees 33 minutes 20 seconds West, 187.10 feet;

Thence North 30 degrees 30 minutes 54 seconds West, 178.79 feet;

Thence South 68 degrees 01 minutes 10 seconds West, 154.53 feet;

Thence South 29 degrees 33 minutes 22 seconds West, 100.96 feet;

Thence South 04 degrees 52 minutes 10 seconds West, 272.06 feet;

Thence South 17 degrees 31 minutes 17 seconds West, 89.86 feet;

Thence South 73 degrees 29 minutes 44 seconds West, 342.58 feet;

Thence South 84 degrees 04 minutes 58 seconds West, 309.14 feet;

Thence North 50 degrees 33 minutes 54 seconds West, 255.37 feet;

Thence South 73 degrees 27 minutes 01 seconds West, 388.52 feet;

Thence North 73 degrees 16 minutes 25 seconds West, 289.39 feet;

Thence North 46 degrees 20 minutes 28 seconds West, 105.77 feet;

Thence North 72 degrees 45 minutes 58 seconds West, 101.10 feet;

Thence South 70 degrees 30 minutes 18 seconds West, 123.73 feet;

Thence South 31 degrees 00 minutes 33 seconds West, 440.58 feet;

Thence North 58 degrees 24 minutes 16 seconds West, 310.66 feet;

Thence South 73 degrees 15 minutes 29 seconds West, 256.78 feet;

Thence North 71 degrees 39 minutes 29 seconds West, 353.26 feet;

Thence North 87 degrees 00 minutes 47 seconds West, 880.51 feet;

Thence South 61 degrees 22 minutes 55 seconds West, 266.89 feet;

Thence South 74 degrees 50 minutes 37 seconds West, 146.51 feet;

Thence South 52 degrees 54 minutes 30 seconds West, 111.58 feet;

Thence South 73 degrees 56 minutes 59 seconds West, 321.02 feet;

Thence North 89 degrees 06 minutes 33 seconds West, 270.12 feet;

Thence South 76 degrees 01 minutes 59 seconds West, 244.37 feet;

Thence South 27 degrees 51 minutes 45 seconds West, 208.97 feet;

Thence South 11 degrees 48 minutes 46 seconds East, 177.85 feet;

Thence South 22 degrees 24 minutes 06 seconds West, 372.69 feet;

Thence South 61 degrees 59 minutes 05 seconds West, 296.61 feet;

Thence South 83 degrees 25 minutes 31 seconds West, 1212.17 feet;

Thence South 69 degrees 18 minutes 17 seconds West, 229.11 feet;

Thence North 85 degrees 48 minutes 33 seconds West, 150.93 feet;

Thence South 79 degrees 20 minutes 49 seconds West, 231.40 feet;

Thence North 89 degrees 06 minutes 26 seconds West, 245.49 feet;

Thence South 73 degrees 18 minutes 43 seconds West, 163.03 feet;

Thence South 79 degrees 41 minutes 17 seconds West, 286.85 feet;

Thence South 70 degrees 03 minutes 37 seconds West, 476.85 feet;

Thence South 44 degrees 26 minutes 50 seconds West, 347.78 feet;

Thence South 63 degrees 37 minutes 21 seconds West, 181.58 feet;

Thence South 58 degrees 00 minutes 12 seconds West, 102.39 feet;

Thence South 35 degrees 54 minutes 30 seconds West, 149.92 feet;

Thence South 59 degrees 59 minutes 00 seconds West, 220.61 feet;

Thence North 85 degrees 10 minutes 43 seconds West, 185.96 feet;

Thence South 49 degrees 43 minutes 20 seconds West, 96.40 feet;

Thence South 27 degrees 37 minutes 15 seconds West, 220.38 feet;

Thence South 40 degrees 29 minutes 42 seconds West, 377.70 feet;

Thence South 77 degrees 36 minutes 09 seconds West, 417.96 feet;

Thence South 65 degrees 41 minutes 17 seconds West, 162.28 feet;

Thence North 61 degrees 05 minutes 39 seconds West, 197.48 feet;

Thence North 75 degrees 19 minutes 35 seconds West, 155.11 feet;

Thence South 74 degrees 04 minutes 53 seconds West, 135.63 feet;

Thence South 32 degrees 49 minutes 20 seconds West, 76.70 feet;

Thence South 67 degrees 35 minutes 45 seconds West, 123.71 feet;

Thence South 28 degrees 40 minutes 17 seconds West, 124.55 feet;

Thence South 52 degrees 53 minutes 13 seconds West, 372.69 feet;

Thence North 68 degrees 26 minutes 31 seconds West, 379.77 feet;

Thence North 38 degrees 34 minutes 25 seconds West, 242.07 feet;

Thence North 74 degrees 46 minutes 26 seconds West, 177.73 feet;

Thence South 81 degrees 55 minutes 11 seconds West, 202.79 feet;

Thence North 73 degrees 50 minutes 14 seconds West, 142.98 feet;

Thence North 81 degrees 13 minutes 05 seconds West, 104.85 feet;

Thence North 66 degrees 36 minutes 09 seconds West, 297.43 feet;

Thence North 41 degrees 39 minutes 30 seconds West, 192.04 feet;

Thence North 88 degrees 10 minutes 36 seconds West, 246.62 feet;

Thence South 70 degrees 26 minutes 59 seconds West, 302.39 feet;

Thence South 75 degrees 45 minutes 27 seconds West, 426.37 feet;

Thence North 77 degrees 57 minutes 49 seconds West, 272.79 feet;

Thence North 66 degrees 13 minutes 21 seconds West, 361.42 feet to a point on the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 48 seconds East, 123.01 feet to the intersection with the line common to said Sections 7 and 18;

Thence North 00 degrees 02 minutes 13 seconds East, 3348.26 feet to an intersection with existing drainage;

Thence the following courses along said existing drainage;

Thence North 35 degrees 59 minutes 15 seconds East, 71.98 feet;

Thence North 23 degrees 40 minutes 36 seconds East, 143.21 feet;

Thence North 56 degrees 47 minutes 37 seconds East, 138.59 feet;

Thence North 65 degrees 55 minutes 52 seconds East, 122.93 feet;

Thence North 64 degrees 19 minutes 50 seconds East, 276.12 feet;

Thence North 55 degrees 22 minutes 17 seconds East, 40.65 feet;

Thence North 34 degrees 03 minutes 44 seconds East, 86.80 feet;

Thence North 05 degrees 37 minutes 31 seconds East, 68.68 feet;

Thence North 37 degrees 17 minutes 53 seconds East, 154.80 feet;

Thence North 44 degrees 18 minutes 50 seconds East, 92.77 feet;

Thence North 31 degrees 01 minutes 44 seconds East, 156.75 feet;

Thence North 52 degrees 36 minutes 12 seconds East, 107.79 feet;

Thence North 67 degrees 40 minutes 36 seconds East, 191.44 feet;

Thence South 70 degrees 55 minutes 51 seconds East, 105.53 feet;

Thence South 70 degrees 15 minutes 30 seconds East, 145.97 feet;

Thence North 88 degrees 44 minutes 54 seconds East, 89.15 feet;

Thence North 71 degrees 37 minutes 39 seconds East, 50.95 feet;

Thence South 85 degrees 49 minutes 38 seconds East, 201.73 feet;

Thence South 89 degrees 55 minutes 04 seconds East, 226.97 feet;

Thence North 83 degrees 40 minutes 48 seconds East, 214.30 feet;

Thence North 26 degrees 19 minutes 47 seconds East, 246.55 feet;

Thence North 38 degrees 05 minutes 55 seconds East, 129.88 feet;

Thence North 72 degrees 14 minutes 45 seconds East, 100.20 feet;

Thence North 74 degrees 29 minutes 57 seconds East, 73.06 feet;

Thence North 87 degrees 16 minutes 29 seconds East, 135.06 feet;

Thence North 58 degrees 08 minutes 52 seconds East, 168.89 feet;

Thence North 27 degrees 26 minutes 09 seconds East, 50.55 feet;

Thence North 00 degrees 05 minutes 15 seconds East, 77.89 feet;

Thence North 64 degrees 30 minutes 40 seconds East, 194.38 feet;

Thence North 46 degrees 57 minutes 57 seconds East, 294.67 feet;

Thence North 59 degrees 01 minutes 55 seconds East, 388.00 feet;

Thence North 44 degrees 04 minutes 45 seconds East, 357.07 feet;

Thence North 13 degrees 17 minutes 24 seconds East, 288.12 feet;

Thence North 18 degrees 16 minutes 45 seconds East, 160.11 feet;

Thence North 54 degrees 06 minutes 04 seconds East, 163.64 feet;

Thence North 68 degrees 22 minutes 41 seconds East, 267.80 feet;

Thence North 20 degrees 02 minutes 06 seconds East, 73.82 feet;

Thence North 49 degrees 20 minutes 13 seconds East, 159.69 feet;

Thence North 71 degrees 13 minutes 38 seconds East, 132.56 feet;

Thence North 73 degrees 38 minutes 07 seconds East, 297.47 feet;

Thence North 86 degrees 09 minutes 29 seconds East, 80.23 feet;

Thence North 84 degrees 16 minutes 14 seconds East, 165.53 feet;

Thence North 65 degrees 11 minutes 55 seconds East, 284.93 feet;

Thence North 82 degrees 35 minutes 18 seconds East, 186.90 feet;

Thence North 48 degrees 33 minutes 53 seconds East, 290.73 feet;

Thence North 47 degrees 32 minutes 28 seconds East, 317.29 feet;

Thence North 82 degrees 49 minutes 52 seconds East, 204.15 feet;

Thence North 48 degrees 23 minutes 00 seconds East, 458.34 feet;

Thence North 48 degrees 55 minutes 30 seconds East, 251.52 feet;

Thence North 59 degrees 21 minutes 11 seconds East, 166.03 feet;

Thence South 84 degrees 43 minutes 30 seconds East, 223.92 feet;

Thence South 86 degrees 07 minutes 05 seconds East, 270.60 feet;

Thence North 70 degrees 12 minutes 37 seconds East, 189.43 feet;

Thence North 24 degrees 33 minutes 15 seconds East, 340.85 feet;

Thence North 66 degrees 32 minutes 03 seconds East, 632.60 feet;

Thence North 51 degrees 36 minutes 19 seconds East, 203.81 feet;

Thence North 73 degrees 07 minutes 20 seconds East, 365.03 feet;

Thence North 49 degrees 24 minutes 21 seconds East, 389.28 feet;

Thence North 37 degrees 06 minutes 52 seconds East, 315.65 feet;

Thence North 69 degrees 03 minutes 42 seconds East, 189.06 feet;

Thence North 83 degrees 32 minutes 20 seconds East, 249.51 feet;

Thence North 69 degrees 14 minutes 45 seconds East, 182.38 feet;

Thence North 32 degrees 34 minutes 08 seconds East, 101.02 feet;

Thence South 88 degrees 25 minutes 10 seconds East, 182.02 feet;

Thence North 74 degrees 05 minutes 59 seconds East, 294.77 feet;

Thence North 64 degrees 48 minutes 35 seconds East, 199.70 feet;

Thence North 62 degrees 37 minutes 56 seconds East, 123.35 feet;

Thence North 82 degrees 55 minutes 26 seconds East, 142.40 feet;

Thence North 50 degrees 44 minutes 30 seconds East, 239.03 feet;

Thence North 30 degrees 35 minutes 58 seconds East, 90.41 feet;

Thence North 66 degrees 00 minutes 14 seconds East, 77.91 feet;

Thence North 39 degrees 04 minutes 33 seconds East, 235.09 feet;

Thence North 15 degrees 16 minutes 55 seconds East, 146.11 feet;

Thence North 07 degrees 15 minutes 47 seconds East, 129.45 feet;

Thence North 39 degrees 53 minutes 19 seconds East, 250.31 feet;

Thence North 09 degrees 53 minutes 21 seconds East, 62.03 feet;

Thence North 01 degrees 58 minutes 57 seconds East, 118.77 feet;

Thence North 19 degrees 00 minutes 54 seconds East, 109.22 feet;

Thence North 49 degrees 59 minutes 18 seconds East, 169.07 feet;

Thence North 45 degrees 39 minutes 27 seconds East, 233.02 feet;

Thence North 77 degrees 27 minutes 14 seconds East, 102.64 feet;

Thence South 82 degrees 50 minutes 46 seconds East, 323.03 feet;

Thence North 65 degrees 49 minutes 59 seconds East, 174.13 feet;

Thence North 11 degrees 01 minutes 33 seconds East, 152.59 feet;

Thence North 66 degrees 53 minutes 32 seconds East, 155.11 feet;

Thence North 88 degrees 09 minutes 16 seconds East, 364.88 feet;

Thence North 64 degrees 29 minutes 38 seconds East, 120.55 feet to a point on the East line of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 812.69 feet along the East line of said Section 33 to the Southeast corner thereof, also being the Northwest corner of said Section 3;

Thence South 89 degrees 56 minutes 45 seconds East, 2645.46 feet along the North line of said Section 3 to the North Quarter corner thereof;

Thence South 89 degrees 58 minutes 54 seconds East, 2654.11 feet along said

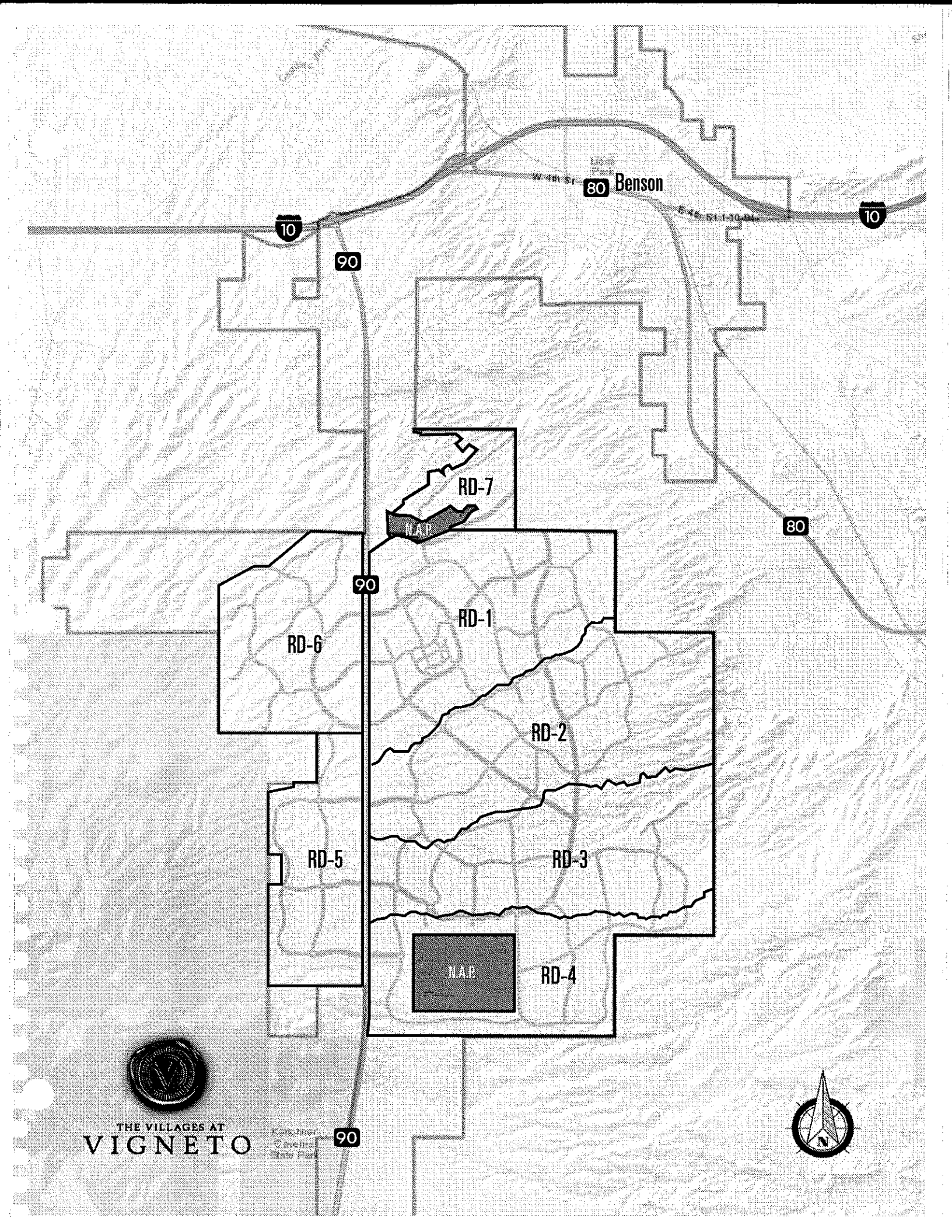
North line of Section 3 to the Northeast corner of said Section 3 and POINT OF BEGINNING.

Containing 2500 square feet (0.0574 acres), more or less

Net area of RD-2 is 123,423,046 square feet (2,833.403 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 5

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 40-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 3, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 40-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 3, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 3 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 3

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 3

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 3) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 3, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 3.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 3, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 3 (RD-3)

Those portions of Sections 8, 9, 10, 15, 16, 17, 18, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 15;

Thence South 00 degrees 10 minutes 16 seconds West, 2648.49 feet along the East line of said Section 15 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 04 seconds East, 233.83 feet along the said East line of Section 15 to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 88 degrees 12 minutes 26 seconds West, 87.02 feet;

Thence South 65 degrees 20 minutes 30 seconds West, 381.46 feet;

Thence South 22 degrees 45 minutes 46 seconds West, 100.83 feet;

Thence South 04 degrees 28 minutes 50 seconds East, 159.43 feet;

Thence South 65 degrees 53 minutes 37 seconds West, 562.31 feet;

Thence South 31 degrees 51 minutes 30 seconds West, 272.48 feet;

Thence South 66 degrees 33 minutes 09 seconds West, 185.28 feet;

Thence North 73 degrees 34 minutes 25 seconds West, 91.99 feet;

Thence South 79 degrees 36 minutes 21 seconds West, 167.52 feet;

Thence South 60 degrees 08 minutes 54 seconds West, 157.89 feet;

Thence South 56 degrees 30 minutes 12 seconds West, 310.04 feet;

Thence South 83 degrees 45 minutes 28 seconds West, 272.85 feet;

Thence North 59 degrees 29 minutes 18 seconds West, 73.29 feet;

Thence South 87 degrees 49 minutes 46 seconds West, 68.51 feet;

Thence South 35 degrees 38 minutes 59 seconds West, 266.89 feet;

Thence North 75 degrees 10 minutes 35 seconds West, 187.42 feet;

Thence South 44 degrees 39 minutes 33 seconds West, 197.41 feet;

Thence North 64 degrees 41 minutes 42 seconds West, 167.96 feet;

Thence South 86 degrees 01 minutes 46 seconds West, 376.74 feet;

Thence South 63 degrees 50 minutes 57 seconds West, 288.18 feet;

Thence North 53 degrees 38 minutes 03 seconds West, 138.90 feet;

Thence South 88 degrees 25 minutes 25 seconds West, 277.31 feet;

Thence North 28 degrees 46 minutes 10 seconds West, 221.04 feet;

Thence North 81 degrees 58 minutes 49 seconds West, 269.27 feet;

Thence South 66 degrees 43 minutes 13 seconds West, 435.30 feet;

Thence North 52 degrees 36 minutes 50 seconds West, 315.02 feet;

Thence South 67 degrees 18 minutes 30 seconds West, 278.11 feet;

Thence North 71 degrees 27 minutes 03 seconds West, 347.85 feet;

Thence North 84 degrees 46 minutes 22 seconds West, 703.82 feet;

Thence South 65 degrees 07 minutes 54 seconds West, 329.09 feet;

Thence South 89 degrees 51 minutes 47 seconds West, 381.25 feet;

Thence South 80 degrees 41 minutes 23 seconds West, 397.40 feet;

Thence South 63 degrees 23 minutes 57 seconds West, 202.81 feet;

Thence South 75 degrees 21 minutes 38 seconds West, 93.79 feet;

Thence North 64 degrees 43 minutes 52 seconds West, 129.20 feet;

Thence North 89 degrees 55 minutes 31 seconds West, 215.89 feet;

Thence South 73 degrees 48 minutes 07 seconds West, 208.24 feet;

Thence North 62 degrees 51 minutes 23 seconds West, 221.49 feet;

Thence North 76 degrees 07 minutes 08 seconds West, 444.62 feet;

Thence North 86 degrees 28 minutes 19 seconds West, 440.57 feet;

Thence North 63 degrees 11 minutes 14 seconds West, 241.73 feet;

Thence North 62 degrees 00 minutes 21 seconds West, 217.08 feet;

Thence North 53 degrees 51 minutes 28 seconds West, 195.27 feet;

Thence North 83 degrees 50 minutes 47 seconds West, 158.97 feet;

Thence South 75 degrees 13 minutes 58 seconds West, 295.03 feet;

Thence North 78 degrees 09 minutes 04 seconds West, 435.60 feet;

Thence South 58 degrees 12 minutes 19 seconds West, 192.40 feet;

Thence South 78 degrees 10 minutes 24 seconds West, 150.35 feet;

Thence South 49 degrees 13 minutes 22 seconds West, 166.54 feet;

Thence South 58 degrees 02 minutes 44 seconds West, 166.54 feet;

Thence South 19 degrees 18 minutes 58 seconds West, 95.35 feet;

Thence South 68 degrees 57 minutes 41 seconds West, 94.48 feet;

Thence North 69 degrees 55 minutes 38 seconds West, 231.88 feet;

Thence North 74 degrees 30 minutes 21 seconds West, 252.40 feet;

Thence South 67 degrees 34 minutes 17 seconds West, 102.57 feet;

Thence South 81 degrees 56 minutes 36 seconds West, 112.27 feet;

Thence South 70 degrees 25 minutes 16 seconds West, 183.07 feet;

Thence North 79 degrees 59 minutes 30 seconds West, 90.92 feet;

Thence South 74 degrees 03 minutes 29 seconds West, 71.44 feet;

Thence North 87 degrees 04 minutes 03 seconds West, 143.32 feet;

Thence South 84 degrees 41 minutes 31 seconds West, 81.19 feet;

Thence North 87 degrees 01 minutes 44 seconds West, 221.60 feet;

Thence North 70 degrees 08 minutes 48 seconds West, 70.25 feet;

Thence North 36 degrees 36 minutes 11 seconds West, 61.94 feet;

Thence South 89 degrees 36 minutes 50 seconds West, 59.48 feet;

Thence North 76 degrees 17 minutes 31 seconds West, 363.37 feet;

Thence South 89 degrees 51 minutes 44 seconds West, 185.24 feet;

Thence South 68 degrees 59 minutes 27 seconds West, 386.29 feet;

Thence South 75 degrees 59 minutes 03 seconds West, 87.90 feet;

Thence South 83 degrees 36 minutes 47 seconds West, 482.03 feet;

Thence South 82 degrees 43 minutes 29 seconds West, 321.41 feet;

Thence North 71 degrees 39 minutes 36 seconds West, 486.93 feet;

Thence South 78 degrees 18 minutes 34 seconds West, 142.94 feet;

Thence North 83 degrees 50 minutes 30 seconds West, 175.56 feet;

Thence North 74 degrees 14 minutes 50 seconds West, 454.49 feet;

Thence South 71 degrees 23 minutes 13 seconds West, 167.88 feet;

Thence South 43 degrees 00 minutes 32 seconds West, 92.21 feet;

Thence South 56 degrees 04 minutes 00 seconds West, 138.35 feet;

Thence North 86 degrees 52 minutes 37 seconds West, 316.48 feet;

Thence North 76 degrees 50 minutes 42 seconds West, 207.23 feet;

Thence South 87 degrees 09 minutes 05 seconds West, 326.27 feet;

Thence South 53 degrees 44 minutes 44 seconds West, 311.05 feet;

Thence South 80 degrees 01 minutes 52 seconds West, 485.90 feet;

Thence South 64 degrees 46 minutes 14 seconds West, 475.99 feet to a point on the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 48 seconds East, 3449.25 feet;

Thence South 89 degrees 57 minutes 11 seconds East, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 70.00 feet;

Thence North 89 degrees 57 minutes 15 seconds West, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 1048.66 feet to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 66 degrees 13 minutes 21 seconds East, 361.42 feet;

Thence South 77 degrees 57 minutes 49 seconds East, 272.79 feet;

Thence North 75 degrees 45 minutes 27 seconds East, 426.37 feet;

Thence North 70 degrees 26 minutes 59 seconds East, 302.39 feet;

Thence South 88 degrees 10 minutes 36 seconds East, 246.62 feet;

Thence South 41 degrees 39 minutes 30 seconds East, 192.04 feet;

Thence South 66 degrees 36 minutes 09 seconds East, 297.43 feet;

Thence South 81 degrees 13 minutes 05 seconds East, 104.85 feet;

Thence South 73 degrees 50 minutes 14 seconds East, 142.98 feet;

Thence North 81 degrees 55 minutes 11 seconds East, 202.79 feet;

Thence South 74 degrees 46 minutes 26 seconds East, 177.73 feet;

Thence South 38 degrees 34 minutes 25 seconds East, 242.07 feet;

Thence South 68 degrees 26 minutes 31 seconds East, 379.77 feet;

Thence North 52 degrees 53 minutes 13 seconds East, 372.69 feet;

Thence North 28 degrees 40 minutes 17 seconds East, 124.55 feet;

Thence North 67 degrees 35 minutes 45 seconds East, 123.71 feet;

Thence North 32 degrees 49 minutes 20 seconds East, 76.70 feet;

Thence North 74 degrees 04 minutes 53 seconds East, 135.63 feet;

Thence South 75 degrees 19 minutes 35 seconds East, 155.11 feet;

Thence South 61 degrees 05 minutes 39 seconds East, 197.48 feet;

Thence North 65 degrees 41 minutes 17 seconds East, 162.28 feet;

Thence North 77 degrees 36 minutes 09 seconds East, 417.96 feet;

Thence North 40 degrees 29 minutes 42 seconds East, 377.70 feet;

Thence North 27 degrees 37 minutes 15 seconds East, 220.38 feet;

Thence North 49 degrees 43 minutes 20 seconds East, 96.40 feet;

Thence South 85 degrees 10 minutes 43 seconds East, 185.96 feet;

Thence North 59 degrees 59 minutes 00 seconds East, 220.61 feet;

Thence North 35 degrees 54 minutes 30 seconds East, 149.92 feet;

Thence North 58 degrees 00 minutes 12 seconds East, 102.39 feet;

Thence North 63 degrees 37 minutes 21 seconds East, 181.58 feet;

Thence North 44 degrees 26 minutes 50 seconds East, 347.78 feet;

Thence North 70 degrees 03 minutes 37 seconds East, 476.85 feet;

Thence North 79 degrees 41 minutes 17 seconds East, 286.85 feet;

Thence North 73 degrees 18 minutes 43 seconds East, 163.03 feet;

Thence South 89 degrees 06 minutes 26 seconds East, 245.49 feet;

Thence North 79 degrees 20 minutes 49 seconds East, 231.40 feet;

Thence South 85 degrees 48 minutes 33 seconds East, 150.93 feet;

Thence North 69 degrees 18 minutes 17 seconds East, 229.11 feet;

Thence North 83 degrees 25 minutes 31 seconds East, 1212.17 feet;

Thence North 61 degrees 59 minutes 05 seconds East, 296.61 feet;

Thence North 22 degrees 24 minutes 06 seconds East, 372.69 feet;

Thence North 11 degrees 48 minutes 46 seconds West, 177.85 feet;

Thence North 27 degrees 51 minutes 45 seconds East, 208.97 feet;

Thence North 76 degrees 01 minutes 59 seconds East, 244.37 feet;

Thence South 89 degrees 06 minutes 33 seconds East, 270.12 feet;

Thence North 73 degrees 56 minutes 59 seconds East, 321.02 feet;

Thence North 52 degrees 54 minutes 30 seconds East, 111.58 feet;

Thence North 74 degrees 50 minutes 37 seconds East, 146.51 feet;

Thence North 61 degrees 22 minutes 55 seconds East, 266.89 feet;

Thence South 87 degrees 00 minutes 47 seconds East, 880.51 feet;

Thence South 71 degrees 39 minutes 29 seconds East, 353.26 feet;

Thence North 73 degrees 15 minutes 29 seconds East, 256.78 feet;

Thence South 58 degrees 24 minutes 16 seconds East, 310.66 feet;

Thence North 31 degrees 00 minutes 33 seconds East, 440.58 feet;

Thence North 70 degrees 30 minutes 18 seconds East, 123.73 feet;

Thence South 72 degrees 45 minutes 58 seconds East, 101.10 feet;

Thence South 46 degrees 20 minutes 28 seconds East, 105.77 feet;

Thence South 73 degrees 16 minutes 25 seconds East, 289.39 feet;

Thence North 73 degrees 27 minutes 01 seconds East, 388.52 feet;

Thence South 50 degrees 33 minutes 54 seconds East, 255.37 feet;

Thence North 84 degrees 04 minutes 58 seconds East, 309.14 feet;

Thence North 73 degrees 29 minutes 44 seconds East, 342.58 feet;

Thence North 17 degrees 31 minutes 17 seconds East, 89.86 feet;

Thence North 04 degrees 52 minutes 10 seconds East, 272.06 feet;

Thence North 29 degrees 33 minutes 22 seconds East, 100.96 feet;

Thence North 68 degrees 01 minutes 10 seconds East, 154.53 feet;

Thence South 30 degrees 30 minutes 54 seconds East, 178.79 feet;

Thence South 68 degrees 33 minutes 20 seconds East, 187.10 feet;

Thence North 85 degrees 33 minutes 00 seconds East, 385.90 feet;

Thence North 45 degrees 34 minutes 17 seconds East, 317.71 feet;

Thence North 46 degrees 34 minutes 18 seconds East, 302.64 feet;

Thence North 37 degrees 46 minutes 36 seconds East, 91.24 feet;

Thence South 48 degrees 08 minutes 07 seconds East, 131.95 feet;

Thence South 42 degrees 36 minutes 39 seconds East, 230.87 feet;

Thence North 59 degrees 44 minutes 29 seconds East, 349.86 feet;

Thence South 81 degrees 41 minutes 27 seconds East, 612.55 feet;

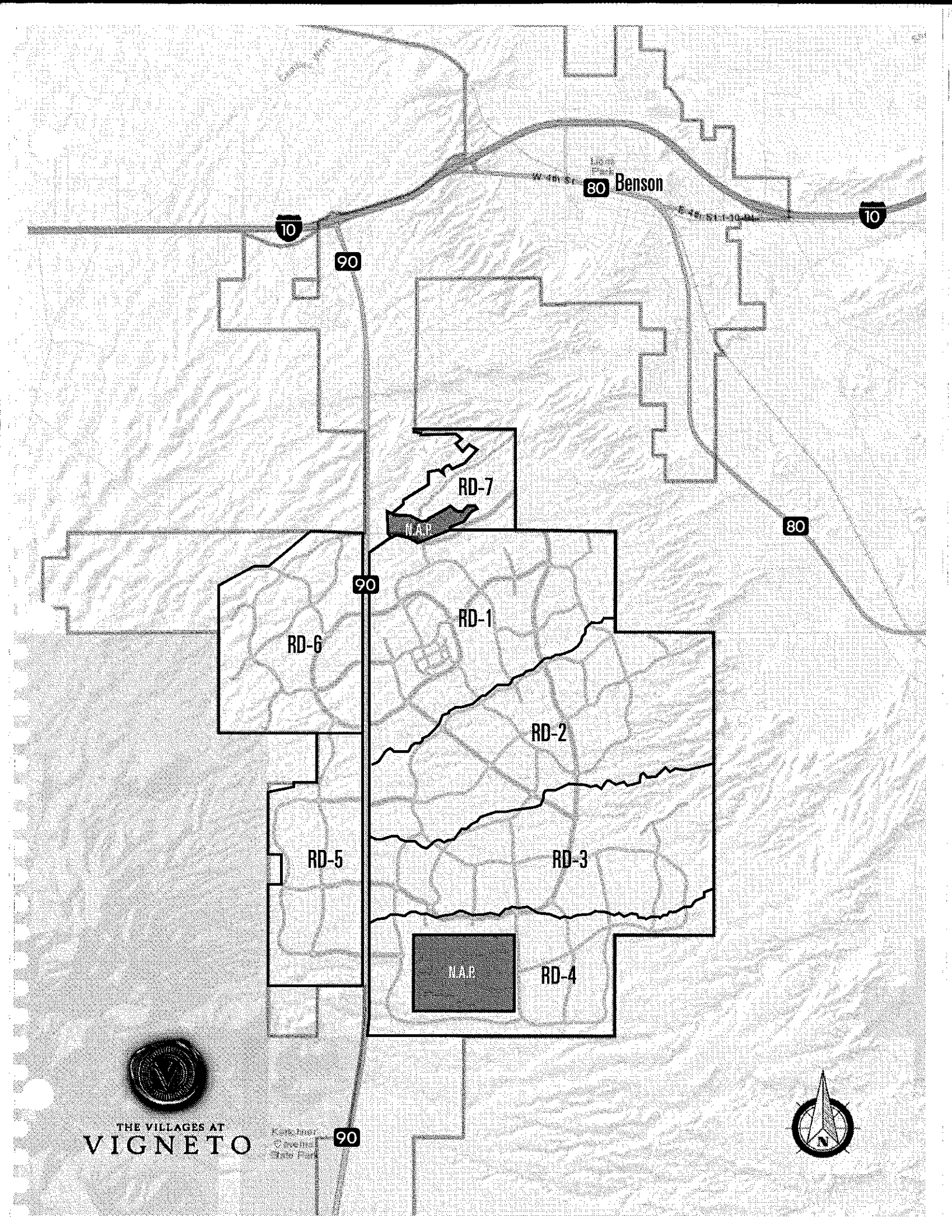
Thence North 75 degrees 40 minutes 21 seconds East, 1456.66 feet to a point on the East line of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 1027.84 feet along the East line of said Section 10 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 18 seconds West, 2644.85 feet along said East line of Section 10 to the Southeast corner thereof, also being the Northeast corner of said Section 15 and POINT OF BEGINNING.

Containing 104,474,929 square feet (2398.414 acres), more or less

EXPIRES 3/31/2018


Benson
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RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 6

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 41-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 4, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 41-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 4, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 4 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 4

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 4

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 4) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 4, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 4.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 4, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 4 (RD-4)

Those portions of Sections 15, 16, 17, 10, 20, 21, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona, described as follows:

BEGINNING at the southeast corner of said Section 15;

Thence North 89 degrees 51 minutes 49 seconds West, 2651.95 feet along the South line of said Section 15 to the South Quarter corner thereof;

Thence North 89 degrees 46 minutes 21 seconds West, 2651.73 feet along the South line of said Section 15 to the Southwest corner thereof, also being the Northeast corner of said Section 21;

Thence South 00 degrees 06 minutes 13 seconds West, 2647.15 feet along the East line of said Section 21 to the east Quarter corner thereof;

Thence South 00 degrees 05 minutes 02 seconds West, 2649.47 feet along said East line of Section 21 to the southeast corner thereof;

Thence South 89 degrees 54 minutes 37 seconds West, 2644.96 feet along the South line of said Section 21 to the South Quarter corner thereof;

Thence North 89 degrees 48 minutes 01 seconds West, 2638.89 feet along the said South line of Section 21 to the Southwest corner thereof, also being the Southeast corner of said Section 20;

Thence North 89 degrees 48 minutes 24 seconds West, 5291.23 feet along the South line of said Section 20 to the Southwest corner thereof, also being the Southeast corner of said Section 19;

Thence North 89 degrees 55 minutes 05 seconds West, 2537.60 feet along the South line of said Section 19 to a point of non-tangent curvature on the east right-of-way of State Route 90, from which point the radius point bears North 84 degrees 57 minutes 37 seconds West;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 001 degrees 46 minutes 55 seconds, 718.98 feet;

Thence South 86 degrees 44 minutes 32 seconds East, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 86 degrees 44 minutes 32 seconds West;

Thence along a curve to the left, having a radius of 23168.32 feet and a central angle of 000 degrees 59 minutes 28 seconds, 400.75 feet;

Thence North 87 degrees 44 minutes 00 seconds West, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 87 degrees 44 minutes 00 seconds West;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 002 degrees 03 minutes 54 seconds, 833.23 feet to a point of tangency;

Thence North 00 degrees 12 minutes 06 seconds East, 3350.67 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 596.27 feet to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence North 64 degrees 46 minutes 14 seconds East, 475.99 feet;

Thence North 80 degrees 01 minutes 52 seconds East, 485.90 feet;

Thence North 53 degrees 44 minutes 44 seconds East, 311.05 feet;

Thence North 87 degrees 09 minutes 05 seconds East, 326.27 feet;

Thence South 76 degrees 50 minutes 42 seconds East, 207.23 feet;

Thence South 86 degrees 52 minutes 37 seconds East, 316.48 feet;

Thence North 56 degrees 04 minutes 00 seconds East, 138.35 feet;

Thence North 43 degrees 00 minutes 32 seconds East, 92.21 feet;

Thence North 71 degrees 23 minutes 13 seconds East, 167.88 feet;

Thence South 74 degrees 14 minutes 50 seconds East, 454.49 feet;

Thence South 83 degrees 50 minutes 30 seconds East, 175.56 feet;

Thence North 78 degrees 18 minutes 34 seconds East, 142.94 feet;

Thence South 71 degrees 39 minutes 36 seconds East, 486.93 feet;

Thence North 82 degrees 43 minutes 29 seconds East, 321.41 feet;

Thence North 83 degrees 36 minutes 47 seconds East, 482.03 feet;

Thence North 75 degrees 59 minutes 03 seconds East, 87.90 feet;

Thence North 68 degrees 59 minutes 27 seconds East, 386.29 feet;

Thence North 89 degrees 51 minutes 44 seconds East, 185.24 feet;

Thence South 76 degrees 17 minutes 31 seconds East, 363.37 feet;

Thence North 89 degrees 36 minutes 50 seconds East, 59.48 feet;

Thence South 36 degrees 36 minutes 11 seconds East, 61.94 feet;

Thence South 70 degrees 08 minutes 48 seconds East, 70.25 feet;

Thence South 87 degrees 01 minutes 44 seconds East, 221.60 feet;

Thence North 84 degrees 41 minutes 31 seconds East, 81.19 feet;

Thence South 87 degrees 04 minutes 03 seconds East, 143.32 feet;

Thence North 74 degrees 03 minutes 29 seconds East, 71.44 feet;

Thence South 79 degrees 59 minutes 30 seconds East, 90.92 feet;

Thence North 70 degrees 25 minutes 16 seconds East, 183.07 feet;

Thence North 81 degrees 56 minutes 36 seconds East, 112.27 feet;

Thence North 67 degrees 34 minutes 17 seconds East, 102.57 feet;

Thence South 74 degrees 30 minutes 21 seconds East, 252.40 feet;

Thence South 69 degrees 55 minutes 38 seconds East, 231.88 feet;

Thence North 68 degrees 57 minutes 41 seconds East, 94.48 feet;

Thence North 19 degrees 18 minutes 58 seconds East, 95.35 feet;

Thence North 58 degrees 02 minutes 44 seconds East, 166.54 feet;

Thence North 49 degrees 13 minutes 22 seconds East, 166.54 feet;

Thence North 78 degrees 10 minutes 24 seconds East, 150.35 feet;

Thence North 58 degrees 12 minutes 19 seconds East, 192.40 feet;

Thence South 78 degrees 09 minutes 04 seconds East, 435.60 feet;

Thence North 75 degrees 13 minutes 58 seconds East, 295.03 feet;

Thence South 83 degrees 50 minutes 47 seconds East, 158.97 feet;

Thence South 53 degrees 51 minutes 28 seconds East, 195.27 feet;

Thence South 62 degrees 00 minutes 21 seconds East, 217.08 feet;

Thence South 63 degrees 11 minutes 14 seconds East, 241.73 feet;

Thence South 86 degrees 28 minutes 19 seconds East, 440.57 feet;

Thence South 76 degrees 07 minutes 08 seconds East, 444.62 feet;

Thence South 62 degrees 51 minutes 23 seconds East, 221.49 feet;

Thence North 73 degrees 48 minutes 07 seconds East, 208.24 feet;

Thence South 89 degrees 55 minutes 31 seconds East, 215.89 feet;

Thence South 64 degrees 43 minutes 52 seconds East, 129.20 feet;

Thence North 75 degrees 21 minutes 38 seconds East, 93.79 feet;

Thence North 63 degrees 23 minutes 57 seconds East, 202.81 feet;

Thence North 80 degrees 41 minutes 23 seconds East, 397.40 feet;

Thence North 89 degrees 51 minutes 47 seconds East, 381.25 feet;

Thence North 65 degrees 07 minutes 54 seconds East, 329.09 feet;

Thence South 84 degrees 46 minutes 22 seconds East, 703.82 feet;

Thence South 71 degrees 27 minutes 03 seconds East, 347.85 feet;

Thence North 67 degrees 18 minutes 30 seconds East, 278.11 feet;

Thence South 52 degrees 36 minutes 50 seconds East, 315.02 feet;

Thence North 66 degrees 43 minutes 13 seconds East, 435.30 feet;

Thence South 81 degrees 58 minutes 49 seconds East, 269.27 feet;

Thence South 28 degrees 46 minutes 10 seconds East, 221.04 feet;

Thence North 88 degrees 25 minutes 25 seconds East, 277.31 feet;

Thence South 53 degrees 38 minutes 03 seconds East, 138.90 feet;

Thence North 63 degrees 50 minutes 57 seconds East, 288.18 feet;

Thence North 86 degrees 01 minutes 46 seconds East, 376.74 feet;

Thence South 64 degrees 41 minutes 42 seconds East, 167.96 feet;

Thence North 44 degrees 39 minutes 33 seconds East, 197.41 feet;

Thence South 75 degrees 10 minutes 35 seconds East, 187.42 feet;

Thence North 35 degrees 38 minutes 59 seconds East, 266.89 feet;

Thence North 87 degrees 49 minutes 46 seconds East, 68.51 feet;

Thence South 59 degrees 29 minutes 18 seconds East, 73.29 feet;

Thence North 83 degrees 45 minutes 28 seconds East, 272.85 feet;

Thence North 56 degrees 30 minutes 12 seconds East, 310.04 feet;

Thence North 60 degrees 08 minutes 54 seconds East, 157.89 feet;

Thence North 79 degrees 36 minutes 21 seconds East, 167.52 feet;

Thence South 73 degrees 34 minutes 25 seconds East, 91.99 feet;

Thence North 66 degrees 33 minutes 09 seconds East, 185.28 feet;

Thence North 31 degrees 51 minutes 30 seconds East, 272.48 feet;

Thence North 65 degrees 53 minutes 37 seconds East, 562.31 feet;

Thence North 04 degrees 28 minutes 50 seconds West, 159.43 feet;

Thence North 22 degrees 45 minutes 46 seconds East, 100.83 feet;

Thence North 65 degrees 20 minutes 30 seconds East, 381.46 feet;

Thence North 88 degrees 12 minutes 26 seconds East, 87.02 feet to the East line of said Section 15;

Thence South 00 degrees 05 minutes 04 seconds East, 2431.64 feet along the East line of said Section 15 to the Southeast corner thereof and POINT OF BEGINNING.

EXCEPT the following portion of said Section 20;

BEGINNING at the Northeast corner of said Section 20, Township 18 South, Range 20 East, Gila and Salt River Meridian, Cochise County, Arizona;

Thence North 89 degrees 49 minutes 41 seconds West, 2643.71 feet along the North line of said Section 20 to the North Quarter corner thereof;

Thence North 89 degrees 45 minutes 38 seconds West, 2644.50 feet along the North line of said Section 20 to the Northwest corner thereof;

Thence South 00 degrees 07 minutes 01 seconds West, 2650.59 feet along the West line of said Section 20 to the West Quarter corner thereof;

Thence South 00 degrees 04 minutes 09 seconds West, 1323.07 feet along the West line of said Section 20;

Thence South 89 degrees 48 minutes 47 seconds East, 5291.15 feet to a point on the East line of said Section 20;

Thence North 00 degrees 03 minutes 57 seconds East, 1323.64 feet to the East Quarter corner of said Section 20;

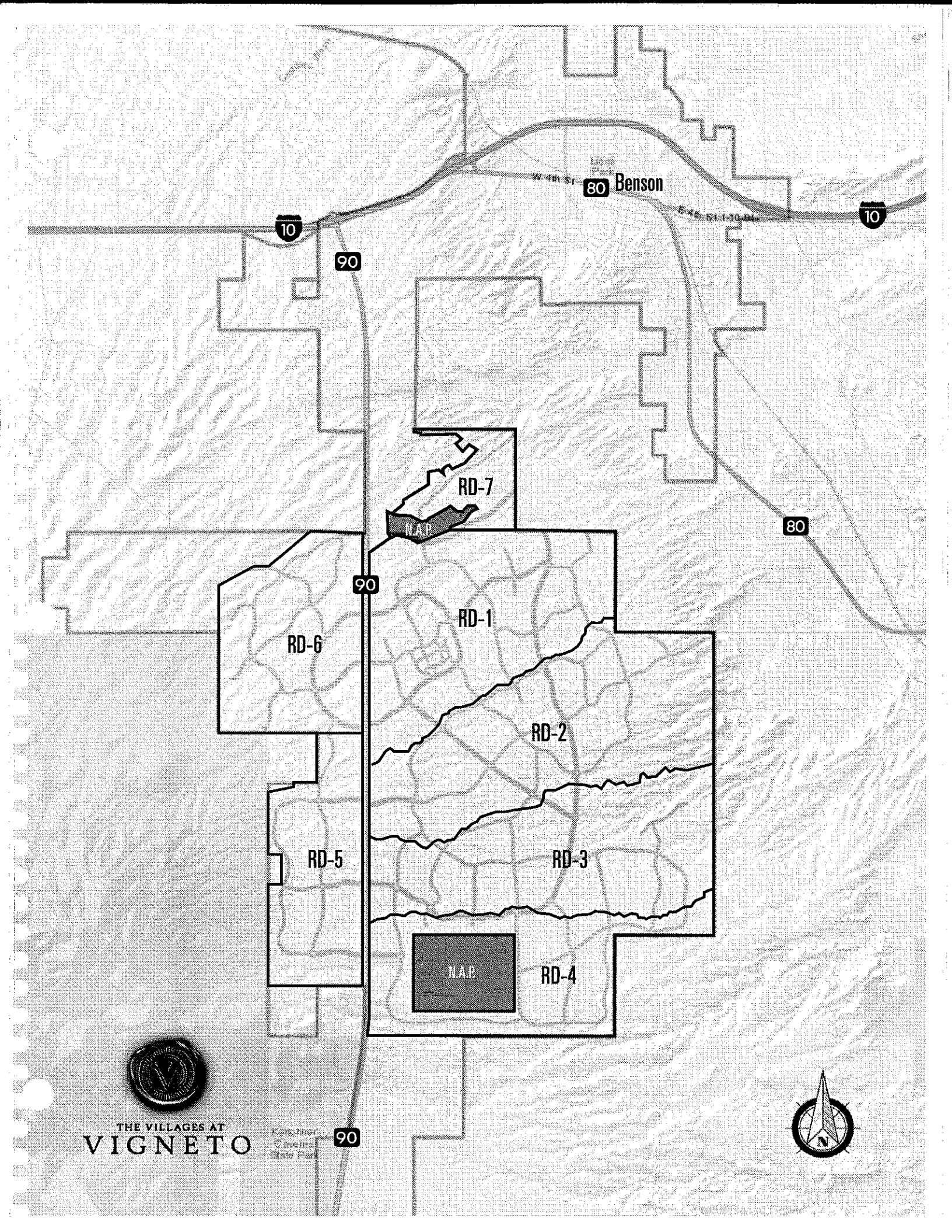
Thence North 00 degrees 03 minutes 17 seconds East, 2648.31 feet along the East line of said Section 20 to the POINT OF BEGINNING.

Containing 21012513 square feet (482.381 acres), more or less

Net area of RD-4 is 69,350,389 square feet (1,592.066 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018


Benson
80
10
90
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RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 7

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 42-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 5, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 42-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 5, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 5 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 5

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 5

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 5) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 5, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 5.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 5, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 5 (RD-5)

Those portions of Sections 7, 18, and 19, Township 18 South, Range 20 East, Gila and Salt River Meridian and Sections 12, 13 and 24, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 33 seconds West, 2643.09 feet along the West line of said Section 7 to the Quarter corner common to said Sections 7 and 12;

Thence South 89 degrees 51 minutes 22 seconds West, 1320.01 feet along the East-West Mid-section line of said Section 12;

Thence South 00 degrees 05 minutes 31 seconds West, 233.00 feet;

Thence South 79 degrees 51 minutes 15 seconds West, 1341.69 feet to the intersection with the North-South Mid-section line of said Section 12;

Thence South 00 degrees 06 minutes 47 seconds West, 2176.57 feet along the said North-South Mid-section line of Section 12 to the Quarter corner common to said Section 12 and 13;

Thence South 00 degrees 11 minutes 06 seconds West, 1102.99 feet along the North-South Mid-section line of said Section 13;

Thence North 89 degrees 48 minutes 01 seconds East, 693.77 feet;

Thence South 00 degrees 15 minutes 22 seconds West, 631.48 feet;

Thence South 00 degrees 11 minutes 06 seconds West, 911.84 feet to the East-West Mid-section line of said Section 13;

Thence South 89 degrees 55 minutes 06 seconds West, 692.97 feet along the said East-West Mid-section line of Section 13 to the Center Quarter thereof;

Thence South 00 degrees 12 minutes 23 seconds West, 2645.80 feet along the North-South Mid-section line of said Section 13 to the Quarter corner common to said Sections 13 and 24;

Thence South 00 degrees 00 minutes 47 seconds West, 2648.04 feet along the North-South Mid-section line of said Section 24 to the Center Quarter corner thereof;

Thence North 89 degrees 56 minutes 35 seconds East, 2638.53 feet along the East-West Mid-section line of said Section 24 to the Quarter corner common to said Sections 19 and 24;

Thence South 89 degrees 54 minutes 56 seconds East, 2409.56 feet along the East-West Mid-section line of said Section 19 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence North 00 degrees 12 minutes 05 seconds East, 2654.03 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 2641.27 feet to the intersection with the Mid-section line of said Section 18;

Thence North 00 degrees 02 minutes 48 seconds East, 2645.86 feet to the intersection with the line common to said Sections 18 and 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2645.71 feet to the intersection with the Mid-section line of said Section 7;

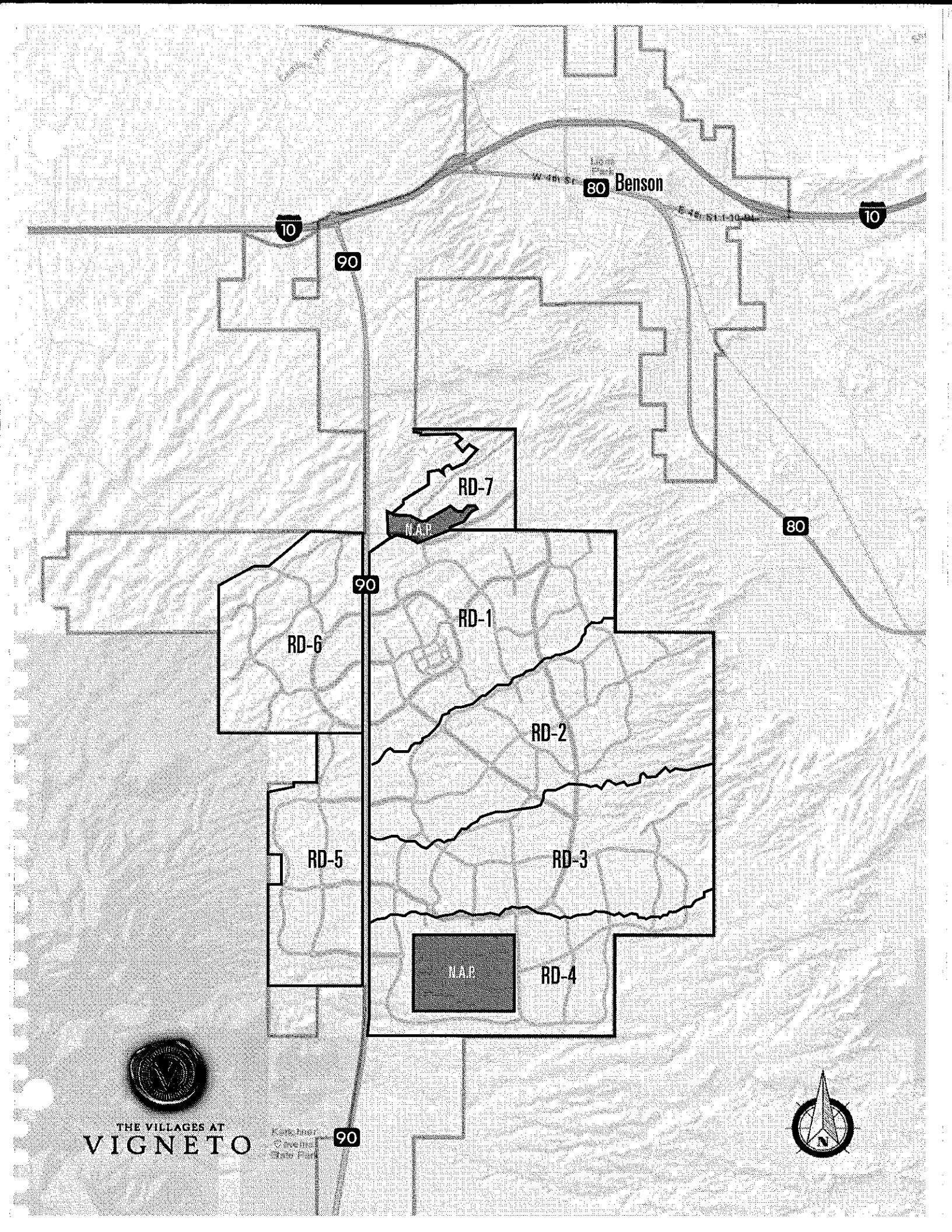
Thence North 00 degrees 02 minutes 13 seconds East, 2652.61 feet to the intersection with the North line of said Section 7;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along said North line to the POINT OF BEGINNING.

Total Area for RD-5 is 58,254,220 square feet (1,337.333 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 8

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 43-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 6, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 43-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 6, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 6 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 6

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 6

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 6) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 6, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 6.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 6, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 6 (RD-6)

Those portions of Section 31, Township 17 South, Range 20 East, Gila and Salt River Meridian; Section 6, Township 18 South, Range 20 East, Gila and Salt River Meridian; Section 36, Township 17 South, Range 19 East, Gila and Salt River Meridian and Section 1, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Southwest corner of said Section 1;

Thence North 00 degrees 11 minutes 46 seconds East, 2647.37 feet along the West line of said Section 1 to the West Quarter corner thereof;

Thence North 00 degrees 16 minutes 18 seconds East, 2619.28 feet along the West line of said Section 1 to the Northwest corner thereof, also being the Southwest corner of said Section 36;

Thence North 00 degrees 04 minutes 41 seconds East, 2462.96 feet along the West line of said Section 36;

Thence departing said West line North 61 degrees 44 minutes 23 seconds East, 2131.29 feet;

Thence South 89 degrees 52 minutes 03 seconds East, 771.87 feet;

Thence North 51 degrees 12 minutes 56 seconds East, 2891.21 feet to the North line of said Section 36;

Thence North 89 degrees 43 minutes 03 seconds East, 400.04 feet along the North line of said Section 36 to the Northeast corner thereof, also being the Northwest corner of said Section 31;

Thence South 87 degrees 25 minutes 37 seconds East, 2373.90 feet along the North line of said Section 31 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence South 00 degrees 05 minutes 35 seconds West, 4.24 feet;

Thence South 00 degrees 11 minutes 49 seconds West, 5144.21 feet to the intersection with the line common to said Sections 31 and 6;

Thence South 00 degrees 02 minutes 49 seconds West, 5278.00 feet to the intersection with the South line of said Section 6;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along the South line of said Section 6 to the Southwest corner thereof, also being the Southeast corner of said Section 1;

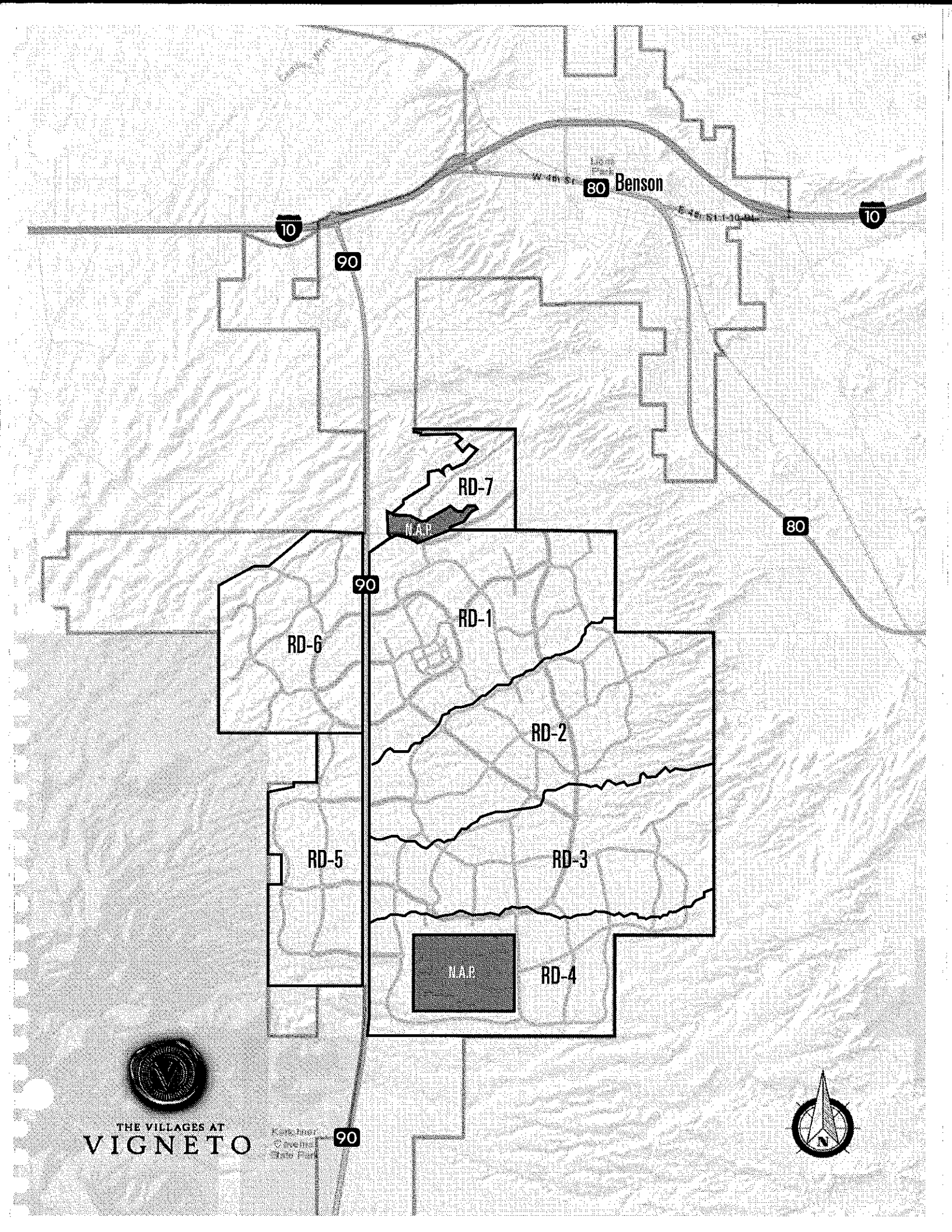
Thence South 89 degrees 41 minutes 11 seconds West, 2639.59 feet along the South line of said Section 1 to the South Quarter corner thereof;

Thence North 89 degrees 53 minutes 24 seconds West, 2640.06 feet along the south line of said Section 1 to the Southwest corner thereof and POINT OF BEGINNING.

Total Area is 72,947,717 square feet (1,674.649 acres), more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 9

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 44-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Revitalization District No. 7, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Revitalization Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 44-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 7, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Revitalization District No. 7 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-6801, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-6807(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 7

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY REVITALIZATION NO. 7

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 7) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Revitalization District No. 7, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-6801 through 48-6819 (the Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

B. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any assessment bonds as described in Section 8 ("Assessment Bonds"), and revenue bonds as described in Section 9 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any

alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's

liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may

determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District (the "Acquisition Period"), the District may use such Assessment Bonds only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

   8.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-6815, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

   8.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property

but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

8.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

8.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

8.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

8.6. At the time of a sale other than a “public sale” (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

8.7. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as

amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

8.8. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

9. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

9.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

9.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

10. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

11. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

12. Successors; Assignments.

    12.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    12.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

    12.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

13. Cooperative Purchasing Authorized.

13.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

13.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

13.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

13.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

13.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

13.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

13.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

13.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts, including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

13.9. The requirements of this Section 13 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

13.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to

any claim or claims by persons or entities other than those expressly identified in this Section.

14. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

15. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

16. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

17. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

19. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

20. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

21. Notices.

    21.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
120 W. 6th Street

Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

With a copy to: Benson City Manager
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85015
(602) 530-8500

21.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

22. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

23. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

23.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Revitalization District No. 7.

24. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

25. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

26. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

27. Default.

    27.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

    27.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Revitalization District No. 7, an Arizona revitalization district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF REVITALIZATION DISTRICT 7 (RD-7)

Block 2, and Well Site abutting Block 2 of THE CANYONS AT WHETSTONE RANCH subdivision, recorded in Book 15 at Page 23, 23A through 23M in the Cochise County Recorder's office, and those portions of Sections 29 and 30, Township 17 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona, described as follows:

BEGINNING at the corner common to Sections 28, 29, 32, 33, Township 17 South, Range 20 East, Gila and Salt River Meridian;

Thence South 89 degrees 27 minutes 57 seconds West, 3637.48 feet along the south line of said Section 29 to the intersection with the exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23, Cochise County records);

Thence the following courses along the said exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23, Cochise County records);

Thence North 67 degrees 00 minutes 00 seconds East, 222.76 feet;

Thence North 19 degrees 00 minutes 00 seconds West, 186.81 feet;

Thence North 71 degrees 00 minutes 00 seconds East, 834.24 feet;

Thence North 36 degrees 00 minutes 56 seconds East, 593.12 feet;

Thence North 54 degrees 10 minutes 41 seconds East, 307.02 feet;

Thence North 06 degrees 30 minutes 54 seconds West, 129.11 feet calculated (North 06 degrees 31 minutes 16 seconds East, 129.10 feet record plat);

Thence South 87 degrees 17 minutes 10 seconds West, 474.99 feet to a point of non-tangent curvature, from which point the radius point bears North 71 degrees 06 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 350.00 feet and a central angle of 094 degrees 44 minutes 07 seconds, 578.70 feet to a point of tangency;

Thence North 66 degrees 22 minutes 03 seconds West, 216.56 feet;

Thence North 44 degrees 37 minutes 46 seconds West, 137.93 feet;

Thence South 77 degrees 28 minutes 12 seconds West, 321.08 feet calculated (321.14 feet record plat) to a point of non-tangent curvature, from which point the radius point bears North 41 degrees 59 minutes 01 seconds West;

Thence along a curve to the right, having a radius of 1975.00 feet and a central angle of 030 degrees 55 minutes 18 seconds, 1065.88 feet calculated (1066.30 record plat);

Thence South 03 degrees 05 minutes 39 seconds East, 120.14 feet;

Thence South 85 degrees 17 minutes 54 seconds West, 54.00 feet (54.02 feet record plat) to a point of non-tangent curvature, from which point the radius point bears South 86 degrees 54 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 25.00 feet and a central angle of 083 degrees 39 minutes 07 seconds, 36.50 feet to a point of tangency;

Thence South 80 degrees 33 minutes 14 seconds West, 118.41 feet to a point of non-tangent curvature, from which point the radius point bears North 09 degrees 26 minutes 44 seconds West;

Thence along a curve to the right, having a radius of 565.00 feet and a central angle of 039 degrees 04 minutes 05 seconds, 385.25 feet to a point of tangency;

Thence North 60 degrees 22 minutes 41 seconds West, 268.45 feet to a point of non-tangent curvature, from which point the radius point bears South 29 degrees 37 minutes 18 seconds West;

Thence along a curve to the left, having a radius of 665.00 feet and a central angle of 032 degrees 12 minutes 41 seconds, 373.86 feet to a point of reverse curvature;

Thence along a curve to the right, having a radius of 1740.00 feet and a central angle of 023 degrees 13 minutes 10 seconds, 705.15 feet to a point on the exterior boundary of THE COTTONWOOD HIGHLANDS subdivision (Book 15, page 25, Cochise County records);

Thence North 21 degrees 04 minutes 11 seconds West, 40.99 feet (41.03 feet record plat) along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence the following courses along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence North 54 degrees 28 minutes 47 seconds East, 761.10 feet;

Thence North 24 degrees 42 minutes 22 seconds West, 211.59 feet;

Thence North 60 degrees 00 minutes 00 seconds East, 1596.14 feet;

Thence North 00 degrees 05 minutes 20 seconds West, 694.84 feet;

Thence North 76 degrees 00 minutes 00 seconds East, 525.85 feet;

Thence South 52 degrees 45 minutes 34 seconds East, 334.83 feet calculated (South 52 degrees 50 minutes 34 seconds East, 334.94 feet record plat) to the Southwest corner of Lot 140 of said THE COTTONWOOD HIGHLANDS subdivision;

Thence departing said exterior boundary the following courses around the perimeter of said Lot 140;

Thence North 08 degrees 11 minutes 10 seconds West, 228.47 feet to a point of non-tangent curvature, from which point the radius point bears North 08 degrees 11 minutes 10 seconds West;

Thence along a curve to the left, having a radius of 320.00 feet and a central angle of 026 degrees 25 minutes 28 seconds, 147.58 feet to a point of tangency;

Thence North 55 degrees 23 minutes 21 seconds East, 286.39 feet;

Thence South 31 degrees 08 minutes 59 seconds East, 281.44 feet to the intersection with said exterior boundary;

Thence the following courses along said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 67 degrees 27 minutes 16 seconds East, 510.87 feet;

Thence North 44 degrees 10 minutes 00 seconds East, 1158.98 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 450.00 feet;

Thence South 44 degrees 10 minutes 00 seconds West, 550.00 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 500.00 feet to the intersection with the exterior boundary of that property described within the Special Warranty Deed to the City of Benson recorded in Document No. 0605-18326 in the office of the Cochise County Recorder;

Thence the following courses along said Special Warranty Deed;

Thence North 44 degrees 10 minutes 24 seconds East, 449.99 feet calculated;

Thence North 45 degrees 49 minutes 54 seconds West, 410.07 feet;

Thence South 88 degrees 22 minutes 01 seconds West, 1982.49 feet to the said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 01 degrees 38 minutes 00 seconds West, 100.00 feet along said exterior boundary;

Thence South 88 degrees 21 minutes 16 seconds West 297.61 feet along said exterior boundary to the intersection with the West line of Section 29;

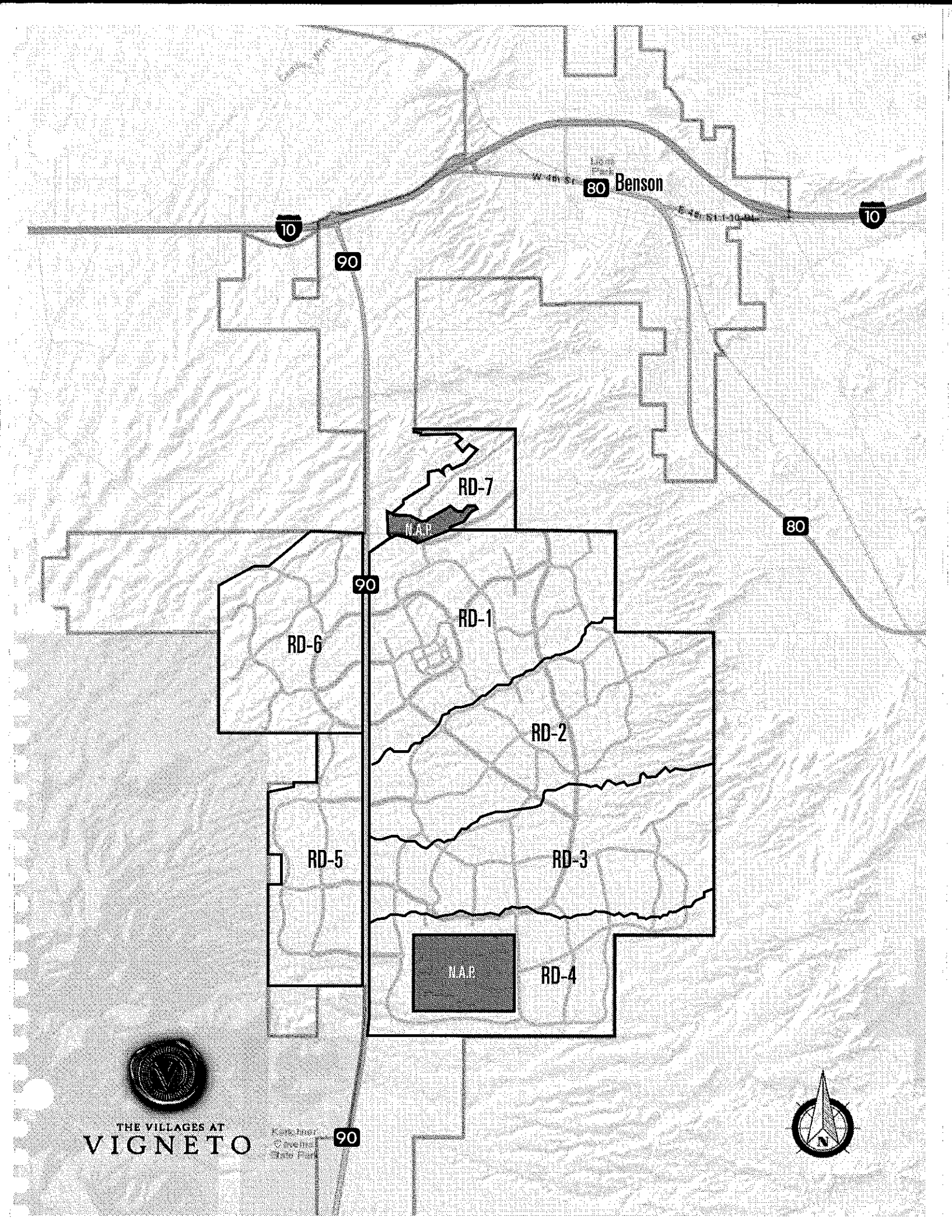
Thence North 00 degrees 39 minutes 14 seconds West, 100.00 feet along said West line to the Northwest corner of said Section 29;

Thence North 88 degrees 22 minutes 00 seconds East, 2685.18 feet along the north line of the Northwest quarter of said Section 29 to the North quarter corner thereof;

Thence South 88 degrees 52 minutes 53 seconds East, 2632.56 feet along the north line of the Northeast quarter of said Section 29 to the Northeast corner thereof;

Thence South 00 degrees 21 minutes 07 seconds East, 5284.19 feet along the East line of said Section 29 to the said corner common to Sections 28, 29, 32, 33 and POINT OF BEGINNING.

Total Area for RD-7 is 21,325,616 square feet (489.569 acres), more or less


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 10

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 45-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 1 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 45-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 1 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 45-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 1 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 1 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 1";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 2,492 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 1" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act;

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 1 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A - Legal Description
Exhibit B - Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 1 (RD-1)

Block 4 of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, Page 23-Maps) and those portions of Sections 31, 32, and 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, and those portions of Sections 4, 5, 6, 7, 8, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 4429.51 feet along the East line of said Section 33 to the intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 64 degrees 29 minutes 38 seconds West, 120.55 feet;

Thence South 88 degrees 09 minutes 16 seconds West, 364.88 feet;

Thence South 66 degrees 53 minutes 32 seconds West, 155.11 feet;

Thence South 11 degrees 01 minutes 33 seconds West, 152.59 feet;

Thence South 65 degrees 49 minutes 59 seconds West, 174.13 feet;

Thence North 82 degrees 50 minutes 46 seconds West, 323.03 feet;

Thence South 77 degrees 27 minutes 14 seconds West, 102.64 feet;

Thence South 45 degrees 39 minutes 27 seconds West, 233.02 feet;

Thence South 49 degrees 59 minutes 18 seconds West, 169.07 feet;

Thence South 19 degrees 00 minutes 54 seconds West, 109.22 feet;

Thence South 01 degrees 58 minutes 57 seconds West, 118.77 feet;

Thence South 09 degrees 53 minutes 21 seconds West, 62.03 feet;

Thence South 39 degrees 53 minutes 19 seconds West, 250.31 feet;

Thence South 07 degrees 15 minutes 47 seconds West, 129.45 feet;

Thence South 15 degrees 16 minutes 55 seconds West, 146.11 feet;

Thence South 39 degrees 04 minutes 33 seconds West, 235.09 feet;

Thence South 66 degrees 00 minutes 14 seconds West, 77.91 feet;

Thence South 30 degrees 35 minutes 58 seconds West, 90.41 feet;

Thence South 50 degrees 44 minutes 30 seconds West, 239.03 feet;

Thence South 82 degrees 55 minutes 26 seconds West, 142.40 feet;

Thence South 62 degrees 37 minutes 56 seconds West, 123.35 feet;

Thence South 64 degrees 48 minutes 35 seconds West, 199.70 feet;

Thence South 74 degrees 05 minutes 59 seconds West, 294.77 feet;

Thence North 88 degrees 25 minutes 10 seconds West, 182.02 feet;

Thence South 32 degrees 34 minutes 08 seconds West, 101.02 feet;

Thence South 69 degrees 14 minutes 45 seconds West, 182.38 feet;

Thence South 83 degrees 32 minutes 20 seconds West, 249.51 feet;

Thence South 69 degrees 03 minutes 42 seconds West, 189.06 feet;

Thence South 37 degrees 06 minutes 52 seconds West, 315.65 feet;

Thence South 49 degrees 24 minutes 21 seconds West, 389.28 feet;

Thence South 73 degrees 07 minutes 20 seconds West, 365.03 feet;

Thence South 51 degrees 36 minutes 19 seconds West, 203.81 feet;

Thence South 66 degrees 32 minutes 03 seconds West, 632.60 feet;

Thence South 24 degrees 33 minutes 15 seconds West, 340.85 feet;

Thence South 70 degrees 12 minutes 37 seconds West, 189.43 feet;

Thence North 86 degrees 07 minutes 05 seconds West, 270.60 feet;

Thence North 84 degrees 43 minutes 30 seconds West, 223.92 feet;

Thence South 59 degrees 21 minutes 11 seconds West, 166.03 feet;

Thence South 48 degrees 55 minutes 30 seconds West, 251.52 feet;

Thence South 48 degrees 23 minutes 00 seconds West, 458.34 feet;

Thence South 82 degrees 49 minutes 52 seconds West, 204.15 feet;

Thence South 47 degrees 32 minutes 28 seconds West, 317.29 feet;

Thence South 48 degrees 33 minutes 53 seconds West, 290.73 feet;

Thence South 82 degrees 35 minutes 18 seconds West, 186.90 feet;

Thence South 65 degrees 11 minutes 55 seconds West, 284.93 feet;

Thence South 84 degrees 16 minutes 14 seconds West, 165.53 feet;

Thence South 86 degrees 09 minutes 29 seconds West, 80.23 feet;

Thence South 73 degrees 38 minutes 07 seconds West, 297.47 feet;

Thence South 71 degrees 13 minutes 38 seconds West, 132.56 feet;

Thence South 49 degrees 20 minutes 13 seconds West, 159.69 feet;

Thence South 20 degrees 02 minutes 06 seconds West, 73.82 feet;

Thence South 68 degrees 22 minutes 41 seconds West, 267.80 feet;

Thence South 54 degrees 06 minutes 04 seconds West, 163.64 feet;

Thence South 18 degrees 16 minutes 45 seconds West, 160.11 feet;

Thence South 13 degrees 17 minutes 24 seconds West, 288.12 feet;

Thence South 44 degrees 04 minutes 45 seconds West, 357.07 feet;

Thence South 59 degrees 01 minutes 55 seconds West, 388.00 feet;

Thence South 46 degrees 57 minutes 57 seconds West, 294.67 feet;

Thence South 64 degrees 30 minutes 40 seconds West, 194.38 feet;

Thence South 00 degrees 05 minutes 15 seconds West, 77.89 feet;

Thence South 27 degrees 26 minutes 09 seconds West, 50.55 feet;

Thence South 58 degrees 08 minutes 52 seconds West, 168.89 feet;

Thence South 87 degrees 16 minutes 29 seconds West, 135.06 feet;

Thence South 74 degrees 29 minutes 57 seconds West, 73.06 feet;

Thence South 72 degrees 14 minutes 45 seconds West, 100.20 feet;

Thence South 38 degrees 05 minutes 55 seconds West, 129.88 feet;

Thence South 26 degrees 19 minutes 47 seconds West, 246.55 feet;

Thence South 83 degrees 40 minutes 48 seconds West, 214.30 feet;

Thence North 89 degrees 55 minutes 04 seconds West, 226.97 feet;

Thence North 85 degrees 49 minutes 38 seconds West, 201.73 feet;

Thence South 71 degrees 37 minutes 39 seconds West, 50.95 feet;

Thence South 88 degrees 44 minutes 54 seconds West, 89.15 feet;

Thence North 70 degrees 15 minutes 30 seconds West, 145.97 feet;

Thence North 70 degrees 55 minutes 51 seconds West, 105.53 feet;

Thence South 67 degrees 40 minutes 36 seconds West, 191.44 feet;

Thence South 52 degrees 36 minutes 12 seconds West, 107.79 feet;

Thence South 31 degrees 01 minutes 44 seconds West, 156.75 feet;

Thence South 44 degrees 18 minutes 50 seconds West, 92.77 feet;

Thence South 37 degrees 17 minutes 53 seconds West, 154.80 feet;

Thence South 05 degrees 37 minutes 31 seconds West, 68.68 feet;

Thence South 34 degrees 03 minutes 44 seconds West, 86.80 feet;

Thence South 55 degrees 22 minutes 17 seconds West, 40.65 feet;

Thence South 64 degrees 19 minutes 50 seconds West, 276.12 feet;

Thence South 65 degrees 55 minutes 52 seconds West, 122.93 feet;

Thence South 56 degrees 47 minutes 37 seconds West, 138.59 feet;

Thence South 23 degrees 40 minutes 36 seconds West, 143.21 feet;

Thence South 35 degrees 59 minutes 15 seconds West, 71.98 feet to the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 13 seconds East, 679.96 feet;

Thence South 89 degrees 57 minutes 49 seconds East, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 60.00 feet;

Thence North 89 degrees 57 minutes 46 seconds West, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 311.62 feet;

Thence South 89 degrees 57 minutes 48 seconds East, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 90.00 feet;

Thence North 89 degrees 57 minutes 48 seconds West, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 808.47 feet to the intersection with the line common to said Sections 6 and 7;

Thence North 00 degrees 02 minutes 49 seconds East, 5277.56 feet to the intersection with the line common to said Sections 6 and 31;

Thence North 00 degrees 11 minutes 49 seconds East, 4167.51 feet;

Thence departing said East right-of-way North 57 degrees 00 minutes 00 seconds East, 1250.67 feet along the Southern exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23B - Cochise County records) to the Southwest corner of Block 4 of said THE CANYONS AT RANCH WHETSTONE subdivision;

Thence the following courses along the exterior boundary of said Block 4;

Thence North 01 degrees 11 minutes 21 seconds East, 197.16 feet;

Thence South 88 degrees 55 minutes 15 seconds East, 838.06 feet to a point of curvature;

Thence along a curve to the right, having a radius of 925.00 feet and a central angle of 053 degrees 41 minutes 43 seconds, 866.87 feet to the said Southern exterior boundary;

Thence South 86 degrees 00 minutes 00 seconds East, 121.89 feet along said Southern exterior boundary;

Thence North 67 degrees 00 minutes 00 seconds East, 1527.20 feet along said Southern exterior boundary to the North line of said Section 32;

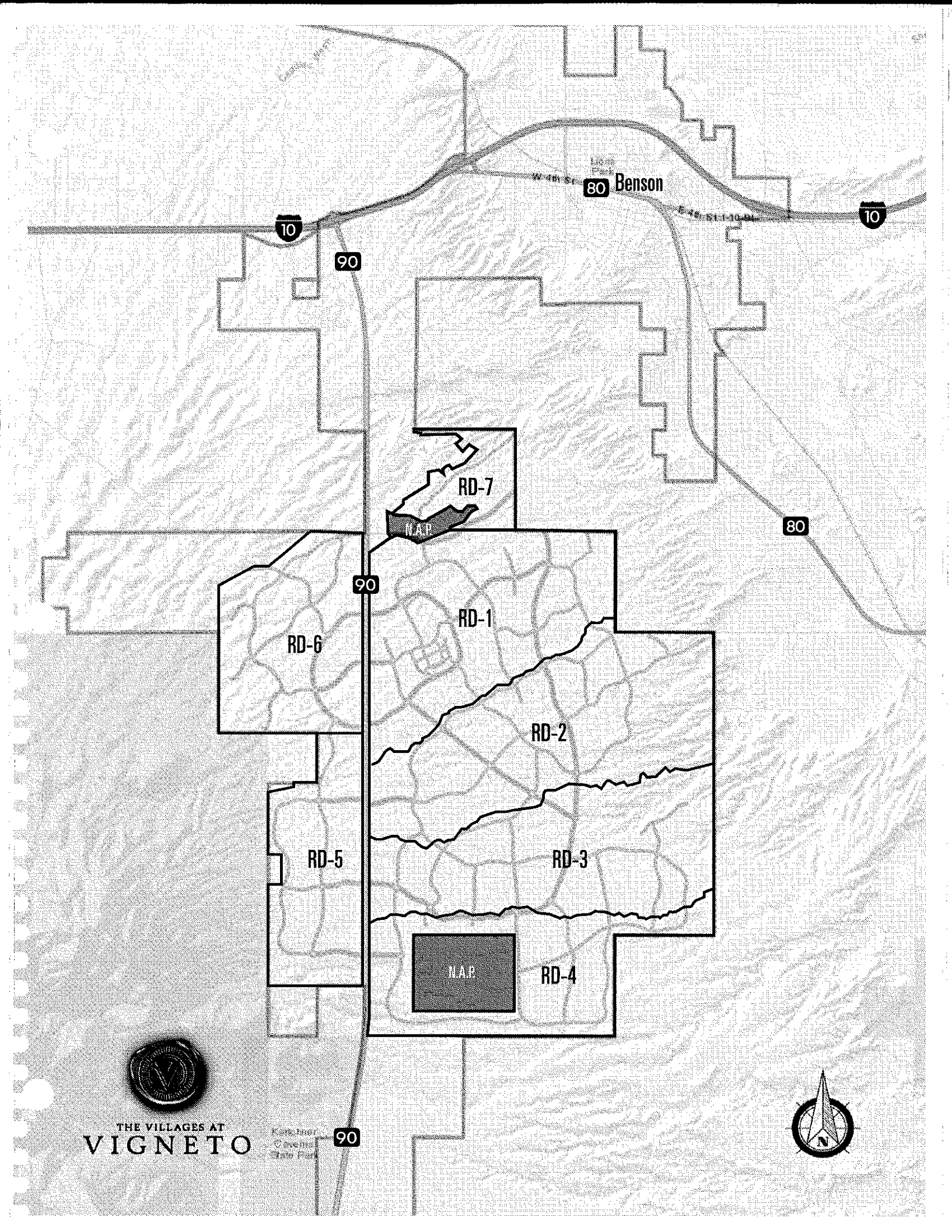
Thence North 89 degrees 27 minutes 57 seconds East, 3637.48 feet along the North line of said Section 32 to the Northeast corner thereof, also being the Northwest corner of said Section 33;

Thence South 89 degrees 25 minutes 51 seconds East, 5314.82 feet along the North line of said Section 33 to the POINT OF BEGINNING;

Net area of RD-1 is 108,545,692 square feet (2,491.866 acres) more or less.

EXHIBIT B

Boundary Map


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 11

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 46-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 2 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 46-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 2 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 46-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 2 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 2 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 2";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 2,833 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 2" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 2 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A - Legal Description
Exhibit B - Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 2 (RD-2)

Those portions of Sections 3, 4, 5, 7, 8, 9, 10, 17, 18, Township 18 South, Range 20 East, Gila and Salt River Meridian, and Section 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 3;

Thence South 00 degrees 13 minutes 48 seconds West, 2628.45 feet along the East line of said Section 3 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 57 seconds West, 2638.43 feet along said East line of Section 3 to the Southeast corner thereof, also being the Northeast corner of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 1619.55 feet along the East line of said Section 10 to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 75 degrees 40 minutes 21 seconds West, 1456.66 feet;

Thence North 81 degrees 41 minutes 27 seconds West, 612.55 feet;

Thence South 59 degrees 44 minutes 29 seconds West, 349.86 feet;

Thence North 42 degrees 36 minutes 39 seconds West, 230.87 feet;

Thence North 48 degrees 08 minutes 07 seconds West, 131.95 feet;

Thence South 37 degrees 46 minutes 36 seconds West, 91.24 feet;

Thence South 46 degrees 34 minutes 18 seconds West, 302.64 feet;

Thence South 45 degrees 34 minutes 17 seconds West, 317.71 feet;

Thence South 85 degrees 33 minutes 00 seconds West, 385.90 feet;

Thence North 68 degrees 33 minutes 20 seconds West, 187.10 feet;

Thence North 30 degrees 30 minutes 54 seconds West, 178.79 feet;

Thence South 68 degrees 01 minutes 10 seconds West, 154.53 feet;

Thence South 29 degrees 33 minutes 22 seconds West, 100.96 feet;

Thence South 04 degrees 52 minutes 10 seconds West, 272.06 feet;

Thence South 17 degrees 31 minutes 17 seconds West, 89.86 feet;

Thence South 73 degrees 29 minutes 44 seconds West, 342.58 feet;

Thence South 84 degrees 04 minutes 58 seconds West, 309.14 feet;

Thence North 50 degrees 33 minutes 54 seconds West, 255.37 feet;

Thence South 73 degrees 27 minutes 01 seconds West, 388.52 feet;

Thence North 73 degrees 16 minutes 25 seconds West, 289.39 feet;

Thence North 46 degrees 20 minutes 28 seconds West, 105.77 feet;

Thence North 72 degrees 45 minutes 58 seconds West, 101.10 feet;

Thence South 70 degrees 30 minutes 18 seconds West, 123.73 feet;

Thence South 31 degrees 00 minutes 33 seconds West, 440.58 feet;

Thence North 58 degrees 24 minutes 16 seconds West, 310.66 feet;

Thence South 73 degrees 15 minutes 29 seconds West, 256.78 feet;

Thence North 71 degrees 39 minutes 29 seconds West, 353.26 feet;

Thence North 87 degrees 00 minutes 47 seconds West, 880.51 feet;

Thence South 61 degrees 22 minutes 55 seconds West, 266.89 feet;

Thence South 74 degrees 50 minutes 37 seconds West, 146.51 feet;

Thence South 52 degrees 54 minutes 30 seconds West, 111.58 feet;

Thence South 73 degrees 56 minutes 59 seconds West, 321.02 feet;

Thence North 89 degrees 06 minutes 33 seconds West, 270.12 feet;

Thence South 76 degrees 01 minutes 59 seconds West, 244.37 feet;

Thence South 27 degrees 51 minutes 45 seconds West, 208.97 feet;

Thence South 11 degrees 48 minutes 46 seconds East, 177.85 feet;

Thence South 22 degrees 24 minutes 06 seconds West, 372.69 feet;

Thence South 61 degrees 59 minutes 05 seconds West, 296.61 feet;

Thence South 83 degrees 25 minutes 31 seconds West, 1212.17 feet;

Thence South 69 degrees 18 minutes 17 seconds West, 229.11 feet;

Thence North 85 degrees 48 minutes 33 seconds West, 150.93 feet;

Thence South 79 degrees 20 minutes 49 seconds West, 231.40 feet;

Thence North 89 degrees 06 minutes 26 seconds West, 245.49 feet;

Thence South 73 degrees 18 minutes 43 seconds West, 163.03 feet;

Thence South 79 degrees 41 minutes 17 seconds West, 286.85 feet;

Thence South 70 degrees 03 minutes 37 seconds West, 476.85 feet;

Thence South 44 degrees 26 minutes 50 seconds West, 347.78 feet;

Thence South 63 degrees 37 minutes 21 seconds West, 181.58 feet;

Thence South 58 degrees 00 minutes 12 seconds West, 102.39 feet;

Thence South 35 degrees 54 minutes 30 seconds West, 149.92 feet;

Thence South 59 degrees 59 minutes 00 seconds West, 220.61 feet;

Thence North 85 degrees 10 minutes 43 seconds West, 185.96 feet;

Thence South 49 degrees 43 minutes 20 seconds West, 96.40 feet;

Thence South 27 degrees 37 minutes 15 seconds West, 220.38 feet;

Thence South 40 degrees 29 minutes 42 seconds West, 377.70 feet;

Thence South 77 degrees 36 minutes 09 seconds West, 417.96 feet;

Thence South 65 degrees 41 minutes 17 seconds West, 162.28 feet;

Thence North 61 degrees 05 minutes 39 seconds West, 197.48 feet;

Thence North 75 degrees 19 minutes 35 seconds West, 155.11 feet;

Thence South 74 degrees 04 minutes 53 seconds West, 135.63 feet;

Thence South 32 degrees 49 minutes 20 seconds West, 76.70 feet;

Thence South 67 degrees 35 minutes 45 seconds West, 123.71 feet;

Thence South 28 degrees 40 minutes 17 seconds West, 124.55 feet;

Thence South 52 degrees 53 minutes 13 seconds West, 372.69 feet;

Thence North 68 degrees 26 minutes 31 seconds West, 379.77 feet;

Thence North 38 degrees 34 minutes 25 seconds West, 242.07 feet;

Thence North 74 degrees 46 minutes 26 seconds West, 177.73 feet;

Thence South 81 degrees 55 minutes 11 seconds West, 202.79 feet;

Thence North 73 degrees 50 minutes 14 seconds West, 142.98 feet;

Thence North 81 degrees 13 minutes 05 seconds West, 104.85 feet;

Thence North 66 degrees 36 minutes 09 seconds West, 297.43 feet;

Thence North 41 degrees 39 minutes 30 seconds West, 192.04 feet;

Thence North 88 degrees 10 minutes 36 seconds West, 246.62 feet;

Thence South 70 degrees 26 minutes 59 seconds West, 302.39 feet;

Thence South 75 degrees 45 minutes 27 seconds West, 426.37 feet;

Thence North 77 degrees 57 minutes 49 seconds West, 272.79 feet;

Thence North 66 degrees 13 minutes 21 seconds West, 361.42 feet to a point on the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 48 seconds East, 123.01 feet to the intersection with the line common to said Sections 7 and 18;

Thence North 00 degrees 02 minutes 13 seconds East, 3348.26 feet to an intersection with existing drainage;

Thence the following courses along said existing drainage;

Thence North 35 degrees 59 minutes 15 seconds East, 71.98 feet;

Thence North 23 degrees 40 minutes 36 seconds East, 143.21 feet;

Thence North 56 degrees 47 minutes 37 seconds East, 138.59 feet;

Thence North 65 degrees 55 minutes 52 seconds East, 122.93 feet;

Thence North 64 degrees 19 minutes 50 seconds East, 276.12 feet;

Thence North 55 degrees 22 minutes 17 seconds East, 40.65 feet;

Thence North 34 degrees 03 minutes 44 seconds East, 86.80 feet;

Thence North 05 degrees 37 minutes 31 seconds East, 68.68 feet;

Thence North 37 degrees 17 minutes 53 seconds East, 154.80 feet;

Thence North 44 degrees 18 minutes 50 seconds East, 92.77 feet;

Thence North 31 degrees 01 minutes 44 seconds East, 156.75 feet;

Thence North 52 degrees 36 minutes 12 seconds East, 107.79 feet;

Thence North 67 degrees 40 minutes 36 seconds East, 191.44 feet;

Thence South 70 degrees 55 minutes 51 seconds East, 105.53 feet;

Thence South 70 degrees 15 minutes 30 seconds East, 145.97 feet;

Thence North 88 degrees 44 minutes 54 seconds East, 89.15 feet;

Thence North 71 degrees 37 minutes 39 seconds East, 50.95 feet;

Thence South 85 degrees 49 minutes 38 seconds East, 201.73 feet;

Thence South 89 degrees 55 minutes 04 seconds East, 226.97 feet;

Thence North 83 degrees 40 minutes 48 seconds East, 214.30 feet;

Thence North 26 degrees 19 minutes 47 seconds East, 246.55 feet;

Thence North 38 degrees 05 minutes 55 seconds East, 129.88 feet;

Thence North 72 degrees 14 minutes 45 seconds East, 100.20 feet;

Thence North 74 degrees 29 minutes 57 seconds East, 73.06 feet;

Thence North 87 degrees 16 minutes 29 seconds East, 135.06 feet;

Thence North 58 degrees 08 minutes 52 seconds East, 168.89 feet;

Thence North 27 degrees 26 minutes 09 seconds East, 50.55 feet;

Thence North 00 degrees 05 minutes 15 seconds East, 77.89 feet;

Thence North 64 degrees 30 minutes 40 seconds East, 194.38 feet;

Thence North 46 degrees 57 minutes 57 seconds East, 294.67 feet;

Thence North 59 degrees 01 minutes 55 seconds East, 388.00 feet;

Thence North 44 degrees 04 minutes 45 seconds East, 357.07 feet;

Thence North 13 degrees 17 minutes 24 seconds East, 288.12 feet;

Thence North 18 degrees 16 minutes 45 seconds East, 160.11 feet;

Thence North 54 degrees 06 minutes 04 seconds East, 163.64 feet;

Thence North 68 degrees 22 minutes 41 seconds East, 267.80 feet;

Thence North 20 degrees 02 minutes 06 seconds East, 73.82 feet;

Thence North 49 degrees 20 minutes 13 seconds East, 159.69 feet;

Thence North 71 degrees 13 minutes 38 seconds East, 132.56 feet;

Thence North 73 degrees 38 minutes 07 seconds East, 297.47 feet;

Thence North 86 degrees 09 minutes 29 seconds East, 80.23 feet;

Thence North 84 degrees 16 minutes 14 seconds East, 165.53 feet;

Thence North 65 degrees 11 minutes 55 seconds East, 284.93 feet;

Thence North 82 degrees 35 minutes 18 seconds East, 186.90 feet;

Thence North 48 degrees 33 minutes 53 seconds East, 290.73 feet;

Thence North 47 degrees 32 minutes 28 seconds East, 317.29 feet;

Thence North 82 degrees 49 minutes 52 seconds East, 204.15 feet;

Thence North 48 degrees 23 minutes 00 seconds East, 458.34 feet;

Thence North 48 degrees 55 minutes 30 seconds East, 251.52 feet;

Thence North 59 degrees 21 minutes 11 seconds East, 166.03 feet;

Thence South 84 degrees 43 minutes 30 seconds East, 223.92 feet;

Thence South 86 degrees 07 minutes 05 seconds East, 270.60 feet;

Thence North 70 degrees 12 minutes 37 seconds East, 189.43 feet;

Thence North 24 degrees 33 minutes 15 seconds East, 340.85 feet;

Thence North 66 degrees 32 minutes 03 seconds East, 632.60 feet;

Thence North 51 degrees 36 minutes 19 seconds East, 203.81 feet;

Thence North 73 degrees 07 minutes 20 seconds East, 365.03 feet;

Thence North 49 degrees 24 minutes 21 seconds East, 389.28 feet;

Thence North 37 degrees 06 minutes 52 seconds East, 315.65 feet;

Thence North 69 degrees 03 minutes 42 seconds East, 189.06 feet;

Thence North 83 degrees 32 minutes 20 seconds East, 249.51 feet;

Thence North 69 degrees 14 minutes 45 seconds East, 182.38 feet;

Thence North 32 degrees 34 minutes 08 seconds East, 101.02 feet;

Thence South 88 degrees 25 minutes 10 seconds East, 182.02 feet;

Thence North 74 degrees 05 minutes 59 seconds East, 294.77 feet;

Thence North 64 degrees 48 minutes 35 seconds East, 199.70 feet;

Thence North 62 degrees 37 minutes 56 seconds East, 123.35 feet;

Thence North 82 degrees 55 minutes 26 seconds East, 142.40 feet;

Thence North 50 degrees 44 minutes 30 seconds East, 239.03 feet;

Thence North 30 degrees 35 minutes 58 seconds East, 90.41 feet;

Thence North 66 degrees 00 minutes 14 seconds East, 77.91 feet;

Thence North 39 degrees 04 minutes 33 seconds East, 235.09 feet;

Thence North 15 degrees 16 minutes 55 seconds East, 146.11 feet;

Thence North 07 degrees 15 minutes 47 seconds East, 129.45 feet;

Thence North 39 degrees 53 minutes 19 seconds East, 250.31 feet;

Thence North 09 degrees 53 minutes 21 seconds East, 62.03 feet;

Thence North 01 degrees 58 minutes 57 seconds East, 118.77 feet;

Thence North 19 degrees 00 minutes 54 seconds East, 109.22 feet;

Thence North 49 degrees 59 minutes 18 seconds East, 169.07 feet;

Thence North 45 degrees 39 minutes 27 seconds East, 233.02 feet;

Thence North 77 degrees 27 minutes 14 seconds East, 102.64 feet;

Thence South 82 degrees 50 minutes 46 seconds East, 323.03 feet;

Thence North 65 degrees 49 minutes 59 seconds East, 174.13 feet;

Thence North 11 degrees 01 minutes 33 seconds East, 152.59 feet;

Thence North 66 degrees 53 minutes 32 seconds East, 155.11 feet;

Thence North 88 degrees 09 minutes 16 seconds East, 364.88 feet;

Thence North 64 degrees 29 minutes 38 seconds East, 120.55 feet to a point on the East line of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 812.69 feet along the East line of said Section 33 to the Southeast corner thereof, also being the Northwest corner of said Section 3;

Thence South 89 degrees 56 minutes 45 seconds East, 2645.46 feet along the North line of said Section 3 to the North Quarter corner thereof;

Thence South 89 degrees 58 minutes 54 seconds East, 2654.11 feet along said

North line of Section 3 to the Northeast corner of said Section 3 and POINT OF BEGINNING.

Containing 2500 square feet (0.0574 acres), more or less

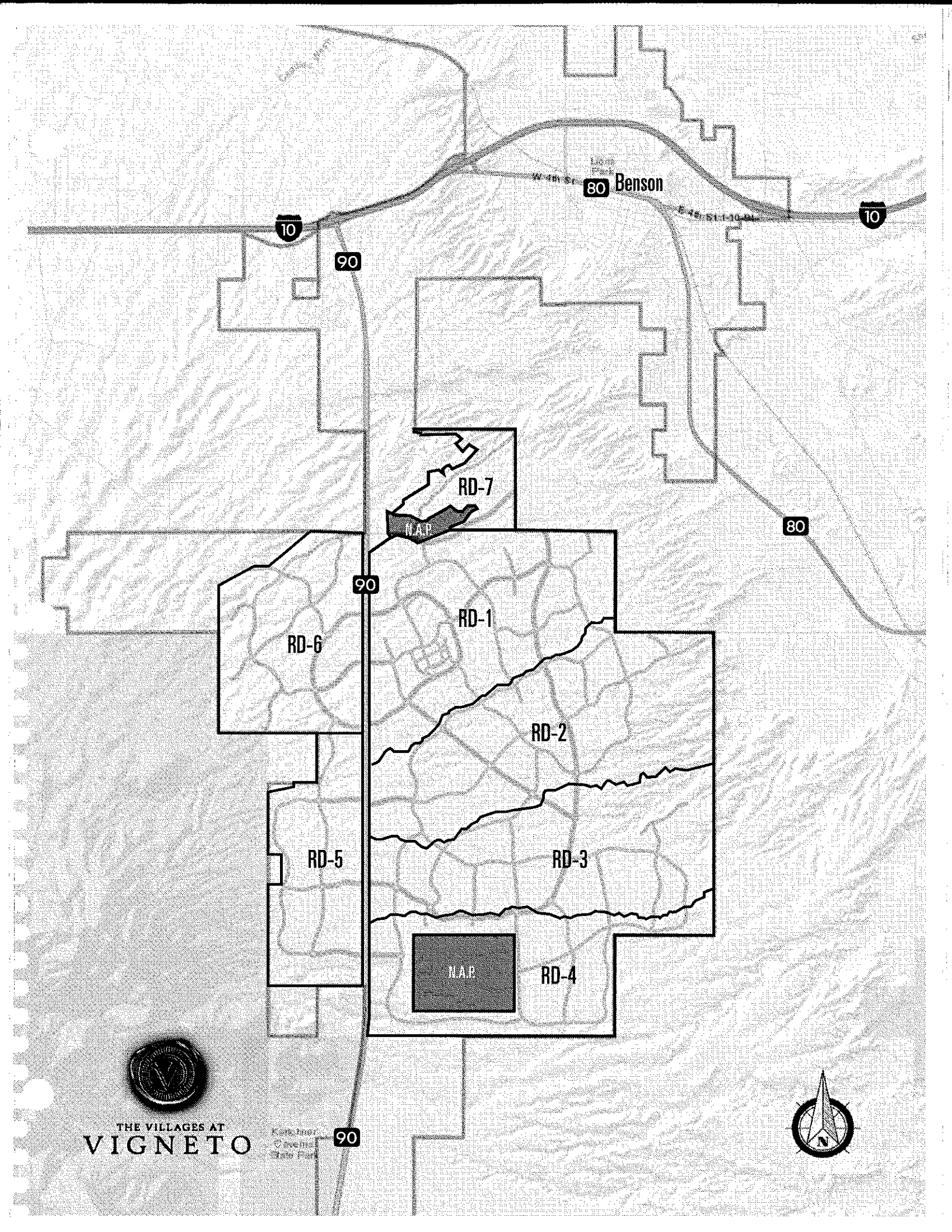
Net area of RD-2 is 123,423,046 square feet (2,833.403 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018

EXHIBIT B

Boundary Map


Benson
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RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 12

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 47-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 3 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 47-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 3 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 47-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 3 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 3 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 3";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 2,398 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 3" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 3 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A - Legal Description
Exhibit B - Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 3 (RD-3)

Those portions of Sections 8, 9, 10, 15, 16, 17, 18, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 15;

Thence South 00 degrees 10 minutes 16 seconds West, 2648.49 feet along the East line of said Section 15 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 04 seconds East, 233.83 feet along the said East line of Section 15 to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 88 degrees 12 minutes 26 seconds West, 87.02 feet;

Thence South 65 degrees 20 minutes 30 seconds West, 381.46 feet;

Thence South 22 degrees 45 minutes 46 seconds West, 100.83 feet;

Thence South 04 degrees 28 minutes 50 seconds East, 159.43 feet;

Thence South 65 degrees 53 minutes 37 seconds West, 562.31 feet;

Thence South 31 degrees 51 minutes 30 seconds West, 272.48 feet;

Thence South 66 degrees 33 minutes 09 seconds West, 185.28 feet;

Thence North 73 degrees 34 minutes 25 seconds West, 91.99 feet;

Thence South 79 degrees 36 minutes 21 seconds West, 167.52 feet;

Thence South 60 degrees 08 minutes 54 seconds West, 157.89 feet;

Thence South 56 degrees 30 minutes 12 seconds West, 310.04 feet;

Thence South 83 degrees 45 minutes 28 seconds West, 272.85 feet;

Thence North 59 degrees 29 minutes 18 seconds West, 73.29 feet;

Thence South 87 degrees 49 minutes 46 seconds West, 68.51 feet;

Thence South 35 degrees 38 minutes 59 seconds West, 266.89 feet;

Thence North 75 degrees 10 minutes 35 seconds West, 187.42 feet;

Thence South 44 degrees 39 minutes 33 seconds West, 197.41 feet;

Thence North 64 degrees 41 minutes 42 seconds West, 167.96 feet;

Thence South 86 degrees 01 minutes 46 seconds West, 376.74 feet;

Thence South 63 degrees 50 minutes 57 seconds West, 288.18 feet;

Thence North 53 degrees 38 minutes 03 seconds West, 138.90 feet;

Thence South 88 degrees 25 minutes 25 seconds West, 277.31 feet;

Thence North 28 degrees 46 minutes 10 seconds West, 221.04 feet;

Thence North 81 degrees 58 minutes 49 seconds West, 269.27 feet;

Thence South 66 degrees 43 minutes 13 seconds West, 435.30 feet;

Thence North 52 degrees 36 minutes 50 seconds West, 315.02 feet;

Thence South 67 degrees 18 minutes 30 seconds West, 278.11 feet;

Thence North 71 degrees 27 minutes 03 seconds West, 347.85 feet;

Thence North 84 degrees 46 minutes 22 seconds West, 703.82 feet;

Thence South 65 degrees 07 minutes 54 seconds West, 329.09 feet;

Thence South 89 degrees 51 minutes 47 seconds West, 381.25 feet;

Thence South 80 degrees 41 minutes 23 seconds West, 397.40 feet;

Thence South 63 degrees 23 minutes 57 seconds West, 202.81 feet;

Thence South 75 degrees 21 minutes 38 seconds West, 93.79 feet;

Thence North 64 degrees 43 minutes 52 seconds West, 129.20 feet;

Thence North 89 degrees 55 minutes 31 seconds West, 215.89 feet;

Thence South 73 degrees 48 minutes 07 seconds West, 208.24 feet;

Thence North 62 degrees 51 minutes 23 seconds West, 221.49 feet;

Thence North 76 degrees 07 minutes 08 seconds West, 444.62 feet;

Thence North 86 degrees 28 minutes 19 seconds West, 440.57 feet;

Thence North 63 degrees 11 minutes 14 seconds West, 241.73 feet;

Thence North 62 degrees 00 minutes 21 seconds West, 217.08 feet;

Thence North 53 degrees 51 minutes 28 seconds West, 195.27 feet;

Thence North 83 degrees 50 minutes 47 seconds West, 158.97 feet;

Thence South 75 degrees 13 minutes 58 seconds West, 295.03 feet;

Thence North 78 degrees 09 minutes 04 seconds West, 435.60 feet;

Thence South 58 degrees 12 minutes 19 seconds West, 192.40 feet;

Thence South 78 degrees 10 minutes 24 seconds West, 150.35 feet;

Thence South 49 degrees 13 minutes 22 seconds West, 166.54 feet;

Thence South 58 degrees 02 minutes 44 seconds West, 166.54 feet;

Thence South 19 degrees 18 minutes 58 seconds West, 95.35 feet;

Thence South 68 degrees 57 minutes 41 seconds West, 94.48 feet;

Thence North 69 degrees 55 minutes 38 seconds West, 231.88 feet;

Thence North 74 degrees 30 minutes 21 seconds West, 252.40 feet;

Thence South 67 degrees 34 minutes 17 seconds West, 102.57 feet;

Thence South 81 degrees 56 minutes 36 seconds West, 112.27 feet;

Thence South 70 degrees 25 minutes 16 seconds West, 183.07 feet;

Thence North 79 degrees 59 minutes 30 seconds West, 90.92 feet;

Thence South 74 degrees 03 minutes 29 seconds West, 71.44 feet;

Thence North 87 degrees 04 minutes 03 seconds West, 143.32 feet;

Thence South 84 degrees 41 minutes 31 seconds West, 81.19 feet;

Thence North 87 degrees 01 minutes 44 seconds West, 221.60 feet;

Thence North 70 degrees 08 minutes 48 seconds West, 70.25 feet;

Thence North 36 degrees 36 minutes 11 seconds West, 61.94 feet;

Thence South 89 degrees 36 minutes 50 seconds West, 59.48 feet;

Thence North 76 degrees 17 minutes 31 seconds West, 363.37 feet;

Thence South 89 degrees 51 minutes 44 seconds West, 185.24 feet;

Thence South 68 degrees 59 minutes 27 seconds West, 386.29 feet;

Thence South 75 degrees 59 minutes 03 seconds West, 87.90 feet;

Thence South 83 degrees 36 minutes 47 seconds West, 482.03 feet;

Thence South 82 degrees 43 minutes 29 seconds West, 321.41 feet;

Thence North 71 degrees 39 minutes 36 seconds West, 486.93 feet;

Thence South 78 degrees 18 minutes 34 seconds West, 142.94 feet;

Thence North 83 degrees 50 minutes 30 seconds West, 175.56 feet;

Thence North 74 degrees 14 minutes 50 seconds West, 454.49 feet;

Thence South 71 degrees 23 minutes 13 seconds West, 167.88 feet;

Thence South 43 degrees 00 minutes 32 seconds West, 92.21 feet;

Thence South 56 degrees 04 minutes 00 seconds West, 138.35 feet;

Thence North 86 degrees 52 minutes 37 seconds West, 316.48 feet;

Thence North 76 degrees 50 minutes 42 seconds West, 207.23 feet;

Thence South 87 degrees 09 minutes 05 seconds West, 326.27 feet;

Thence South 53 degrees 44 minutes 44 seconds West, 311.05 feet;

Thence South 80 degrees 01 minutes 52 seconds West, 485.90 feet;

Thence South 64 degrees 46 minutes 14 seconds West, 475.99 feet to a point on the East right-of-way of State Route 90;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence North 00 degrees 02 minutes 48 seconds East, 3449.25 feet;

Thence South 89 degrees 57 minutes 11 seconds East, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 70.00 feet;

Thence North 89 degrees 57 minutes 15 seconds West, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 1048.66 feet to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence South 66 degrees 13 minutes 21 seconds East, 361.42 feet;

Thence South 77 degrees 57 minutes 49 seconds East, 272.79 feet;

Thence North 75 degrees 45 minutes 27 seconds East, 426.37 feet;

Thence North 70 degrees 26 minutes 59 seconds East, 302.39 feet;

Thence South 88 degrees 10 minutes 36 seconds East, 246.62 feet;

Thence South 41 degrees 39 minutes 30 seconds East, 192.04 feet;

Thence South 66 degrees 36 minutes 09 seconds East, 297.43 feet;

Thence South 81 degrees 13 minutes 05 seconds East, 104.85 feet;

Thence South 73 degrees 50 minutes 14 seconds East, 142.98 feet;

Thence North 81 degrees 55 minutes 11 seconds East, 202.79 feet;

Thence South 74 degrees 46 minutes 26 seconds East, 177.73 feet;

Thence South 38 degrees 34 minutes 25 seconds East, 242.07 feet;

Thence South 68 degrees 26 minutes 31 seconds East, 379.77 feet;

Thence North 52 degrees 53 minutes 13 seconds East, 372.69 feet;

Thence North 28 degrees 40 minutes 17 seconds East, 124.55 feet;

Thence North 67 degrees 35 minutes 45 seconds East, 123.71 feet;

Thence North 32 degrees 49 minutes 20 seconds East, 76.70 feet;

Thence North 74 degrees 04 minutes 53 seconds East, 135.63 feet;

Thence South 75 degrees 19 minutes 35 seconds East, 155.11 feet;

Thence South 61 degrees 05 minutes 39 seconds East, 197.48 feet;

Thence North 65 degrees 41 minutes 17 seconds East, 162.28 feet;

Thence North 77 degrees 36 minutes 09 seconds East, 417.96 feet;

Thence North 40 degrees 29 minutes 42 seconds East, 377.70 feet;

Thence North 27 degrees 37 minutes 15 seconds East, 220.38 feet;

Thence North 49 degrees 43 minutes 20 seconds East, 96.40 feet;

Thence South 85 degrees 10 minutes 43 seconds East, 185.96 feet;

Thence North 59 degrees 59 minutes 00 seconds East, 220.61 feet;

Thence North 35 degrees 54 minutes 30 seconds East, 149.92 feet;

Thence North 58 degrees 00 minutes 12 seconds East, 102.39 feet;

Thence North 63 degrees 37 minutes 21 seconds East, 181.58 feet;

Thence North 44 degrees 26 minutes 50 seconds East, 347.78 feet;

Thence North 70 degrees 03 minutes 37 seconds East, 476.85 feet;

Thence North 79 degrees 41 minutes 17 seconds East, 286.85 feet;

Thence North 73 degrees 18 minutes 43 seconds East, 163.03 feet;

Thence South 89 degrees 06 minutes 26 seconds East, 245.49 feet;

Thence North 79 degrees 20 minutes 49 seconds East, 231.40 feet;

Thence South 85 degrees 48 minutes 33 seconds East, 150.93 feet;

Thence North 69 degrees 18 minutes 17 seconds East, 229.11 feet;

Thence North 83 degrees 25 minutes 31 seconds East, 1212.17 feet;

Thence North 61 degrees 59 minutes 05 seconds East, 296.61 feet;

Thence North 22 degrees 24 minutes 06 seconds East, 372.69 feet;

Thence North 11 degrees 48 minutes 46 seconds West, 177.85 feet;

Thence North 27 degrees 51 minutes 45 seconds East, 208.97 feet;

Thence North 76 degrees 01 minutes 59 seconds East, 244.37 feet;

Thence South 89 degrees 06 minutes 33 seconds East, 270.12 feet;

Thence North 73 degrees 56 minutes 59 seconds East, 321.02 feet;

Thence North 52 degrees 54 minutes 30 seconds East, 111.58 feet;

Thence North 74 degrees 50 minutes 37 seconds East, 146.51 feet;

Thence North 61 degrees 22 minutes 55 seconds East, 266.89 feet;

Thence South 87 degrees 00 minutes 47 seconds East, 880.51 feet;

Thence South 71 degrees 39 minutes 29 seconds East, 353.26 feet;

Thence North 73 degrees 15 minutes 29 seconds East, 256.78 feet;

Thence South 58 degrees 24 minutes 16 seconds East, 310.66 feet;

Thence North 31 degrees 00 minutes 33 seconds East, 440.58 feet;

Thence North 70 degrees 30 minutes 18 seconds East, 123.73 feet;

Thence South 72 degrees 45 minutes 58 seconds East, 101.10 feet;

Thence South 46 degrees 20 minutes 28 seconds East, 105.77 feet;

Thence South 73 degrees 16 minutes 25 seconds East, 289.39 feet;

Thence North 73 degrees 27 minutes 01 seconds East, 388.52 feet;

Thence South 50 degrees 33 minutes 54 seconds East, 255.37 feet;

Thence North 84 degrees 04 minutes 58 seconds East, 309.14 feet;

Thence North 73 degrees 29 minutes 44 seconds East, 342.58 feet;

Thence North 17 degrees 31 minutes 17 seconds East, 89.86 feet;

Thence North 04 degrees 52 minutes 10 seconds East, 272.06 feet;

Thence North 29 degrees 33 minutes 22 seconds East, 100.96 feet;

Thence North 68 degrees 01 minutes 10 seconds East, 154.53 feet;

Thence South 30 degrees 30 minutes 54 seconds East, 178.79 feet;

Thence South 68 degrees 33 minutes 20 seconds East, 187.10 feet;

Thence North 85 degrees 33 minutes 00 seconds East, 385.90 feet;

Thence North 45 degrees 34 minutes 17 seconds East, 317.71 feet;

Thence North 46 degrees 34 minutes 18 seconds East, 302.64 feet;

Thence North 37 degrees 46 minutes 36 seconds East, 91.24 feet;

Thence South 48 degrees 08 minutes 07 seconds East, 131.95 feet;

Thence South 42 degrees 36 minutes 39 seconds East, 230.87 feet;

Thence North 59 degrees 44 minutes 29 seconds East, 349.86 feet;

Thence South 81 degrees 41 minutes 27 seconds East, 612.55 feet;

Thence North 75 degrees 40 minutes 21 seconds East, 1456.66 feet to a point on the East line of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 1027.84 feet along the East line of said Section 10 to the East Quarter corner thereof;

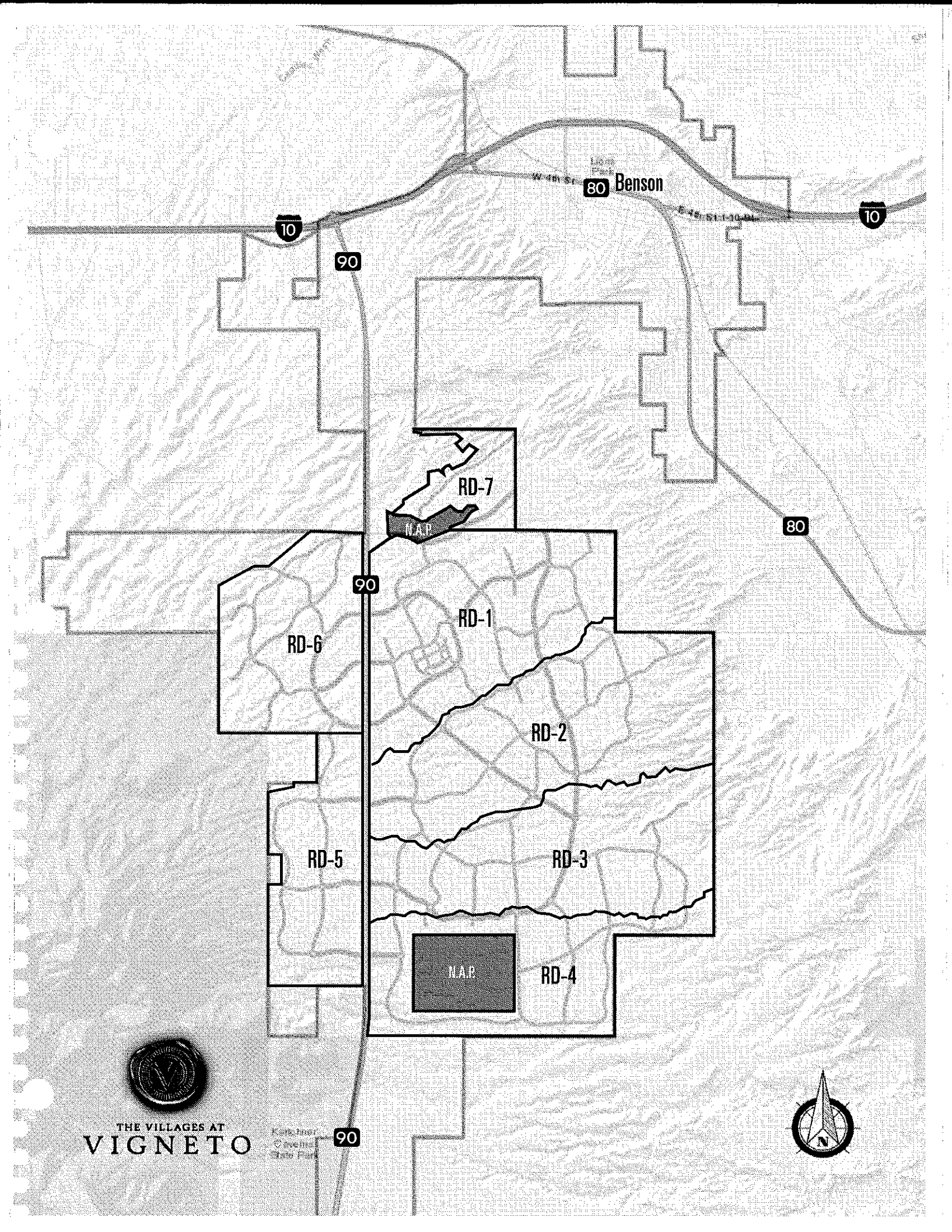
Thence South 00 degrees 04 minutes 18 seconds West, 2644.85 feet along said East line of Section 10 to the Southeast corner thereof, also being the Northeast corner of said Section 15 and POINT OF BEGINNING.

Containing 104,474,929 square feet (2398.414 acres), more or less

EXPIRES 3/31/2018

EXHIBIT B

Boundary Map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RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 13

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 48-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 4 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 48-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 4 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 48-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 4 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 4 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 4";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 1,592 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 4" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 4 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A	-	Legal Description
Exhibit B	-	Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 4 (RD-4)

Those portions of Sections 15, 16, 17, 10, 20, 21, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona, described as follows:

BEGINNING at the southeast corner of said Section 15;

Thence North 89 degrees 51 minutes 49 seconds West, 2651.95 feet along the South line of said Section 15 to the South Quarter corner thereof;

Thence North 89 degrees 46 minutes 21 seconds West, 2651.73 feet along the South line of said Section 15 to the Southwest corner thereof, also being the Northeast corner of said Section 21;

Thence South 00 degrees 06 minutes 13 seconds West, 2647.15 feet along the East line of said Section 21 to the east Quarter corner thereof;

Thence South 00 degrees 05 minutes 02 seconds West, 2649.47 feet along said East line of Section 21 to the southeast corner thereof;

Thence South 89 degrees 54 minutes 37 seconds West, 2644.96 feet along the South line of said Section 21 to the South Quarter corner thereof;

Thence North 89 degrees 48 minutes 01 seconds West, 2638.89 feet along the said South line of Section 21 to the Southwest corner thereof, also being the Southeast corner of said Section 20;

Thence North 89 degrees 48 minutes 24 seconds West, 5291.23 feet along the South line of said Section 20 to the Southwest corner thereof, also being the Southeast corner of said Section 19;

Thence North 89 degrees 55 minutes 05 seconds West, 2537.60 feet along the South line of said Section 19 to a point of non-tangent curvature on the east right-of-way of State Route 90, from which point the radius point bears North 84 degrees 57 minutes 37 seconds West;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 001 degrees 46 minutes 55 seconds, 718.98 feet;

Thence South 86 degrees 44 minutes 32 seconds East, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 86 degrees 44 minutes 32 seconds West;

Thence along a curve to the left, having a radius of 23168.32 feet and a central angle of 000 degrees 59 minutes 28 seconds, 400.75 feet;

Thence North 87 degrees 44 minutes 00 seconds West, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 87 degrees 44 minutes 00 seconds West;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 002 degrees 03 minutes 54 seconds, 833.23 feet to a point of tangency;

Thence North 00 degrees 12 minutes 06 seconds East, 3350.67 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 596.27 feet to an intersection with an existing drainage;

Thence the following courses along said existing drainage;

Thence North 64 degrees 46 minutes 14 seconds East, 475.99 feet;

Thence North 80 degrees 01 minutes 52 seconds East, 485.90 feet;

Thence North 53 degrees 44 minutes 44 seconds East, 311.05 feet;

Thence North 87 degrees 09 minutes 05 seconds East, 326.27 feet;

Thence South 76 degrees 50 minutes 42 seconds East, 207.23 feet;

Thence South 86 degrees 52 minutes 37 seconds East, 316.48 feet;

Thence North 56 degrees 04 minutes 00 seconds East, 138.35 feet;

Thence North 43 degrees 00 minutes 32 seconds East, 92.21 feet;

Thence North 71 degrees 23 minutes 13 seconds East, 167.88 feet;

Thence South 74 degrees 14 minutes 50 seconds East, 454.49 feet;

Thence South 83 degrees 50 minutes 30 seconds East, 175.56 feet;

Thence North 78 degrees 18 minutes 34 seconds East, 142.94 feet;

Thence South 71 degrees 39 minutes 36 seconds East, 486.93 feet;

Thence North 82 degrees 43 minutes 29 seconds East, 321.41 feet;

Thence North 83 degrees 36 minutes 47 seconds East, 482.03 feet;

Thence North 75 degrees 59 minutes 03 seconds East, 87.90 feet;

Thence North 68 degrees 59 minutes 27 seconds East, 386.29 feet;

Thence North 89 degrees 51 minutes 44 seconds East, 185.24 feet;

Thence South 76 degrees 17 minutes 31 seconds East, 363.37 feet;

Thence North 89 degrees 36 minutes 50 seconds East, 59.48 feet;

Thence South 36 degrees 36 minutes 11 seconds East, 61.94 feet;

Thence South 70 degrees 08 minutes 48 seconds East, 70.25 feet;

Thence South 87 degrees 01 minutes 44 seconds East, 221.60 feet;

Thence North 84 degrees 41 minutes 31 seconds East, 81.19 feet;

Thence South 87 degrees 04 minutes 03 seconds East, 143.32 feet;

Thence North 74 degrees 03 minutes 29 seconds East, 71.44 feet;

Thence South 79 degrees 59 minutes 30 seconds East, 90.92 feet;

Thence North 70 degrees 25 minutes 16 seconds East, 183.07 feet;

Thence North 81 degrees 56 minutes 36 seconds East, 112.27 feet;

Thence North 67 degrees 34 minutes 17 seconds East, 102.57 feet;

Thence South 74 degrees 30 minutes 21 seconds East, 252.40 feet;

Thence South 69 degrees 55 minutes 38 seconds East, 231.88 feet;

Thence North 68 degrees 57 minutes 41 seconds East, 94.48 feet;

Thence North 19 degrees 18 minutes 58 seconds East, 95.35 feet;

Thence North 58 degrees 02 minutes 44 seconds East, 166.54 feet;

Thence North 49 degrees 13 minutes 22 seconds East, 166.54 feet;

Thence North 78 degrees 10 minutes 24 seconds East, 150.35 feet;

Thence North 58 degrees 12 minutes 19 seconds East, 192.40 feet;

Thence South 78 degrees 09 minutes 04 seconds East, 435.60 feet;

Thence North 75 degrees 13 minutes 58 seconds East, 295.03 feet;

Thence South 83 degrees 50 minutes 47 seconds East, 158.97 feet;

Thence South 53 degrees 51 minutes 28 seconds East, 195.27 feet;

Thence South 62 degrees 00 minutes 21 seconds East, 217.08 feet;

Thence South 63 degrees 11 minutes 14 seconds East, 241.73 feet;

Thence South 86 degrees 28 minutes 19 seconds East, 440.57 feet;

Thence South 76 degrees 07 minutes 08 seconds East, 444.62 feet;

Thence South 62 degrees 51 minutes 23 seconds East, 221.49 feet;

Thence North 73 degrees 48 minutes 07 seconds East, 208.24 feet;

Thence South 89 degrees 55 minutes 31 seconds East, 215.89 feet;

Thence South 64 degrees 43 minutes 52 seconds East, 129.20 feet;

Thence North 75 degrees 21 minutes 38 seconds East, 93.79 feet;

Thence North 63 degrees 23 minutes 57 seconds East, 202.81 feet;

Thence North 80 degrees 41 minutes 23 seconds East, 397.40 feet;

Thence North 89 degrees 51 minutes 47 seconds East, 381.25 feet;

Thence North 65 degrees 07 minutes 54 seconds East, 329.09 feet;

Thence South 84 degrees 46 minutes 22 seconds East, 703.82 feet;

Thence South 71 degrees 27 minutes 03 seconds East, 347.85 feet;

Thence North 67 degrees 18 minutes 30 seconds East, 278.11 feet;

Thence South 52 degrees 36 minutes 50 seconds East, 315.02 feet;

Thence North 66 degrees 43 minutes 13 seconds East, 435.30 feet;

Thence South 81 degrees 58 minutes 49 seconds East, 269.27 feet;

Thence South 28 degrees 46 minutes 10 seconds East, 221.04 feet;

Thence North 88 degrees 25 minutes 25 seconds East, 277.31 feet;

Thence South 53 degrees 38 minutes 03 seconds East, 138.90 feet;

Thence North 63 degrees 50 minutes 57 seconds East, 288.18 feet;

Thence North 86 degrees 01 minutes 46 seconds East, 376.74 feet;

Thence South 64 degrees 41 minutes 42 seconds East, 167.96 feet;

Thence North 44 degrees 39 minutes 33 seconds East, 197.41 feet;

Thence South 75 degrees 10 minutes 35 seconds East, 187.42 feet;

Thence North 35 degrees 38 minutes 59 seconds East, 266.89 feet;

Thence North 87 degrees 49 minutes 46 seconds East, 68.51 feet;

Thence South 59 degrees 29 minutes 18 seconds East, 73.29 feet;

Thence North 83 degrees 45 minutes 28 seconds East, 272.85 feet;

Thence North 56 degrees 30 minutes 12 seconds East, 310.04 feet;

Thence North 60 degrees 08 minutes 54 seconds East, 157.89 feet;

Thence North 79 degrees 36 minutes 21 seconds East, 167.52 feet;

Thence South 73 degrees 34 minutes 25 seconds East, 91.99 feet;

Thence North 66 degrees 33 minutes 09 seconds East, 185.28 feet;

Thence North 31 degrees 51 minutes 30 seconds East, 272.48 feet;

Thence North 65 degrees 53 minutes 37 seconds East, 562.31 feet;

Thence North 04 degrees 28 minutes 50 seconds West, 159.43 feet;

Thence North 22 degrees 45 minutes 46 seconds East, 100.83 feet;

Thence North 65 degrees 20 minutes 30 seconds East, 381.46 feet;

Thence North 88 degrees 12 minutes 26 seconds East, 87.02 feet to the East line of said Section 15;

Thence South 00 degrees 05 minutes 04 seconds East, 2431.64 feet along the East line of said Section 15 to the Southeast corner thereof and POINT OF BEGINNING.

EXCEPT the following portion of said Section 20;

BEGINNING at the Northeast corner of said Section 20, Township 18 South, Range 20 East, Gila and Salt River Meridian, Cochise County, Arizona;

Thence North 89 degrees 49 minutes 41 seconds West, 2643.71 feet along the North line of said Section 20 to the North Quarter corner thereof;

Thence North 89 degrees 45 minutes 38 seconds West, 2644.50 feet along the North line of said Section 20 to the Northwest corner thereof;

Thence South 00 degrees 07 minutes 01 seconds West, 2650.59 feet along the West line of said Section 20 to the West Quarter corner thereof;

Thence South 00 degrees 04 minutes 09 seconds West, 1323.07 feet along the West line of said Section 20;

Thence South 89 degrees 48 minutes 47 seconds East, 5291.15 feet to a point on the East line of said Section 20;

Thence North 00 degrees 03 minutes 57 seconds East, 1323.64 feet to the East Quarter corner of said Section 20;

Thence North 00 degrees 03 minutes 17 seconds East, 2648.31 feet along the East line of said Section 20 to the POINT OF BEGINNING.

Containing 21012513 square feet (482.381 acres), more or less

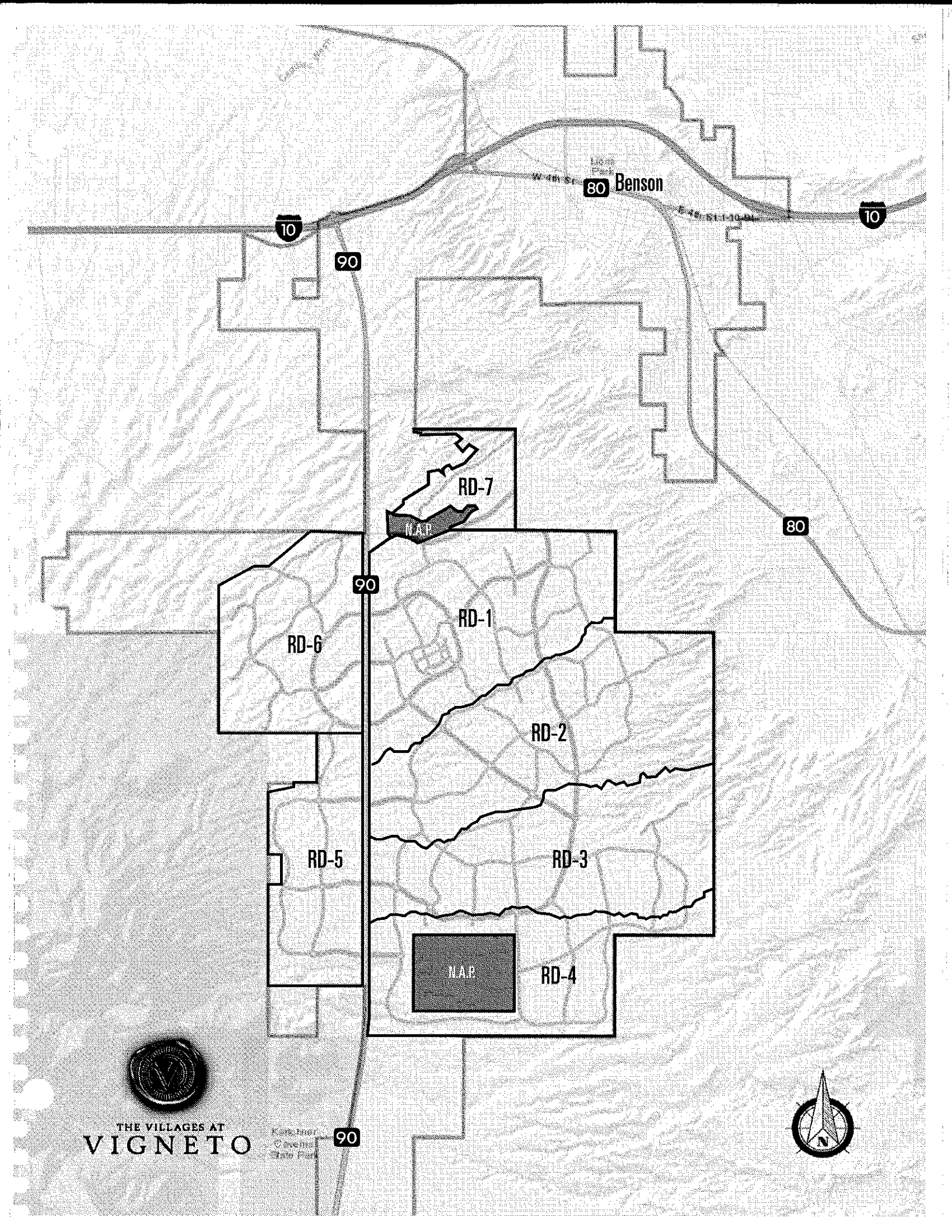
Net area of RD-4 is 69,350,389 square feet (1,592.066 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018

EXHIBIT B

Boundary Map


Benson
80
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RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 14

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 49-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 5 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th^{h} Street
Benson, AZ 85602

RESOLUTION 49-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 5 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 49-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 5 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 5 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 5";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 1,337 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 5" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 5 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

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PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A	-	Legal Description
Exhibit B	-	Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 5 (RD-5)

Those portions of Sections 7, 18, and 19, Township 18 South, Range 20 East, Gila and Salt River Meridian and Sections 12, 13 and 24, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 33 seconds West, 2643.09 feet along the West line of said Section 7 to the Quarter corner common to said Sections 7 and 12;

Thence South 89 degrees 51 minutes 22 seconds West, 1320.01 feet along the East-West Mid-section line of said Section 12;

Thence South 00 degrees 05 minutes 31 seconds West, 233.00 feet;

Thence South 79 degrees 51 minutes 15 seconds West, 1341.69 feet to the intersection with the North-South Mid-section line of said Section 12;

Thence South 00 degrees 06 minutes 47 seconds West, 2176.57 feet along the said North-South Mid-section line of Section 12 to the Quarter corner common to said Section 12 and 13;

Thence South 00 degrees 11 minutes 06 seconds West, 1102.99 feet along the North-South Mid-section line of said Section 13;

Thence North 89 degrees 48 minutes 01 seconds East, 693.77 feet;

Thence South 00 degrees 15 minutes 22 seconds West, 631.48 feet;

Thence South 00 degrees 11 minutes 06 seconds West, 911.84 feet to the East-West Mid-section line of said Section 13;

Thence South 89 degrees 55 minutes 06 seconds West, 692.97 feet along the said East-West Mid-section line of Section 13 to the Center Quarter thereof;

Thence South 00 degrees 12 minutes 23 seconds West, 2645.80 feet along the North-South Mid-section line of said Section 13 to the Quarter corner common to said Sections 13 and 24;

Thence South 00 degrees 00 minutes 47 seconds West, 2648.04 feet along the North-South Mid-section line of said Section 24 to the Center Quarter corner thereof;

Thence North 89 degrees 56 minutes 35 seconds East, 2638.53 feet along the East-West Mid-section line of said Section 24 to the Quarter corner common to said Sections 19 and 24;

Thence South 89 degrees 54 minutes 56 seconds East, 2409.56 feet along the East-West Mid-section line of said Section 19 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence North 00 degrees 12 minutes 05 seconds East, 2654.03 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 2641.27 feet to the intersection with the Mid-section line of said Section 18;

Thence North 00 degrees 02 minutes 48 seconds East, 2645.86 feet to the intersection with the line common to said Sections 18 and 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2645.71 feet to the intersection with the Mid-section line of said Section 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2652.61 feet to the intersection with the North line of said Section 7;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along said North line to the POINT OF BEGINNING.

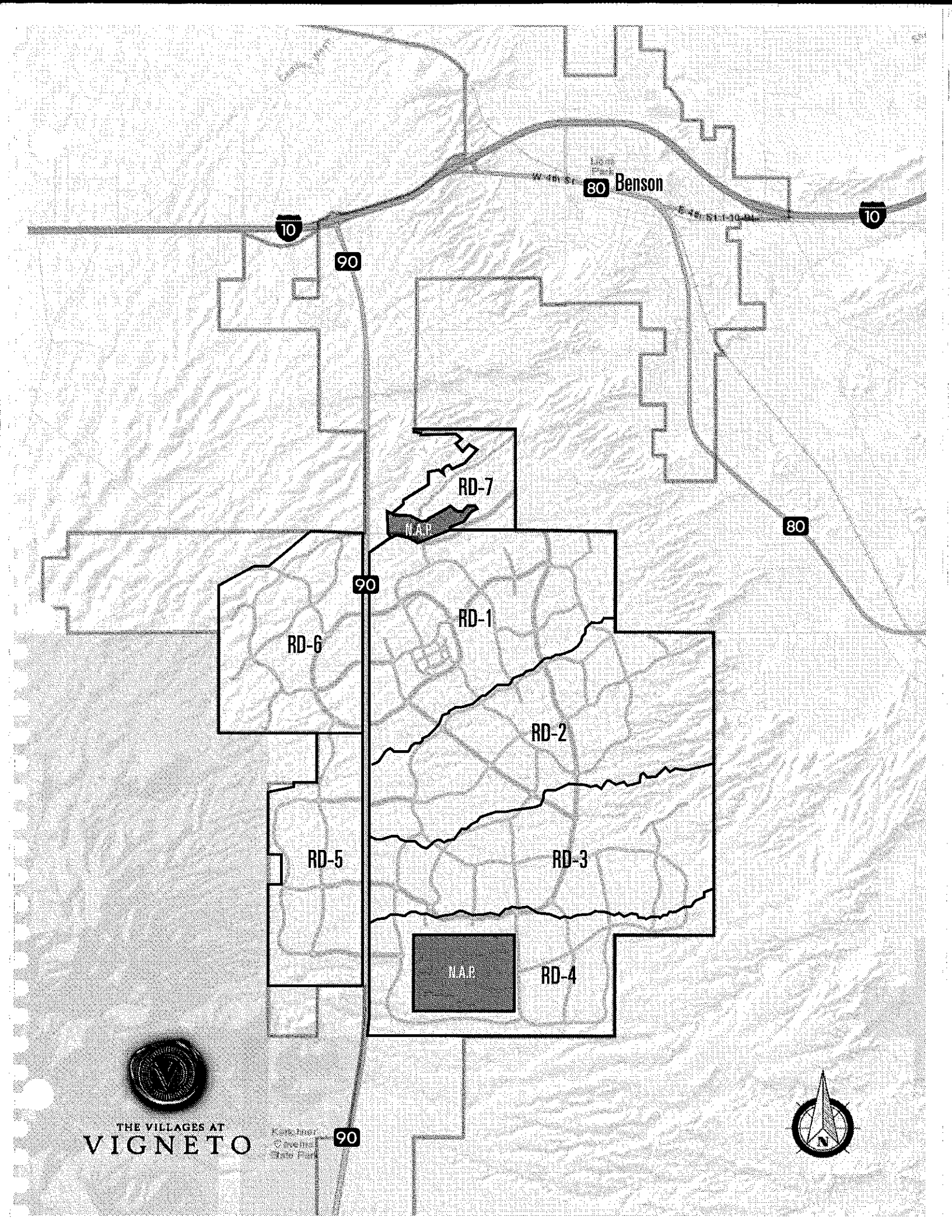
Total Area for RD-5 is 58,254,220 square feet (1,337.333 acres) more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018

EXHIBIT B

Boundary Map


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 15

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 50-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 6 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 50-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 6 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 50-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 6 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 6 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 6";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 1,675 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 6" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 6 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

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PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A	-	Legal Description
Exhibit B	-	Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 6 (RD-6)

Those portions of Section 31, Township 17 South, Range 20 East, Gila and Salt River Meridian; Section 6, Township 18 South, Range 20 East, Gila and Salt River Meridian; Section 36, Township 17 South, Range 19 East, Gila and Salt River Meridian and Section 1, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Southwest corner of said Section 1;

Thence North 00 degrees 11 minutes 46 seconds East, 2647.37 feet along the West line of said Section 1 to the West Quarter corner thereof;

Thence North 00 degrees 16 minutes 18 seconds East, 2619.28 feet along the West line of said Section 1 to the Northwest corner thereof, also being the Southwest corner of said Section 36;

Thence North 00 degrees 04 minutes 41 seconds East, 2462.96 feet along the West line of said Section 36;

Thence departing said West line North 61 degrees 44 minutes 23 seconds East, 2131.29 feet;

Thence South 89 degrees 52 minutes 03 seconds East, 771.87 feet;

Thence North 51 degrees 12 minutes 56 seconds East, 2891.21 feet to the North line of said Section 36;

Thence North 89 degrees 43 minutes 03 seconds East, 400.04 feet along the North line of said Section 36 to the Northeast corner thereof, also being the Northwest corner of said Section 31;

Thence South 87 degrees 25 minutes 37 seconds East, 2373.90 feet along the North line of said Section 31 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence South 00 degrees 05 minutes 35 seconds West, 4.24 feet;

Thence South 00 degrees 11 minutes 49 seconds West, 5144.21 feet to the intersection with the line common to said Sections 31 and 6;

Thence South 00 degrees 02 minutes 49 seconds West, 5278.00 feet to the intersection with the South line of said Section 6;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along the South line of said Section 6 to the Southwest corner thereof, also being the Southeast corner of said Section 1;

Thence South 89 degrees 41 minutes 11 seconds West, 2639.59 feet along the South line of said Section 1 to the South Quarter corner thereof;

Thence North 89 degrees 53 minutes 24 seconds West, 2640.06 feet along the south line of said Section 1 to the Southwest corner thereof and POINT OF BEGINNING.

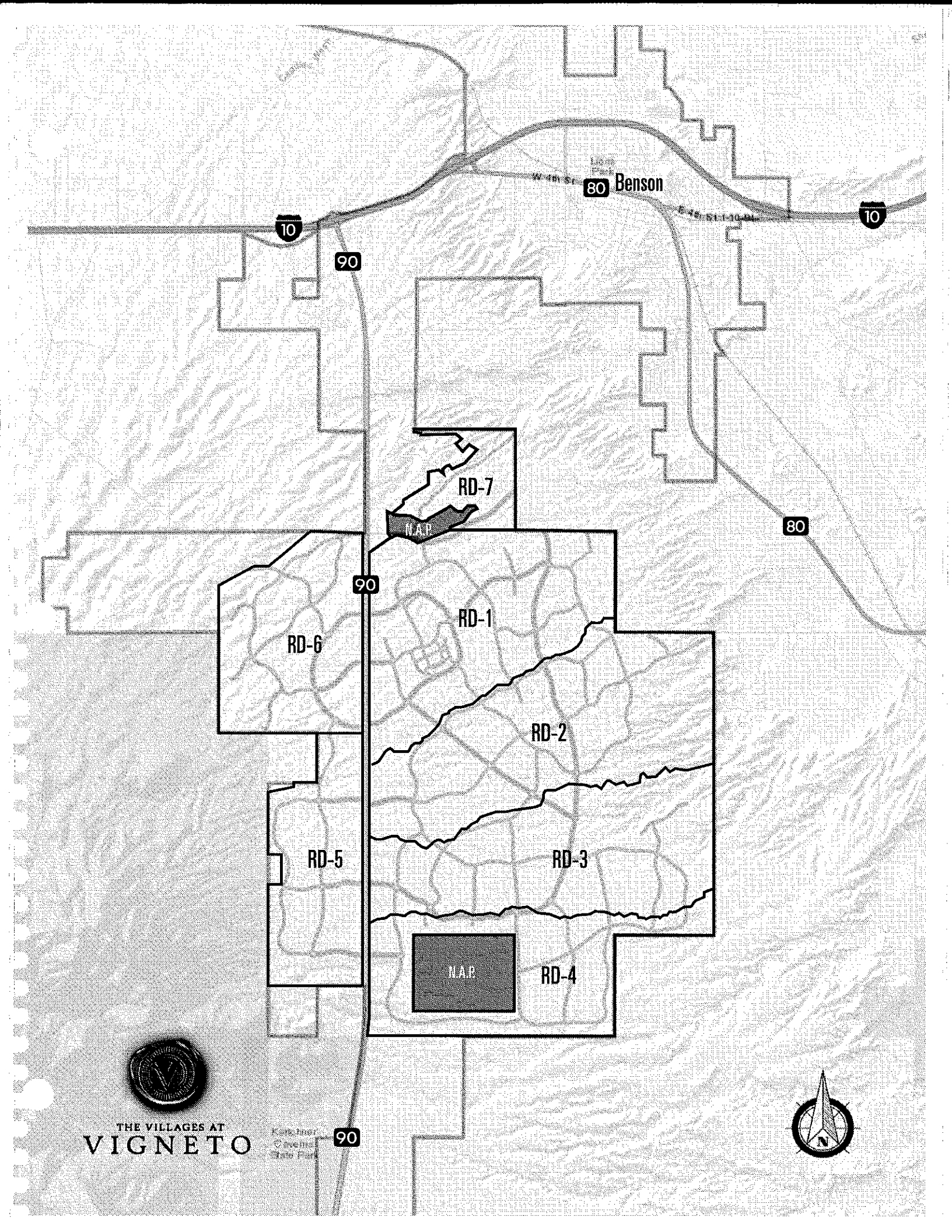
Total Area is 72,947,717 square feet (1,674.649 acres), more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed
ARIZONA U.S.A.

EXPIRES 3/31/2018

EXHIBIT B

Boundary Map


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 16

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 51-2017 of the Mayor and Council of the City of Benson, Arizona, ordering and declaring formation of The Villages at Vigneto Revitalization District No. 7 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form seven special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Revitalization Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping community facilities districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 51-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 7 IN THE CITY OF BENSON, ARIZONA

RESOLUTION 51-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ORDERING AND DECLARING FORMATION OF THE VILLAGES AT VIGNETO REVITALIZATION DISTRICT NO. 7 IN THE CITY OF BENSON, ARIZONA

WHEREAS, on or about October 11, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Revitalization District No. 7 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners"); and

WHEREAS, in the Petition, the Petitioners requested, represented, attested and declared the following:

i. The name of the District shall be "The Villages at Vigneto Revitalization District No. 7";

ii. The District is to be formed, and shall exist, pursuant to the terms and provisions of the Act, as such terms and provisions may be amended, waived or restricted from time to time;

iii. The District will contain an area of approximately 490 acres of land, more or less, located wholly within the incorporated boundaries of the City, and will be composed of the real property described on *Exhibit A* hereto, which is made a part hereof for all purposes (the "Property");

iv. The District will be a special purpose district for purposes of Article IX, Section 19 of the Constitution of the State of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7 of the Constitution of the State of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5 of the Arizona Revised Statutes, and will, except as otherwise provided in the Act, be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City, and will be formed for, and have, all the rights and powers of a "district," as such term is defined, and as provided, in the Act;

v. A "General Plan for the Establishment of the Villages at Vigneto Revitalization District No. 7" (the "General Plan"), setting out a general description of the infrastructure improvements for which the District is proposed to be formed and the general areas to be improved and benefited, has been filed with the Clerk of the City;

vi. The real property to be included in the District will be benefited by the infrastructure improvements for which the District is proposed to be formed;

vii. The formation of the District is to result in the levy of special assessments and/or ad valorem taxes upon the several lots in the Property in order to pay the costs of (a) the formation and operation of the District, (b) the infrastructure improvements to be financed, constructed and acquired by the District and (c) the operation and maintenance of such infrastructure improvements;

viii. The public convenience and necessity require the adoption of this resolution; and

WHEREAS, the City will in no way be liable for the payment of any of the costs of the infrastructure improvements described in the General Plan or for any debt or obligation incurred by the District, except to the extent, if any, expressly authorized by separate agreement; and

WHEREAS, as of the date hereof, (i) as shown on the assessment roll for State and County taxes in Cochise County, Arizona, all of the real property to be included in the District is owned by the Petitioners, and (ii) no registered electors reside on the real property to be included in the District; and

WHEREAS, based upon the foregoing, the Petitioners requested that the Petition be properly filed as provided by law and that the City adopt a resolution declaring its intention to form the District in the manner required by the Act; and

WHEREAS, at a meeting of the Mayor and the Council of the City of Benson, Arizona, duly called, noticed and held on October 23, 2017, at which meeting a quorum was present and acting throughout, the Mayor and Council of the City adopted Resolution No. 33-2017, declaring the intent to form the District; and

WHEREAS, not less than 20 days prior to the date hereof, the Clerk of the City caused proper notice and a copy of Resolution 33-2017, together with notice of the date, time, and location of the public hearing with respect thereto, to be mailed to all owners of real property in the proposed District, and to be published, in accordance with A.R.S. Section 48-6803, and has caused affidavits thereof to be placed in the official records of the City; and

WHEREAS, the City has conducted the public hearing required by A.R.S. Section 48-6804, with respect to which persons claiming an interest in the real property to be included in the District and any qualified electors in the District, among others, were afforded the opportunity to file objections, both in writing and in person, to the purported benefits to be derived from the District, the formation of the District or the General Plan for the District; and

WHEREAS, the Mayor and Council have received and considered the objections, both in writing and in person, presented at the public hearing held on this date, including the testimony and evidence presented in support of or opposition to the objections,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Matters Noticed, Acknowledged and Agreed to by the City. The Mayor and Council hereby notice, acknowledge and agree as follows:

(a) The Petitioners seek formation of the District to exercise the rights and powers set forth in the Act,

(b) As required by the Act, the General Plan has been filed with the Clerk of the City,

(c) The Petition and all supporting materials deemed necessary have been filed with, and received by, the Mayor and Council and are hereby incorporated herein as if set forth in full herein,

(d) The purposes for which the organization of the District is sought are as described in the Petition and are purposes for which a district may be organized pursuant to the Act, and

(e) The public convenience and necessity require the adoption of this Resolution.

Section 2. **Approval of General Plan of the District**. The General Plan of the District submitted to the City Clerk on initially submitted on August 14, 2017 and resubmitted on October 11, 2017, is found to be a General Plan within the meaning of the Act.

Section 3. **Granting of Petition; Formation and Powers of District**. The Petition is hereby granted, and the District, to be known as The Villages at Vigneto Revitalization District No. 7 of Benson, Arizona, is hereby formed as a revitalization district pursuant to the terms and provisions of, and with the powers and authority conferred by, the Act, with jurisdiction over the Property. Based on the Petition and the recitals in this Resolution, all requirements of posting, publication, mailing, notice, protest, hearing and election required by the Act in connection with the formation of the District and adoption of this Resolution have been satisfied. The District shall have and may exercise all such powers as may be necessary or appropriate to accomplish the construction and acquisition of infrastructure improvements described in the Petition and the General Plan.

Section 4. **District Boundaries and Map**. The District boundaries are as described on *Exhibit A* hereto. A map showing the District boundaries is set forth as *Exhibit B* hereto and is hereby approved.

Section 5. **Dissemination of Resolution**. Pursuant to A.R.S. § 42-17257, the Petitioners shall cause a copy of this Resolution to be delivered to each of the County Assessor, the Board of Supervisors of Cochise County, Arizona, and the Department of Revenue of the State of Arizona.

Section 6. **District Board of Directors**. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of one year:

Dennis Krahn

Eric Hollensbe

June Prinz

The subsequent District board will be elected in accordance with the Act.

Section 7. **Levy of Taxes.** Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the operation and maintenance expenses of the District.

Section 8. **Development Agreement and Intergovernmental Agreement.** By this Resolution and pursuant to Arizona Revised Statutes Section 48-6607, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the majority of land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. **No General Liability of the City**. NONE OF THE CITY OR THE STATE, NOR THE GENERAL FUNDS OF EITHER, NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT), SHALL BE LIABLE, DIRECTLY OR, INDIRECTLY, FOR THE COSTS OF THE INFRASTRUCTURE IMPROVEMENTS CONTEMPLATED BY THE GENERAL PLAN NOR FOR THE PAYMENT OR REPAYMENT OF ANY OBLIGATION, LIABILITY, COST, EXPENSE, BOND OR INDEBTEDNESS OF THE DISTRICT, EXCEPT TO THE EXTENT, IF ANY, EXPRESSLY AUTHORIZED BY SEPARATE AGREEMENT, AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE CITY, THE STATE OF ARIZONA NOR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN THE DISTRICT) WILL BE PLEDGED THEREFOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

CITY OF BENSON, ARIZONA,
an Arizona municipal corporation

_____
By: Toney D. King, Sr., Mayor

ATTEST:

_____
By: Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibit A	-	Legal Description
Exhibit B	-	Boundary Map

EXHIBIT A

Legal Description

DESCRIPTION OF REVITALIZATION DISTRICT 7 (RD-7)

Block 2, and Well Site abutting Block 2 of THE CANYONS AT WHETSTONE RANCH subdivision, recorded in Book 15 at Page 23, 23A through 23M in the Cochise County Recorder's office, and those portions of Sections 29 and 30, Township 17 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona, described as follows:

BEGINNING at the corner common to Sections 28, 29, 32, 33, Township 17 South, Range 20 East, Gila and Salt River Meridian;

Thence South 89 degrees 27 minutes 57 seconds West, 3637.48 feet along the south line of said Section 29 to the intersection with the exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23, Cochise County records);

Thence the following courses along the said exterior boundary of THE CANYONS AT WHETSTONE RANCH subdivision (Book 15, page 23, Cochise County records);

Thence North 67 degrees 00 minutes 00 seconds East, 222.76 feet;

Thence North 19 degrees 00 minutes 00 seconds West, 186.81 feet;

Thence North 71 degrees 00 minutes 00 seconds East, 834.24 feet;

Thence North 36 degrees 00 minutes 56 seconds East, 593.12 feet;

Thence North 54 degrees 10 minutes 41 seconds East, 307.02 feet;

Thence North 06 degrees 30 minutes 54 seconds West, 129.11 feet calculated (North 06 degrees 31 minutes 16 seconds East, 129.10 feet record plat);

Thence South 87 degrees 17 minutes 10 seconds West, 474.99 feet to a point of non-tangent curvature, from which point the radius point bears North 71 degrees 06 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 350.00 feet and a central angle of 094 degrees 44 minutes 07 seconds, 578.70 feet to a point of tangency;

Thence North 66 degrees 22 minutes 03 seconds West, 216.56 feet;

Thence North 44 degrees 37 minutes 46 seconds West, 137.93 feet;

Thence South 77 degrees 28 minutes 12 seconds West, 321.08 feet calculated (321.14 feet record plat) to a point of non-tangent curvature, from which point the radius point bears North 41 degrees 59 minutes 01 seconds West;

Thence along a curve to the right, having a radius of 1975.00 feet and a central angle of 030 degrees 55 minutes 18 seconds, 1065.88 feet calculated (1066.30 record plat);

Thence South 03 degrees 05 minutes 39 seconds East, 120.14 feet;

Thence South 85 degrees 17 minutes 54 seconds West, 54.00 feet (54.02 feet record plat) to a point of non-tangent curvature, from which point the radius point bears South 86 degrees 54 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 25.00 feet and a central angle of 083 degrees 39 minutes 07 seconds, 36.50 feet to a point of tangency;

Thence South 80 degrees 33 minutes 14 seconds West, 118.41 feet to a point of non-tangent curvature, from which point the radius point bears North 09 degrees 26 minutes 44 seconds West;

Thence along a curve to the right, having a radius of 565.00 feet and a central angle of 039 degrees 04 minutes 05 seconds, 385.25 feet to a point of tangency;

Thence North 60 degrees 22 minutes 41 seconds West, 268.45 feet to a point of non-tangent curvature, from which point the radius point bears South 29 degrees 37 minutes 18 seconds West;

Thence along a curve to the left, having a radius of 665.00 feet and a central angle of 032 degrees 12 minutes 41 seconds, 373.86 feet to a point of reverse curvature;

Thence along a curve to the right, having a radius of 1740.00 feet and a central angle of 023 degrees 13 minutes 10 seconds, 705.15 feet to a point on the exterior boundary of THE COTTONWOOD HIGHLANDS subdivision (Book 15, page 25, Cochise County records);

Thence North 21 degrees 04 minutes 11 seconds West, 40.99 feet (41.03 feet record plat) along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence the following courses along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence North 54 degrees 28 minutes 47 seconds East, 761.10 feet;

Thence North 24 degrees 42 minutes 22 seconds West, 211.59 feet;

Thence North 60 degrees 00 minutes 00 seconds East, 1596.14 feet;

Thence North 00 degrees 05 minutes 20 seconds West, 694.84 feet;

Thence North 76 degrees 00 minutes 00 seconds East, 525.85 feet;

Thence South 52 degrees 45 minutes 34 seconds East, 334.83 feet calculated (South 52 degrees 50 minutes 34 seconds East, 334.94 feet record plat) to the Southwest corner of Lot 140 of said THE COTTONWOOD HIGHLANDS subdivision;

Thence departing said exterior boundary the following courses around the perimeter of said Lot 140;

Thence North 08 degrees 11 minutes 10 seconds West, 228.47 feet to a point of non-tangent curvature, from which point the radius point bears North 08 degrees 11 minutes 10 seconds West;

Thence along a curve to the left, having a radius of 320.00 feet and a central angle of 026 degrees 25 minutes 28 seconds, 147.58 feet to a point of tangency;

Thence North 55 degrees 23 minutes 21 seconds East, 286.39 feet;

Thence South 31 degrees 08 minutes 59 seconds East, 281.44 feet to the intersection with said exterior boundary;

Thence the following courses along said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 67 degrees 27 minutes 16 seconds East, 510.87 feet;

Thence North 44 degrees 10 minutes 00 seconds East, 1158.98 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 450.00 feet;

Thence South 44 degrees 10 minutes 00 seconds West, 550.00 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 500.00 feet to the intersection with the exterior boundary of that property described within the Special Warranty Deed to the City of Benson recorded in Document No. 0605-18326 in the office of the Cochise County Recorder;

Thence the following courses along said Special Warranty Deed;

Thence North 44 degrees 10 minutes 24 seconds East, 449.99 feet calculated;

Thence North 45 degrees 49 minutes 54 seconds West, 410.07 feet;

Thence South 88 degrees 22 minutes 01 seconds West, 1982.49 feet to the said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 01 degrees 38 minutes 00 seconds West, 100.00 feet along said exterior boundary;

Thence South 88 degrees 21 minutes 16 seconds West 297.61 feet along said exterior boundary to the intersection with the West line of Section 29;

Thence North 00 degrees 39 minutes 14 seconds West, 100.00 feet along said West line to the Northwest corner of said Section 29;

Thence North 88 degrees 22 minutes 00 seconds East, 2685.18 feet along the north line of the Northwest quarter of said Section 29 to the North quarter corner thereof;

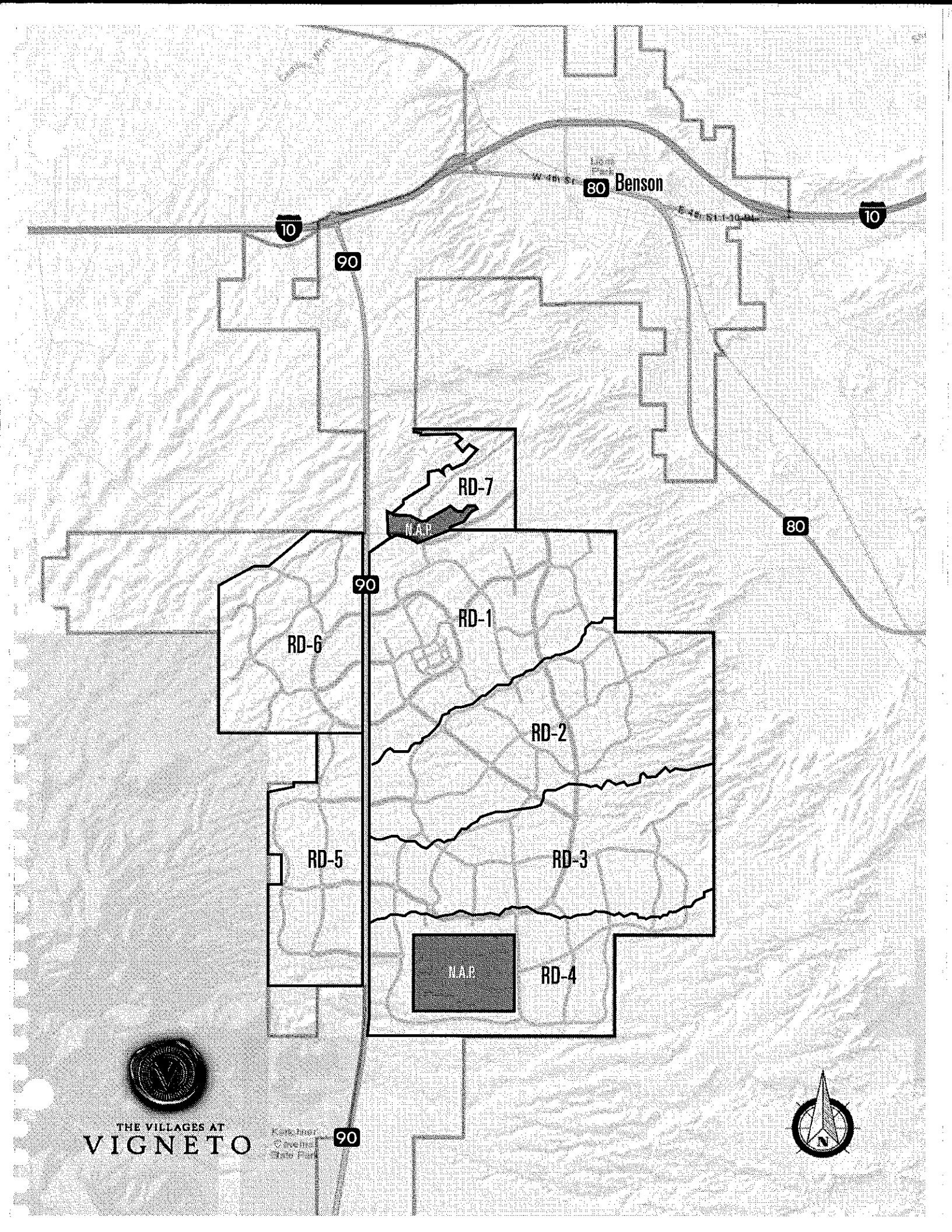
Thence South 88 degrees 52 minutes 53 seconds East, 2632.56 feet along the north line of the Northeast quarter of said Section 29 to the Northeast corner thereof;

Thence South 00 degrees 21 minutes 07 seconds East, 5284.19 feet along the East line of said Section 29 to the said corner common to Sections 28, 29, 32, 33 and POINT OF BEGINNING.

Total Area for RD-7 is 21,325,616 square feet (489.569 acres), more or less

EXHIBIT B

Boundary Map


Benson
80
10
90
RD-7
N.A.P.
RD-1
RD-6
RD-2
RD-5
RD-3
N.A.P.
RD-4
THE VILLAGES AT
VIGNETO

City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 17

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 52-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 1, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Community Facilities Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 52-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, ARIZONA THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Community Facilities District Number 1 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-701, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-708(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Community Facilities District Number 1, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-701 through 48-728 (the CFD Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Issue general obligation bonds of the District ("GO Bonds") as described in Section 8.1.

B. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

C. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the CFD Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any GO Bonds, assessment bonds as described in Section 9 ("Assessment Bonds"), and revenue bonds as described in Section 10 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to (i) the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District and (ii) the first series of GO Bonds and subsequent GO Bonds issued during a ten-year period after issuance of the first GO Bonds in the District (collectively, the "Acquisition Period"), the District may use such Assessment Bonds and GO Bonds, as applicable, only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of GO Bonds and/or Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the GO or Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds, GO Bonds, or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds, GO Bonds, or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds, GO Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. GO Bonds.

8.1. The total aggregate principal amount of all of the series of the GO Bonds shall not exceed $2,375,000,000 during the term of this Agreement, with an interest rate not to exceed 12%. The GO Bond voter authorization shall expire 75 years from the date of the voter authorization.

8.2. A series of the GO Bonds shall only be issued if the debt service therefor is reasonably projected to be amortized from amounts generated by a Debt Service Tax of not to exceed $8.00 per one hundred dollars of assessed valuation of property within the boundaries of the District as indicated on the certified tax roll for the current tax year; provided, however, and notwithstanding the foregoing, GO Bonds may be issued if authorized by the District Board, in its sole discretion, where a tax rate greater than

$8.00 is projected to be necessary to pay the combined debt service of a proposed and any outstanding GO Bonds if other sources of revenue or security acceptable to the District Board and the City is provided to secure the payment of debt service on the GO Bonds including, but not limited to, a guarantee by EDB or its affiliates, or related entities to provide payments of amounts in the event an $8.00 Debt Service Tax is insufficient to pay debt service on the GO Bonds in any given year.

8.3. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, average, annual, percentage delinquency factor for the District calculated at or near the time of the issuance of the GO Bonds shall be assumed; all property in the District owned by EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB shall be assigned the last certified assessed value such property had when categorized as "vacant" for purposes of assessed valuation and the debt service for any outstanding series of the GO Bonds theretofore issued shall be taken into account in determining whether such tax rate will produce adequate debt service tax collections; provided, however, and without limiting the District's sole discretion pertaining to a decision whether to issue Bonds, the District and EDB shall use their best efforts to issue the first series of the GO Bonds no later than necessary to have the debt service tax rate of no more than $8.00 appear on the first tax bill applicable to any single family residential dwelling unit to be located within the boundaries of the District to be owned by other than EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB or any homebuilder to whom EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB sells property within the boundaries of the District.

8.4. If requested in the Report and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of such series of GO Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on that series of the GO Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto.

9. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

9.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-721, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental

agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

9.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

9.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

9.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

9.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

9.6. The mailing to the governing body of the Municipality of the Estimate and the Plans and Specifications in the form of the Report pursuant to Section 48-715, Arizona Revised Statutes, as amended, shall satisfy the filing requirements of Section 48-577, Arizona Revised Statutes, as amended.

9.7. At the time of a sale other than a "public sale" (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount

of the Assessment Bonds assessed to such parcel. In the case of a "public sale" (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

9.8. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

9.9. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

10. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

10.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

10.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten

percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

11. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

12. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

13. Successors; Assignments.

    13.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    13.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior

written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

13.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

14. Cooperative Purchasing Authorized.

14.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

14.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

14.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

14.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

14.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

14.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

14.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

14.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts,

including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

14.9. The requirements of this Section 14 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

14.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to any claim or claims by persons or entities other than those expressly identified in this Section.

15. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

16. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

17. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

18. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

20. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

21. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

22. Notices.

22.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City:	City of Benson 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager Facsimile: (520) 586-3375
With a copy to:	Benson City Manager 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager
If to District:	
With a copy to:	
If to EDB:	El Dorado Benson LLC 8501 N. Scottsdale Rd., Suite 120 Scottsdale, Arizona 85253 Facsimile: (602) 955-3543
With a copy to:	Dana Stagg Belknap, Esq. Gallagher & Kennedy 2575 East Camelback Road Phoenix, Arizona 85015 (602) 530-8500

22.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

23. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

24. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

    24.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Community Facilities District Number 1.

25. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

26. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

27. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

28. Default.

    28.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

28.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Community Facilities District Number 1, an Arizona community facilities district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 1 (CFD-1)

Block 2, Well Site abutting Block 2, and Block 4 of THE CANYONS AT WHETSTONE RANCH subdivision, recorded in Book 15 at Page 23, 23A through 23M in the Cochise County Recorder's office, and those portions of Sections 29, 30, 31, 32, and 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, and Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20 and 21, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 5242.20 feet along the East line of said Section 33 to the Southeast corner thereof, also being the Northwest corner of said Section 3;

Thence South 89 degrees 56 minutes 45 seconds East, 2645.46 feet along the North line of said Section 3 to the North Quarter corner thereof;

Thence South 89 degrees 58 minutes 54 seconds East, 2654.11 feet along said North line of Section 3 to the Northeast corner of said Section 3;

Thence South 00 degrees 13 minutes 48 seconds West, 2628.45 feet along the East line of said Section 3 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 57 seconds West, 2638.43 feet along said East line of Section 3 to the Southeast corner thereof, also being the Northeast corner of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 2647.39 feet along the East line of said Section 10 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 18 seconds West, 2644.85 feet along said East line of Section 10 to the Southeast corner thereof, also being the Northeast corner of said Section 15;

Thence South 00 degrees 10 minutes 16 seconds West, 2648.49 feet along the East line of said Section 15 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 04 seconds East, 2665.47 feet along the said East line of Section 15 to the Southeast corner thereof;

Thence North 89 degrees 51 minutes 49 seconds West, 2651.95 feet along the South line of said Section 15 to the South Quarter corner thereof;

Thence North 89 degrees 46 minutes 21 seconds West, 2651.73 feet along the said South line of Section 15 to the southwest corner thereof, also being the Northeast corner of said Section 21;

Thence South 00 degrees 06 minutes 13 seconds West, 2647.15 feet along the East line of said Section 21 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 02 seconds West, 2649.47 feet along said East line of Section 21 to the Southeast corner thereof;

Thence South 89 degrees 54 minutes 37 seconds West, 2644.96 feet along the South line of said Section 21 to the South Quarter corner thereof;

Thence North 89 degrees 48 minutes 01 seconds West, 2638.89 feet along the said South line of Section 21 to the Southwest corner thereof, also being the Southeast corner of said Section 20;

Thence North 89 degrees 48 minutes 24 seconds West, 5291.23 feet along the South line of said Section 20 to the Southwest corner thereof, also being the Southeast corner of said Section 19;

Thence North 89 degrees 55 minutes 05 seconds West, 2537.60 feet along the South line of said Section 19 to a point of non-tangent curvature on the East right-of-way of State Route 90, from which point the radius point bears North 84 degrees 57 minutes 37 seconds West;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 001 degrees 46 minutes 55 seconds, 718.98 feet;

Thence South 86 degrees 44 minutes 32 seconds East, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 86 degrees 44 minutes 32 seconds West;

Thence along a curve to the left, having a radius of 23168.32 feet and a central angle of 000 degrees 59 minutes 28 seconds, 400.75 feet;

Thence North 87 degrees 44 minutes 00 seconds West, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 87 degrees 44 minutes 00 seconds West;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 002 degrees 03 minutes 54 seconds, 833.23 feet to a point of tangency;

Thence North 00 degrees 12 minutes 06 seconds East, 3350.67 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 4045.52 feet;

Thence South 89 degrees 57 minutes 12 seconds East, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 70.00 feet;

Thence North 89 degrees 57 minutes 12 seconds West, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 1171.67 feet to the intersection with the line common to said Sections 7 and 18;

Thence North 00 degrees 02 minutes 13 seconds East, 4028.22 feet;

Thence South 89 degrees 57 minutes 47 seconds East, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 60.00 feet;

Thence North 89 degrees 57 minutes 47 seconds West, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 311.62 feet;

Thence South 89 degrees 57 minutes 47 seconds East, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 90.00 feet;

Thence North 89 degrees 57 minutes 47 seconds West, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 808.47 feet to the intersection with the line common to said Sections 6 and 7;

Thence North 00 degrees 02 minutes 49 seconds East, 5277.56 feet to the intersection with the line common to said Sections 6 and 31;

Thence North 00 degrees 11 minutes 49 seconds East, 4167.51 feet;

Thence departing said East right-of-way North 57 degrees 00 minutes 00 seconds East, 1250.67 feet along the southern exterior boundary of THE CANYONS AT WHETSTONE subdivision (Book 15, page 23B - Cochise County records);

Thence North 89 degrees 26 minutes 58 seconds East, 800.00 feet along said exterior line;

Thence South 62 degrees 00 minutes 00 seconds East, 400.00 feet along said exterior line;

Thence South 86 degrees 00 minutes 00 seconds East, 550.00 feet along said exterior line;

Thence North 67 degrees 00 minutes 00 seconds East, 1527.20 feet along said exterior line to the North line of said Section 32;

Thence continue North 67 degrees 00 minutes 00 seconds East, 222.76 feet;

Thence the following courses along the exterior boundary of THE CANYONS AT WHETSTONE subdivision (Book 15, page 23, Cochise County records);

Thence North 19 degrees 00 minutes 00 seconds West, 186.81 feet;

Thence North 71 degrees 00 minutes 00 seconds East, 834.24 feet;

Thence North 36 degrees 00 minutes 56 seconds East, 593.12 feet;

Thence North 54 degrees 10 minutes 41 seconds East, 307.02 feet;

Thence North 06 degrees 30 minutes 54 seconds West, 129.11 feet calculated (North 06 degrees 31 minutes 16 seconds East, 129.10 feet record plat);

Thence South 87 degrees 17 minutes 10 seconds West, 474.99 feet to a point of non-tangent curvature, from which point the radius point bears North 71 degrees 06 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 350.00 feet and a central angle of 094 degrees 44 minutes 07 seconds, 578.70 feet to a point of tangency;

Thence North 66 degrees 22 minutes 03 seconds West, 216.56 feet;

Thence North 44 degrees 37 minutes 46 seconds West, 137.93 feet;

Thence South 77 degrees 28 minutes 12 seconds West, 321.08 feet calculated (321.14 feet record plat) to

a point of non-tangent curvature, from which point the radius point bears North 41 degrees 59 minutes 01 seconds West;

Thence along a curve to the right, having a radius of 1975.00 feet and a central angle of 030 degrees 55 minutes 18 seconds, 1065.88 feet calculated (1066.30 record plat);

Thence South 03 degrees 05 minutes 39 seconds East, 120.14 feet;

Thence South 85 degrees 17 minutes 54 seconds West, 54.00 feet (54.02 feet record plat) to a point of non-tangent curvature, from which point the radius point bears South 86 degrees 54 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 25.00 feet and a central angle of 083 degrees 39 minutes 07 seconds, 36.50 feet to a point of tangency;

Thence South 80 degrees 33 minutes 14 seconds West, 118.41 feet to a point of non-tangent curvature, from which point the radius point bears North 09 degrees 26 minutes 44 seconds West;

Thence along a curve to the right, having a radius of 565.00 feet and a central angle of 039 degrees 04 minutes 05 seconds, 385.25 feet to a point of tangency;

Thence North 60 degrees 22 minutes 41 seconds West, 268.45 feet to a point of non-tangent curvature, from which point the radius point bears South 29 degrees 37 minutes 18 seconds West;

Thence along a curve to the left, having a radius of 665.00 feet and a central angle of 032 degrees 12 minutes 41 seconds, 373.86 feet to a point of reverse curvature;

Thence along a curve to the right, having a radius of 1740.00 feet and a central angle of 023 degrees 13 minutes 10 seconds, 705.15 feet to a point on the exterior boundary of THE COTTONWOOD HIGHLANDS subdivision (Book 15, page 25, Cochise County records);

Thence North 21 degrees 04 minutes 11 seconds West, 40.99 feet (41.03 feet record plat) along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence the following courses along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence North 54 degrees 28 minutes 47 seconds East, 761.10 feet;

Thence North 24 degrees 42 minutes 22 seconds West, 211.59 feet;

Thence North 60 degrees 00 minutes 00 seconds East, 1596.14 feet;

Thence North 00 degrees 05 minutes 20 seconds West, 694.84 feet;

Thence North 76 degrees 00 minutes 00 seconds East, 525.85 feet;

Thence South 52 degrees 45 minutes 34 seconds East, 334.83 feet calculated (South 52 degrees 50 minutes 34 seconds East, 334.94 feet record plat) to the Southwest corner of Lot 140 of said THE COTTONWOOD HIGHLANDS subdivision;

Thence departing said exterior boundary the following courses around the perimeter of said Lot 140;

Thence North 08 degrees 11 minutes 10 seconds West, 228.47 feet to a point of non-tangent curvature, from which point the radius point bears North 08 degrees 11 minutes 10 seconds West;

Thence along a curve to the left, having a radius of 320.00 feet and a central angle of 026 degrees 25 minutes 28 seconds, 147.58 feet to a point of tangency;

Thence North 55 degrees 23 minutes 21 seconds East, 286.39 feet;

Thence South 31 degrees 08 minutes 59 seconds East, 281.44 feet to the intersection with said exterior boundary;

Thence the following courses along said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 67 degrees 27 minutes 16 seconds East, 510.87 feet;

Thence North 44 degrees 10 minutes 00 seconds East, 1158.98 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 450.00 feet;

Thence South 44 degrees 10 minutes 00 seconds West, 550.00 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 500.00 feet to the intersection with the exterior boundary of that property described within the Special Warranty Deed to the City of Benson recorded in Document No. 0605-18326 in the office of the Cochise County Recorder;

Thence the following courses along said Special Warranty Deed;

Thence North 44 degrees 10 minutes 24 seconds East, 449.99 feet;

Thence North 45 degrees 49 minutes 54 seconds West, 410.07 feet;

Thence South 88 degrees 22 minutes 01 seconds West, 1982.49 feet to the said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 01 degrees 38 minutes 00 seconds West, 100.00 feet along said exterior boundary;

Thence South 88 degrees 21 minutes 16 seconds West, 297.61 feet along said exterior boundary to the intersection with the West line of Section 29;

Thence North 00 degrees 39 minutes 14 seconds West, 100.00 feet along said West line to the Northwest corner of said Section 29;

Thence North 88 degrees 22 minutes 00 seconds East, 2685.18 feet along the north line of the Northwest quarter of said Section 29 to the North quarter corner thereof;

Thence South 88 degrees 52 minutes 53 seconds East, 2632.56 feet along the north line of the Northeast quarter of said Section 29 to the Northeast corner thereof;

Thence South 00 degrees 21 minutes 07 seconds East, 5284.19 feet along the East line of said Section 29 to the corner common to Sections 28, 29, 32, 33;

Thence South 89 degrees 25 minutes 51 seconds East, 5314.82 feet along the North line of said Section 33 to the POINT OF BEGINNING;

EXCEPTING therefrom the following Exception:

Exception 1:

BEGINNING at the Northeast corner of said Section 20, Township 18 South, Range 20 East, Gila and Salt River Meridian, Cochise County, Arizona;

Thence North 89 degrees 49 minutes 41 seconds West, 2643.71 feet along the North line of said Section 20 to the North Quarter corner thereof;

Thence North 89 degrees 45 minutes 38 seconds West, 2644.50 feet along the North line of said Section 20 to the Northwest corner thereof;

Thence South 00 degrees 07 minutes 01 seconds West, 2650.59 feet along the west line of said Section 20 to the West Quarter corner thereof;

Thence South 00 degrees 04 minutes 09 seconds West, 1323.07 feet along the west line of said Section 20;

Thence South 89 degrees 48 minutes 47 seconds East, 5291.15 feet to a point on the East line of said Section 20;

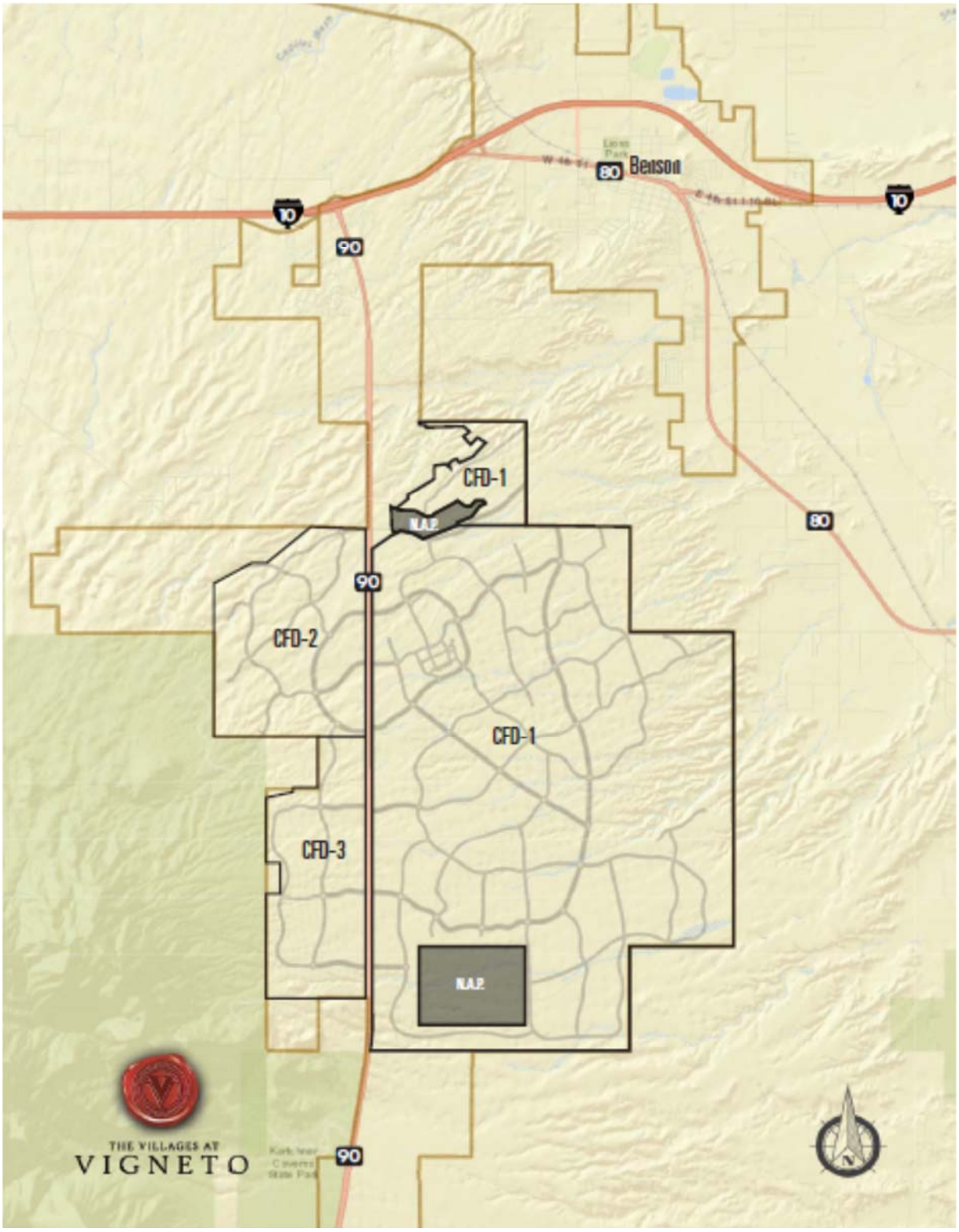
Thence North 00 degrees 03 minutes 57 seconds East, 1323.64 feet to the East Quarter corner of said Section 20;

Thence North 00 degrees 03 minutes 17 seconds East, 2648.31 feet along the East line of said Section 20 to the POINT OF BEGINNING.

Exception 1 containing 21,012,513 square feet (482.381 acres), more or less.

Net area of CFD-1 including Block 2, Well Site, and Block 4 is 427,119,577 square feet (9,805.316 acres) more or less.

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 18

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 53-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 2, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Community Facilities Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 53-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, ARIZONA THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Community Facilities District Number 2 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-701, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-708(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Community Facilities District Number 2, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-701 through 48-728 (the CFD Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Issue general obligation bonds of the District ("GO Bonds") as described in Section 8.1.

B. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

C. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the CFD Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any GO Bonds, assessment bonds as described in Section 9 ("Assessment Bonds"), and revenue bonds as described in Section 10 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to (i) the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District and (ii) the first series of GO Bonds and subsequent GO Bonds issued during a ten-year period after issuance of the first GO Bonds in the District (collectively, the "Acquisition Period"), the District may use such Assessment Bonds and GO Bonds, as applicable, only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of GO Bonds and/or Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the GO or Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds, GO Bonds, or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds, GO Bonds, or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds, GO Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. GO Bonds.

8.1. The total aggregate principal amount of all of the series of the GO Bonds shall not exceed $406,250,000 during the term of this Agreement, with an interest rate not to exceed 12%. The GO Bond voter authorization shall expire 75 years from the date of the voter authorization.

8.2. A series of the GO Bonds shall only be issued if the debt service therefor is reasonably projected to be amortized from amounts generated by a Debt Service Tax of not to exceed $8.00 per one hundred dollars of assessed valuation of property within the boundaries of the District as indicated on the certified tax roll for the current tax year; provided, however, and notwithstanding the foregoing, GO Bonds may be issued if authorized by the District Board, in its sole discretion, where a tax rate greater than

$8.00 is projected to be necessary to pay the combined debt service of a proposed and any outstanding GO Bonds if other sources of revenue or security acceptable to the District Board and the City is provided to secure the payment of debt service on the GO Bonds including, but not limited to, a guarantee by EDB or its affiliates, or related entities to provide payments of amounts in the event an $8.00 Debt Service Tax is insufficient to pay debt service on the GO Bonds in any given year.

8.3. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, average, annual, percentage delinquency factor for the District calculated at or near the time of the issuance of the GO Bonds shall be assumed; all property in the District owned by EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB shall be assigned the last certified assessed value such property had when categorized as "vacant" for purposes of assessed valuation and the debt service for any outstanding series of the GO Bonds theretofore issued shall be taken into account in determining whether such tax rate will produce adequate debt service tax collections; provided, however, and without limiting the District's sole discretion pertaining to a decision whether to issue Bonds, the District and EDB shall use their best efforts to issue the first series of the GO Bonds no later than necessary to have the debt service tax rate of no more than $8.00 appear on the first tax bill applicable to any single family residential dwelling unit to be located within the boundaries of the District to be owned by other than EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB or any homebuilder to whom EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB sells property within the boundaries of the District.

8.4. If requested in the Report and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of such series of GO Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on that series of the GO Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto.

9. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

9.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-721, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental

agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

9.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

9.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

9.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

9.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

9.6. The mailing to the governing body of the Municipality of the Estimate and the Plans and Specifications in the form of the Report pursuant to Section 48-715, Arizona Revised Statutes, as amended, shall satisfy the filing requirements of Section 48-577, Arizona Revised Statutes, as amended.

9.7. At the time of a sale other than a "public sale" (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount

of the Assessment Bonds assessed to such parcel. In the case of a "public sale" (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

9.8. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

9.9. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

10. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

10.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

10.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten

percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

11. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

12. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

13. Successors; Assignments.

    13.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    13.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior

written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

13.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

14. Cooperative Purchasing Authorized.

14.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

14.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

14.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

14.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

14.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

14.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

14.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

14.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts,

including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

14.9. The requirements of this Section 14 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

14.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to any claim or claims by persons or entities other than those expressly identified in this Section.

15. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

16. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

17. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

18. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

20. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

21. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

22. Notices.

22.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City:	City of Benson 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager Facsimile: (520) 586-3375
With a copy to:	Benson City Manager 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager
If to District:	
With a copy to:	
If to EDB:	El Dorado Benson LLC 8501 N. Scottsdale Rd., Suite 120 Scottsdale, Arizona 85253 Facsimile: (602) 955-3543
With a copy to:	Dana Stagg Belknap, Esq. Gallagher & Kennedy 2575 East Camelback Road Phoenix, Arizona 85015 (602) 530-8500

22.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

23. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

24. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

    24.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Community Facilities District Number 2.

25. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

26. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

27. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

28. Default.

    28.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

28.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Community Facilities District Number 2, an Arizona community facilities district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 2 (CFD-2)

Those portions of Section 31, Township 17 South, Range 20 East, Gila and Salt River Meridian; Section 6, Township 18 South, Range 20 East, Gila and salt River Meridian; Section 36, Township 17 South, Range 19 East, Gila and Salt River Meridian and Section 1, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Southwest corner of said Section 1;

Thence North 00 degrees 11 minutes 46 seconds East, 2647.37 feet along the West line of said Section 1 to the West Quarter corner thereof;

Thence North 00 degrees 16 minutes 18 seconds East, 2619.28 feet along the West line of said Section 1 to the Northwest corner thereof, also being the Southwest corner of said Section 36;

Thence North 00 degrees 04 minutes 41 seconds East, 2462.96 feet along the West line of said Section 36;

Thence departing said West line North 61 degrees 44 minutes 23 seconds East, 2131.29 feet;

Thence South 89 degrees 52 minutes 03 seconds East, 771.87 feet;

Thence North 51 degrees 12 minutes 56 seconds East, 2891.21 feet to the North line of said Section 36;

Thence North 89 degrees 43 minutes 03 seconds East, 400.04 feet along the North line of said Section 36 to the Northeast corner thereof, also being the Northwest corner of said Section 31;

Thence South 87 degrees 25 minutes 37 seconds East, 2373.90 feet along the North line of said Section 31 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence South 00 degrees 05 minutes 35 seconds West, 4.24 feet;

Thence South 00 degrees 11 minutes 49 seconds West, 5144.21 feet to the intersection with the line common to said Sections 31 and 6;

Thence South 00 degrees 02 minutes 49 seconds West, 5278.00 feet to the intersection with the South line of said Section 6;

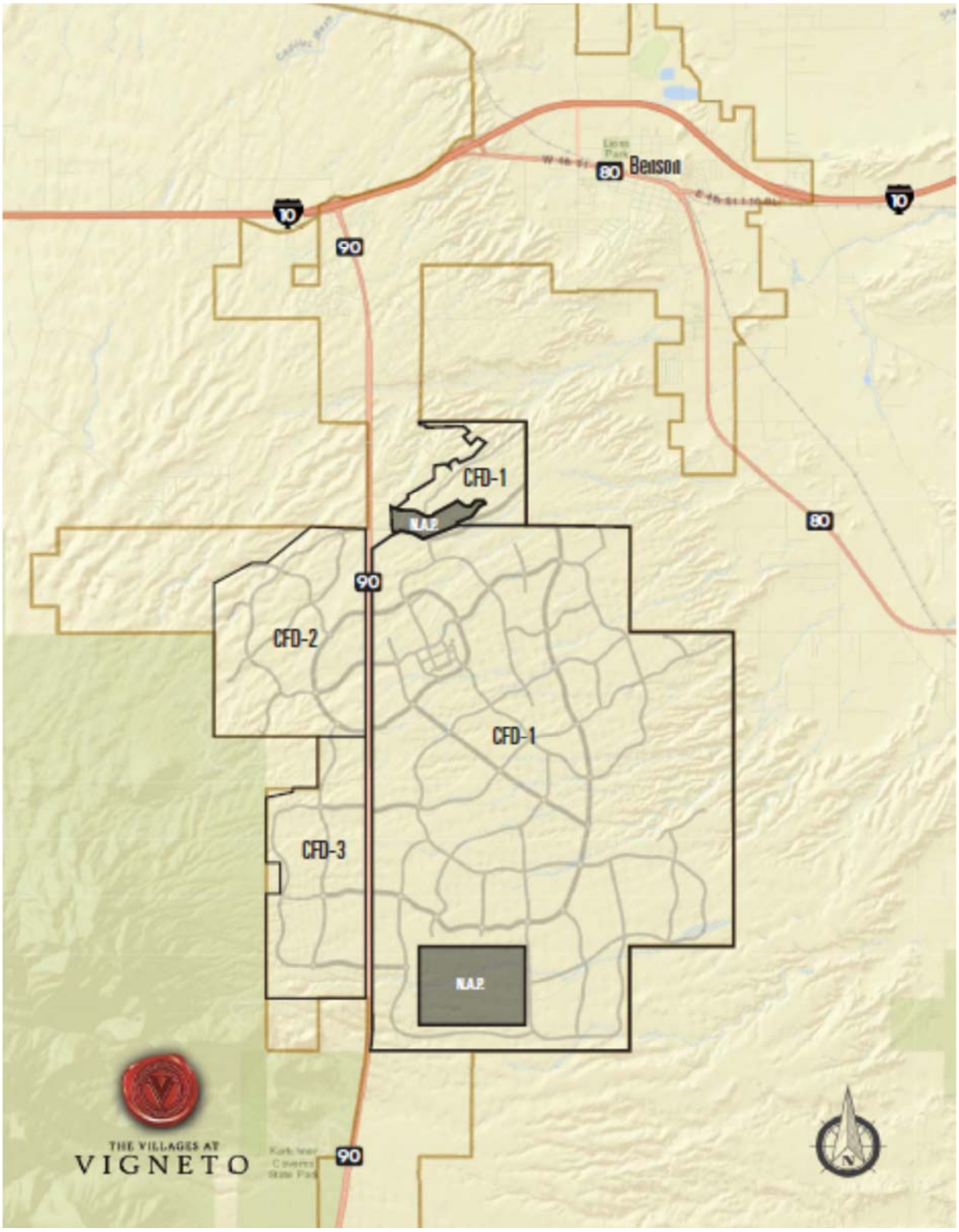
Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along the South line of said Section 6 to the Southwest corner thereof, also being the Southeast corner of said Section 1;

Thence South 89 degrees 41 minutes 11 seconds West, 2639.59 feet along the South line of said Section 1 to the South Quarter corner thereof;

Thence North 89 degrees 53 minutes 24 seconds West, 2640.06 feet along the south line of said Section 1 to the Southwest corner thereof and POINT OF BEGINNING.

CFD-2 containing 72,947,717 square feet (1,674.649 acres), more or less.

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 19

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 54-2017 of the Mayor and Council of the City of Benson, Arizona, authorizing execution of a Development Agreement between the City of Benson, Arizona the Special Taxing District known as The Villages at Vigneto Community Facilities District No. 3, and El Dorado Benson relating to the development of The Villages at Vigneto

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements. Before adopting a Resolution approving the Community Facilities Districts, City staff asks the Mayor and Council to approve new Development Agreements for each district. The development agreements deal essentially with three issues: establishing a requirement that the developer fund the district until it generates enough revenue through its assessments to sustain its operations; the requirement that the developer and the district indemnify the City from certain formation and administrative functions; and allow the District and the City to use each other's procurement functions through a cooperative purchasing arrangement with aim of increasing the buying power of the combined entities.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding these development agreements.

Staff Recommendation:

Council pleasure

RESOLUTION 54-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BENSON, ARIZONA THE SPECIAL TAXING DISTRICT KNOWN AS THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3, AND EL DORADO BENSON RELATING TO THE DEVELOPMENT OF THE VILLAGES AT VIGNETO

WHEREAS, the City is authorized by A.R.S. § 9-500.05 to enter into development agreements relating to the development of property located within its incorporated boundaries;

WHEREAS, in 1993 the City and a developer entered into a development agreement relating to property located along State Route 90 known as the Whetstone Ranch;

WHEREAS, El Dorado Benson, LLC, is the successor owner to approximately 12,167 acres of the property subject to the 1993 development agreement;

WHEREAS, the City and El Dorado Benson previously adopted a new development agreement relating to development of the same property, including to reflect a change in the name of the development from Whetstone Ranch to the Villages at Vigneto;

WHEREAS, the City separately is considering the formation of a Special Taxing District with the proposed name of The Villages at Vigneto Community Facilities District Number 3 (the "District"), which District the applicants propose to form pursuant to the provisions of A.R.S. § 48-701, *et seq.*, to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements;

WHEREAS, the parties separately believe that adopting additional terms relating to the formation and administration of the District are in their best interest;

WHEREAS, upon formation, the District pursuant to the provisions of A.R.S. § 48-708(C) automatically is considered a party to and is charged with administration of any Development Agreement governing the infrastructure of the subject property;

WHEREAS, the City desires to avail itself of all provisions of law applicable to this Development Agreement and desires to enter into it;

WHEREAS, the Mayor and Council hereby find that the requirements of the Development Agreement are consistent with the City's General Plan requirements related to the affected property; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Development Agreement and find that entering into it is in the best interests of the City and its residents and future residents.

NOW THEREFORE, BE IT RESOLVED by the City of Benson Mayor and Council that the City enter the Development Agreement (attached as Exhibit A) with El Dorado Benson for future development of the property the Development Agreement designates. The Mayor is authorized to execute the Agreement.

BE IT FURTHER RESOLVED that the City's officers and staff are authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 28th day of December 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
City Attorney
MESCH CLARK ROTHSCHILD
By Paul A. Loucks

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT

AND INTERGOVERNMENTAL AGREEMENT

FOR

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3

(BENSON, ARIZONA)

by and among

CITY OF BENSON, ARIZONA,

THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3

(BENSON, ARIZONA)

and

EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3) ("Agreement"), is entered into, effective as of _____, 2017 (the "Effective Date") by and among the City of Benson, Arizona, a political subdivision of the State of Arizona ("City"), The Villages at Vigneto Community Facilities District Number 3, a municipal corporation and political subdivision of the State of Arizona ("District"), and El Dorado Benson LLC, an Arizona limited liability company("EDB") (each a "Party" and collectively the "Parties").

1. Background and Purpose.

1.1. The City Council, on _____, 2017, (the "Formation Date"), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-701 through 48-728 (the CFD Act").

1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the "Property").

1.3. The Board of Directors of the District (the "District Board") intends to call an election to authorize the District Board to:

A. Issue general obligation bonds of the District ("GO Bonds") as described in Section 8.1.

B. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the "Debt Service Tax").

C. Annually levy, assess and collect an ad valorem property tax at a rate of up to $0.30 per $100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the "O/M Tax").

1.4. This Agreement is a "development agreement" under the CFD Act and A.R.S. § 9-500.05 and, as between the District and the City, an "intergovernmental agreement" under A.R.S. §§ 11-951 through 11-955.

1.5. This Agreement, among other things, establishes EDB's obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.

1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any GO Bonds, assessment bonds as described in Section 9 ("Assessment Bonds"), and revenue bonds as described in Section 10 ("Revenue Bonds") (collectively, "District Bonds") for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a "Project") and amounts which will be collected with respect to the O/M Tax in the future.

1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.

3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:

A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.

C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.

D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.

E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.

B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.

C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;

5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;

5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of $50,000;

5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.

6. Acquisition Projects. With regard to (i) the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District and (ii) the first series of GO Bonds and subsequent GO Bonds issued during a ten-year period after issuance of the first GO Bonds in the District (collectively, the "Acquisition Period"), the District may use such Assessment Bonds and GO Bonds, as applicable, only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of GO Bonds and/or Assessment Bonds issued after expiration of the Acquisition Period.

7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the GO or Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds, GO Bonds, or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds, GO Bonds, or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds, GO Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.

8. GO Bonds.

8.1. The total aggregate principal amount of all of the series of the GO Bonds shall not exceed $325,000,000 during the term of this Agreement, with an interest rate not to exceed 12%. The GO Bond voter authorization shall expire 75 years from the date of the voter authorization.

8.2. A series of the GO Bonds shall only be issued if the debt service therefor is reasonably projected to be amortized from amounts generated by a Debt Service Tax of not to exceed $8.00 per one hundred dollars of assessed valuation of property within the boundaries of the District as indicated on the certified tax roll for the current tax year; provided, however, and notwithstanding the foregoing, GO Bonds may be issued if authorized by the District Board, in its sole discretion, where a tax rate greater than

$8.00 is projected to be necessary to pay the combined debt service of a proposed and any outstanding GO Bonds if other sources of revenue or security acceptable to the District Board and the City is provided to secure the payment of debt service on the GO Bonds including, but not limited to, a guarantee by EDB or its affiliates, or related entities to provide payments of amounts in the event an $8.00 Debt Service Tax is insufficient to pay debt service on the GO Bonds in any given year.

8.3. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, average, annual, percentage delinquency factor for the District calculated at or near the time of the issuance of the GO Bonds shall be assumed; all property in the District owned by EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB shall be assigned the last certified assessed value such property had when categorized as "vacant" for purposes of assessed valuation and the debt service for any outstanding series of the GO Bonds theretofore issued shall be taken into account in determining whether such tax rate will produce adequate debt service tax collections; provided, however, and without limiting the District's sole discretion pertaining to a decision whether to issue Bonds, the District and EDB shall use their best efforts to issue the first series of the GO Bonds no later than necessary to have the debt service tax rate of no more than $8.00 appear on the first tax bill applicable to any single family residential dwelling unit to be located within the boundaries of the District to be owned by other than EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB or any homebuilder to whom EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB sells property within the boundaries of the District.

8.4. If requested in the Report and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of such series of GO Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on that series of the GO Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto.

9. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.

9.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-721, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental

agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

9.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.

9.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.

9.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of $1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.

9.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

9.6. The mailing to the governing body of the Municipality of the Estimate and the Plans and Specifications in the form of the Report pursuant to Section 48-715, Arizona Revised Statutes, as amended, shall satisfy the filing requirements of Section 48-577, Arizona Revised Statutes, as amended.

9.7. At the time of a sale other than a "public sale" (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount

of the Assessment Bonds assessed to such parcel. In the case of a "public sale" (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

9.8. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.

9.9. For purposes of this Section 9, "Financeable Amount" means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.

10. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.

10.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.

10.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten

percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

11. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.

12. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.

13. Successors; Assignments.

    13.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.

    13.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior

written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

13.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, "lot" means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

14. Cooperative Purchasing Authorized.

14.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

14.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities' respective procurement codes.

14.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

14.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

14.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

14.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

14.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

14.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts,

including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

14.9. The requirements of this Section 14 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.

14.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to any claim or claims by persons or entities other than those expressly identified in this Section.

15. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.

16. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.

17. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.

18. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

20. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

21. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

22. Notices.

22.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City:	City of Benson 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager Facsimile: (520) 586-3375
With a copy to:	Benson City Manager 120 W. 6th Street Benson, Arizona 85602 Attention: City Manager
If to District:	
With a copy to:	
If to EDB:	El Dorado Benson LLC 8501 N. Scottsdale Rd., Suite 120 Scottsdale, Arizona 85253 Facsimile: (602) 955-3543
With a copy to:	Dana Stagg Belknap, Esq. Gallagher & Kennedy 2575 East Camelback Road Phoenix, Arizona 85015 (602) 530-8500

22.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

23. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

24. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

    24.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Community Facilities District Number 3.

25. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

26. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. *"Force Majeure"* means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

27. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

28. Default.

    28.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

28.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

_____
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Community Facilities District Number 3, an Arizona community facilities district.

_____
Notary Public

(Affix Seal Here)

ATTEST:

_____
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.

My commission expires:

_____
Notary Public

EXHIBIT A

The Property

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 3 (CFD-3)

Those portions of Sections 7, 18, and 19, Township 18 South, Range 20 East, Gila and Salt River Meridian and Sections 12, 13 and 24, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 33 seconds West, 2643.09 feet along the West line of said Section 7 to the Quarter corner common to said Sections 7 and 12;

Thence South 89 degrees 51 minutes 22 seconds West, 1320.01 feet along the East-West Mid-section line of said Section 12;

Thence South 00 degrees 05 minutes 31 seconds West, 233.00 feet;

Thence South 79 degrees 51 minutes 15 seconds West, 1341.69 feet to the intersection with the North-South Mid-section line of said Section 12;

Thence South 00 degrees 06 minutes 47 seconds West, 2176.57 feet along the said North-South Mid-section line of Section 12 to the Quarter corner common to said Section 12 and 13;

Thence South 00 degrees 11 minutes 06 seconds West, 1102.99 feet along the North-South Mid-section line of said Section 13;

Thence North 89 degrees 48 minutes 01 seconds East, 693.77 feet;

Thence South 00 degrees 15 minutes 22 seconds West, 631.48 feet;

Thence South 00 degrees 11 minutes 06 seconds West, 911.84 feet to the East-West Mid-section line of said Section 13;

Thence South 89 degrees 55 minutes 06 seconds West, 692.97 feet along the said East-West Mid-section line of Section 13 to the Center Quarter thereof;

Thence South 00 degrees 12 minutes 23 seconds West, 2645.80 feet along the North-South Mid-section line of said Section 13 to the Quarter corner common to said Sections 13 and 24;

Thence South 00 degrees 00 minutes 47 seconds West, 2648.04 feet along the North-South Mid-section line of said Section 24 to the Center Quarter corner thereof;

Thence North 89 degrees 56 minutes 35 seconds East, 2638.53 feet along the East-West Mid-section line of said Section 24 to the Quarter corner common to said Sections 19 and 24;

Thence South 89 degrees 54 minutes 56 seconds East, 2409.56 feet along the East-West Mid-section line of said Section 19 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence North 00 degrees 12 minutes 05 seconds East, 2654.03 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 2641.27 feet to the intersection with the Mid-section line of said Section 18;

Thence North 00 degrees 02 minutes 48 seconds East, 2645.86 feet to the intersection with the line common to said Sections 18 and 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2645.71 feet to the intersection with the Mid-section line of said Section 7;

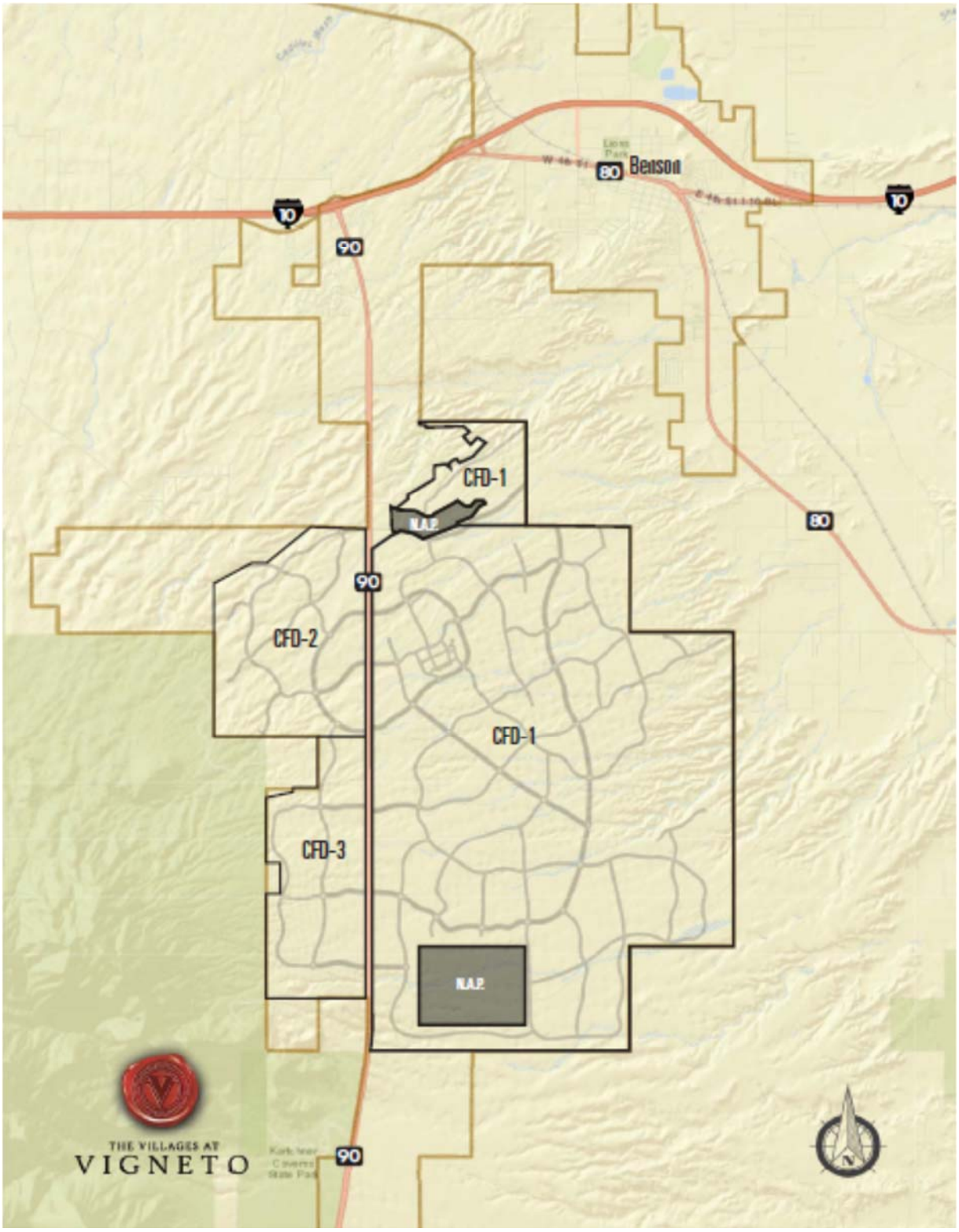
Thence North 00 degrees 02 minutes 13 seconds East, 2652.61 feet to the intersection with the North line of said Section 7;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along said North line to the POINT OF BEGINNING.

Total Area for CFD-3 is 58,254,220 square feet (1,337.333 acres) more or less.

EXPIRES 3/31/2018

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 20

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 55-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 1 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping revitalization districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded, return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 55-2017

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1 IN THE CITY OF BENSON, ARIZONA

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RESOLUTION 55-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 1 IN THE CITY OF BENSON, ARIZONA

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Findings. The Mayor and Council hereby make the following findings:

A. On or about October 13, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Community Facilities District Number 1 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners").

B. The City and the Petitioners agreed that the City would have until December 31, 2017 to consider the Petition for formation of the District.

C. The Petitioner has represented, attested and declared the following:

1. The name of the District is requested pursuant to the Petition to be "The Villages at Vigneto Community Facilities District Number 1",

2. The District is to be formed, and will exist, pursuant to the terms and provisions of the Act,

3. The District is to contain an area of approximately 9,805 acres of land, more or less, wholly within the corporate boundaries of the City, and is to be composed of the land described by metes and bounds as provided in Exhibit A hereto, which is made a part hereof for all purposes (hereinafter referred to as the "Property"),

4. The District is to be a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, the Act, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5, Arizona Revised Statutes, as amended; except as otherwise provided in the Act, and is to be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City; and is to be formed for, and have, all the purposes and powers of a "district" as such term is defined, and as provided, in the Act, and

5. Public convenience and necessity require the adoption of this resolution forming the District.

D. The Petitioner further represented, attested and declared that on the date thereof and hereof, as shown on the assessment roll for State and county taxes in Cochise County, Arizona, all of the land to be in the District is owned by the Petitioner or, if a person listed on such assessment roll is no longer the owner of the land in the District, that the name of the successor owner has become known and verified by recorded deed or similar evidence of transfer of ownership to the Petitioner and that the land to be included in the District shall be benefited from the improvements for which the District is proposed to be formed and that there are no qualified electors residing on the land to be in the District.

E. After representing, attesting and declaring the preceding, the Petitioner requested that the Petition be properly filed as provided by law and that, as the Petition is signed by the owners of all the land to be in the District, any requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof be waived, and that the City, upon receipt of the Petition, declare its intention to form the District and thereafter form the District without being required to comply with such provisions for posting, publication, mailing, notice, hearing or landowner election.

F. A Development and Intergovernmental Agreement (the "Development Agreement") has been presented to the Mayor and Council, executed by the owners of all the land in the District and it is now in order for the City to approve such Development Agreement.

Section 2. Agreements and Further Findings by the City. The Mayor and Council hereby agree to and find the following:

A. The Petitioner seeks formation of the District to exercise the powers and functions set forth in the Act.

B. The General Plan (as defined hereafter) has been filed with the Clerk of the City.

C. The Petition, and all necessary supporting materials, meets the requirements of A.R.S. § 48-707, subsections F and G and has been filed with the Council, and the showings in the Petition are each noticed by us and are hereby incorporated at this place as if set forth in whole.

D. The purposes for which the organization of the District is sought are as described in the Petition and General Plan and are purposes for which a community facilities district created pursuant to the Act may be lawfully formed.

E. The District is to be wholly comprised of the Property and the Property is wholly within the boundaries of the City.

F. The Property is benefited by the District and the public infrastructure and the public infrastructure purposes set forth in the General Plan.

G. Pursuant to A.R.S. § 48-707, subsections F and G, no hearing on the formation of the District will be held; written objections under A.R.S. § 48-704(A) therefore are not warranted.

H. The Petitioner is the owner of all of the Property and no qualified electors reside on the Property.

I. The public convenience and necessity require the adoption hereof.

Section 3. Approval of the General Plan. Prior to the adoption hereof, the Petitioner filed a "General Plan for the Proposed The Villages at Vigneto Community Facilities District No. 1" for the District was filed with the Clerk of the City setting out a general description of the improvements for which the District is proposed to be formed and the general areas to be improved and benefited (hereinafter referred to as the "General Plan"). The General Plan is hereby approved in all respects.

Section 4. Intention to Form the District. The Mayor and Council hereby declares, pursuant to the Act, its intention to form the District comprised of the Property as a community facilities district, pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. Based on the Petition and the findings set forth herein, all requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof are waived.

Section 5. Granting Petition; Formation of District. The Petition is hereby granted, and the District is hereby formed as a community facilities district pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. The Mayor and Council hereby determine February 6, 2018 to be the scheduled election date to submit the question of formation of the District to the qualified electors, if any, who reside within the boundaries of the District. As of the date hereof, which is a date within 50 days immediately preceding such scheduled election date, there are no resident electors or qualified electors residing on the Property, therefore, the submission of the formation of the District to an election of resident electors is hereby found to be unnecessary and no formation election will be held.

Section 6. Levy of Taxes. Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the costs of improvements constructed by the District and the administration of the District and for their operation and maintenance and the administration of the District.

Section 7. District Board and Officers. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of six years:

John Davis

Celia Jenkins

Mark Fenn

and comprised, initially, of the following members who shall serve terms of four years:

Cindy Batten

Richard Polheber

The subsequent members of the Board of Directors will be elected in accordance with the Act.

Section 8. Development Agreement and Intergovernmental Agreement. By this Resolution and pursuant to Arizona Revised Statutes Section 48-708, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. District Boundaries and Map. The District boundaries are set to be as described in metes and bounds in Exhibit A hereto. The map showing the District boundaries is set forth in Exhibit B hereto and is hereby approved.

Section 10. Dissemination of This Resolution. The City Clerk shall cause a copy of this resolution to be delivered to the County Assessor and the Board of Supervisors of Cochise County, Arizona, and to the Department of Revenue of the State of Arizona.

Section 11. No General Liability of or for the City. Neither the general fund or any other fund or moneys of the City, nor that of the State of Arizona or any political subdivision of either (other than the District) shall be liable for the payment or repayment of any obligation, liability, bond or indebtedness of the District, and neither the credit nor the taxing power of the City, the State of Arizona or any political subdivision of either (other than the District) shall be pledged therefor.

Passed by the Council of the City of Benson, Arizona, on December 28, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibits: A Legal description of district B Boundary map of district

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 1 (CFD-1)

Block 2, Well Site abutting Block 2, and Block 4 of THE CANYONS AT WHETSTONE RANCH subdivision, recorded in Book 15 at Page 23, 23A through 23M in the Cochise County Recorder's office, and those portions of Sections 29, 30, 31, 32, and 33, Township 17 South, Range 20 East, Gila and Salt River Meridian, and Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20 and 21, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northeast corner of said Section 33;

Thence South 00 degrees 54 minutes 17 seconds West, 5242.20 feet along the East line of said Section 33 to the Southeast corner thereof, also being the Northwest corner of said Section 3;

Thence South 89 degrees 56 minutes 45 seconds East, 2645.46 feet along the North line of said Section 3 to the North Quarter corner thereof;

Thence South 89 degrees 58 minutes 54 seconds East, 2654.11 feet along said North line of Section 3 to the Northeast corner of said Section 3;

Thence South 00 degrees 13 minutes 48 seconds West, 2628.45 feet along the East line of said Section 3 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 57 seconds West, 2638.43 feet along said East line of Section 3 to the Southeast corner thereof, also being the Northeast corner of said Section 10;

Thence South 00 degrees 07 minutes 46 seconds West, 2647.39 feet along the East line of said Section 10 to the East Quarter corner thereof;

Thence South 00 degrees 04 minutes 18 seconds West, 2644.85 feet along said East line of Section 10 to the Southeast corner thereof, also being the Northeast corner of said Section 15;

Thence South 00 degrees 10 minutes 16 seconds West, 2648.49 feet along the East line of said Section 15 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 04 seconds East, 2665.47 feet along the said East line of Section 15 to the Southeast corner thereof;

Thence North 89 degrees 51 minutes 49 seconds West, 2651.95 feet along the South line of said Section 15 to the South Quarter corner thereof;

Thence North 89 degrees 46 minutes 21 seconds West, 2651.73 feet along the said South line of Section 15 to the southwest corner thereof, also being the Northeast corner of said Section 21;

Thence South 00 degrees 06 minutes 13 seconds West, 2647.15 feet along the East line of said Section 21 to the East Quarter corner thereof;

Thence South 00 degrees 05 minutes 02 seconds West, 2649.47 feet along said East line of Section 21 to the Southeast corner thereof;

Thence South 89 degrees 54 minutes 37 seconds West, 2644.96 feet along the South line of said Section 21 to the South Quarter corner thereof;

Thence North 89 degrees 48 minutes 01 seconds West, 2638.89 feet along the said South line of Section 21 to the Southwest corner thereof, also being the Southeast corner of said Section 20;

Thence North 89 degrees 48 minutes 24 seconds West, 5291.23 feet along the South line of said Section 20 to the Southwest corner thereof, also being the Southeast corner of said Section 19;

Thence North 89 degrees 55 minutes 05 seconds West, 2537.60 feet along the South line of said Section 19 to a point of non-tangent curvature on the East right-of-way of State Route 90, from which point the radius point bears North 84 degrees 57 minutes 37 seconds West;

Continue along the said East right-of-way of State Route 90 the following courses;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 001 degrees 46 minutes 55 seconds, 718.98 feet;

Thence South 86 degrees 44 minutes 32 seconds East, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 86 degrees 44 minutes 32 seconds West;

Thence along a curve to the left, having a radius of 23168.32 feet and a central angle of 000 degrees 59 minutes 28 seconds, 400.75 feet;

Thence North 87 degrees 44 minutes 00 seconds West, 50.00 feet to a point of non-tangent curvature, from which point the radius point bears North 87 degrees 44 minutes 00 seconds West;

Thence along a curve to the left, having a radius of 23118.32 feet and a central angle of 002 degrees 03 minutes 54 seconds, 833.23 feet to a point of tangency;

Thence North 00 degrees 12 minutes 06 seconds East, 3350.67 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 4045.52 feet;

Thence South 89 degrees 57 minutes 12 seconds East, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 70.00 feet;

Thence North 89 degrees 57 minutes 12 seconds West, 15.00 feet;

Thence North 00 degrees 02 minutes 48 seconds East, 1171.67 feet to the intersection with the line common to said Sections 7 and 18;

Thence North 00 degrees 02 minutes 13 seconds East, 4028.22 feet;

Thence South 89 degrees 57 minutes 47 seconds East, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 60.00 feet;

Thence North 89 degrees 57 minutes 47 seconds West, 25.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 311.62 feet;

Thence South 89 degrees 57 minutes 47 seconds East, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 90.00 feet;

Thence North 89 degrees 57 minutes 47 seconds West, 50.00 feet;

Thence North 00 degrees 02 minutes 13 seconds East, 808.47 feet to the intersection with the line common to said Sections 6 and 7;

Thence North 00 degrees 02 minutes 49 seconds East, 5277.56 feet to the intersection with the line common to said Sections 6 and 31;

Thence North 00 degrees 11 minutes 49 seconds East, 4167.51 feet;

Thence departing said East right-of-way North 57 degrees 00 minutes 00 seconds East, 1250.67 feet along the southern exterior boundary of THE CANYONS AT WHETSTONE subdivision (Book 15, page 23B - Cochise County records);

Thence North 89 degrees 26 minutes 58 seconds East, 800.00 feet along said exterior line;

Thence South 62 degrees 00 minutes 00 seconds East, 400.00 feet along said exterior line;

Thence South 86 degrees 00 minutes 00 seconds East, 550.00 feet along said exterior line;

Thence North 67 degrees 00 minutes 00 seconds East, 1527.20 feet along said exterior line to the North line of said Section 32;

Thence continue North 67 degrees 00 minutes 00 seconds East, 222.76 feet;

Thence the following courses along the exterior boundary of THE CANYONS AT WHETSTONE subdivision (Book 15, page 23, Cochise County records);

Thence North 19 degrees 00 minutes 00 seconds West, 186.81 feet;

Thence North 71 degrees 00 minutes 00 seconds East, 834.24 feet;

Thence North 36 degrees 00 minutes 56 seconds East, 593.12 feet;

Thence North 54 degrees 10 minutes 41 seconds East, 307.02 feet;

Thence North 06 degrees 30 minutes 54 seconds West, 129.11 feet calculated (North 06 degrees 31 minutes 16 seconds East, 129.10 feet record plat);

Thence South 87 degrees 17 minutes 10 seconds West, 474.99 feet to a point of non-tangent curvature, from which point the radius point bears North 71 degrees 06 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 350.00 feet and a central angle of 094 degrees 44 minutes 07 seconds, 578.70 feet to a point of tangency;

Thence North 66 degrees 22 minutes 03 seconds West, 216.56 feet;

Thence North 44 degrees 37 minutes 46 seconds West, 137.93 feet;

Thence South 77 degrees 28 minutes 12 seconds West, 321.08 feet calculated (321.14 feet record plat) to

a point of non-tangent curvature, from which point the radius point bears North 41 degrees 59 minutes 01 seconds West;

Thence along a curve to the right, having a radius of 1975.00 feet and a central angle of 030 degrees 55 minutes 18 seconds, 1065.88 feet calculated (1066.30 record plat);

Thence South 03 degrees 05 minutes 39 seconds East, 120.14 feet;

Thence South 85 degrees 17 minutes 54 seconds West, 54.00 feet (54.02 feet record plat) to a point of non-tangent curvature, from which point the radius point bears South 86 degrees 54 minutes 07 seconds West;

Thence along a curve to the right, having a radius of 25.00 feet and a central angle of 083 degrees 39 minutes 07 seconds, 36.50 feet to a point of tangency;

Thence South 80 degrees 33 minutes 14 seconds West, 118.41 feet to a point of non-tangent curvature, from which point the radius point bears North 09 degrees 26 minutes 44 seconds West;

Thence along a curve to the right, having a radius of 565.00 feet and a central angle of 039 degrees 04 minutes 05 seconds, 385.25 feet to a point of tangency;

Thence North 60 degrees 22 minutes 41 seconds West, 268.45 feet to a point of non-tangent curvature, from which point the radius point bears South 29 degrees 37 minutes 18 seconds West;

Thence along a curve to the left, having a radius of 665.00 feet and a central angle of 032 degrees 12 minutes 41 seconds, 373.86 feet to a point of reverse curvature;

Thence along a curve to the right, having a radius of 1740.00 feet and a central angle of 023 degrees 13 minutes 10 seconds, 705.15 feet to a point on the exterior boundary of THE COTTONWOOD HIGHLANDS subdivision (Book 15, page 25, Cochise County records);

Thence North 21 degrees 04 minutes 11 seconds West, 40.99 feet (41.03 feet record plat) along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence the following courses along said exterior boundary of said THE COTTONWOOD HIGHLANDS subdivision;

Thence North 54 degrees 28 minutes 47 seconds East, 761.10 feet;

Thence North 24 degrees 42 minutes 22 seconds West, 211.59 feet;

Thence North 60 degrees 00 minutes 00 seconds East, 1596.14 feet;

Thence North 00 degrees 05 minutes 20 seconds West, 694.84 feet;

Thence North 76 degrees 00 minutes 00 seconds East, 525.85 feet;

Thence South 52 degrees 45 minutes 34 seconds East, 334.83 feet calculated (South 52 degrees 50 minutes 34 seconds East, 334.94 feet record plat) to the Southwest corner of Lot 140 of said THE COTTONWOOD HIGHLANDS subdivision;

Thence departing said exterior boundary the following courses around the perimeter of said Lot 140;

Thence North 08 degrees 11 minutes 10 seconds West, 228.47 feet to a point of non-tangent curvature, from which point the radius point bears North 08 degrees 11 minutes 10 seconds West;

Thence along a curve to the left, having a radius of 320.00 feet and a central angle of 026 degrees 25 minutes 28 seconds, 147.58 feet to a point of tangency;

Thence North 55 degrees 23 minutes 21 seconds East, 286.39 feet;

Thence South 31 degrees 08 minutes 59 seconds East, 281.44 feet to the intersection with said exterior boundary;

Thence the following courses along said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 67 degrees 27 minutes 16 seconds East, 510.87 feet;

Thence North 44 degrees 10 minutes 00 seconds East, 1158.98 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 450.00 feet;

Thence South 44 degrees 10 minutes 00 seconds West, 550.00 feet;

Thence North 45 degrees 50 minutes 00 seconds West, 500.00 feet to the intersection with the exterior boundary of that property described within the Special Warranty Deed to the City of Benson recorded in Document No. 0605-18326 in the office of the Cochise County Recorder;

Thence the following courses along said Special Warranty Deed;

Thence North 44 degrees 10 minutes 24 seconds East, 449.99 feet;

Thence North 45 degrees 49 minutes 54 seconds West, 410.07 feet;

Thence South 88 degrees 22 minutes 01 seconds West, 1982.49 feet to the said exterior boundary of THE COTTONWOOD HIGHLANDS subdivision;

Thence North 01 degrees 38 minutes 00 seconds West, 100.00 feet along said exterior boundary;

Thence South 88 degrees 21 minutes 16 seconds West, 297.61 feet along said exterior boundary to the intersection with the West line of Section 29;

Thence North 00 degrees 39 minutes 14 seconds West, 100.00 feet along said West line to the Northwest corner of said Section 29;

Thence North 88 degrees 22 minutes 00 seconds East, 2685.18 feet along the north line of the Northwest quarter of said Section 29 to the North quarter corner thereof;

Thence South 88 degrees 52 minutes 53 seconds East, 2632.56 feet along the north line of the Northeast quarter of said Section 29 to the Northeast corner thereof;

Thence South 00 degrees 21 minutes 07 seconds East, 5284.19 feet along the East line of said Section 29 to the corner common to Sections 28, 29, 32, 33;

Thence South 89 degrees 25 minutes 51 seconds East, 5314.82 feet along the North line of said Section 33 to the POINT OF BEGINNING;

EXCEPTING therefrom the following Exception:

Exception 1:

BEGINNING at the Northeast corner of said Section 20, Township 18 South, Range 20 East, Gila and Salt River Meridian, Cochise County, Arizona;

Thence North 89 degrees 49 minutes 41 seconds West, 2643.71 feet along the North line of said Section 20 to the North Quarter corner thereof;

Thence North 89 degrees 45 minutes 38 seconds West, 2644.50 feet along the North line of said Section 20 to the Northwest corner thereof;

Thence South 00 degrees 07 minutes 01 seconds West, 2650.59 feet along the west line of said Section 20 to the West Quarter corner thereof;

Thence South 00 degrees 04 minutes 09 seconds West, 1323.07 feet along the west line of said Section 20;

Thence South 89 degrees 48 minutes 47 seconds East, 5291.15 feet to a point on the East line of said Section 20;

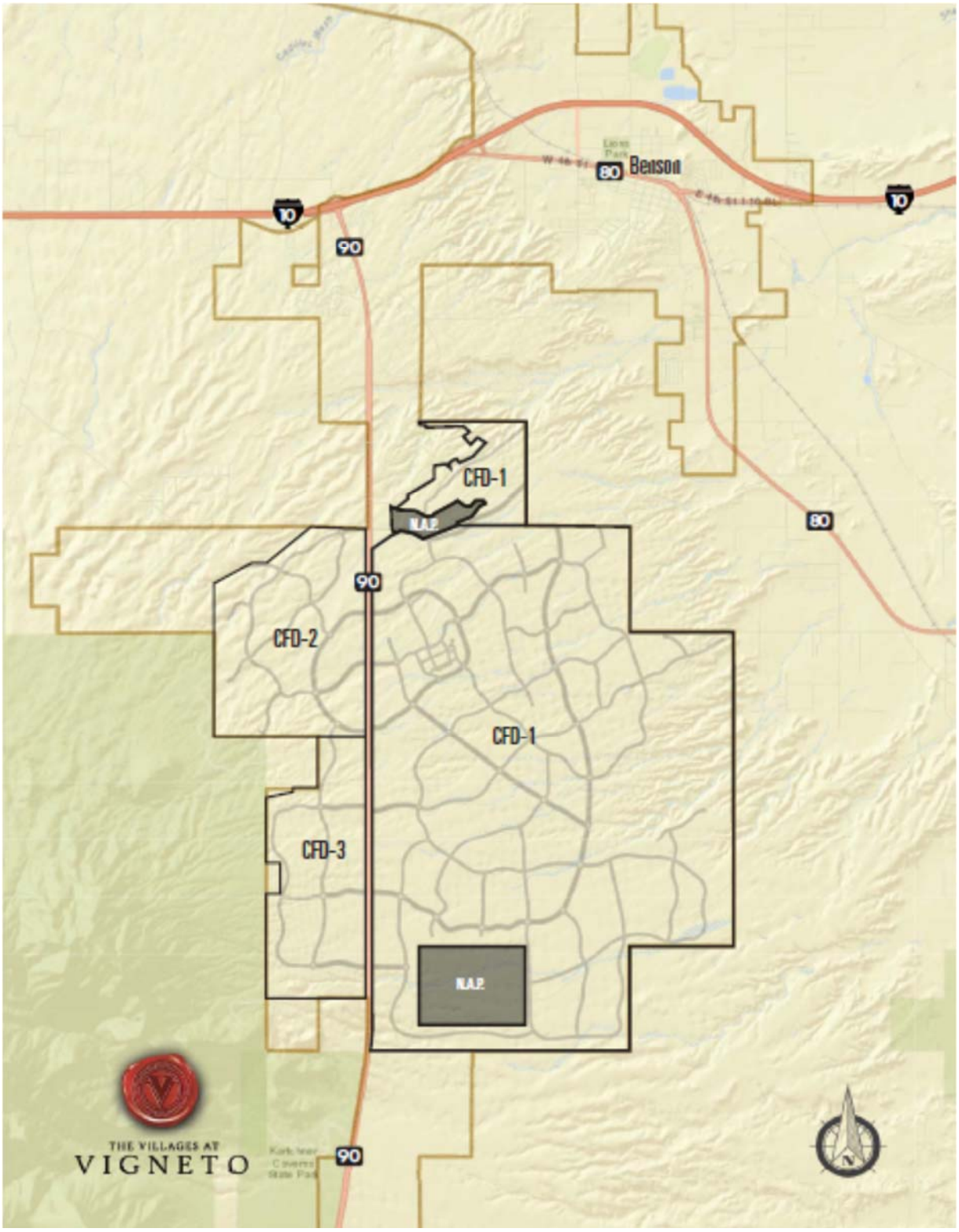
Thence North 00 degrees 03 minutes 57 seconds East, 1323.64 feet to the East Quarter corner of said Section 20;

Thence North 00 degrees 03 minutes 17 seconds East, 2648.31 feet along the East line of said Section 20 to the POINT OF BEGINNING.

Exception 1 containing 21,012,513 square feet (482.381 acres), more or less.

Net area of CFD-1 including Block 2, Well Site, and Block 4 is 427,119,577 square feet (9,805.316 acres) more or less.

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 21

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 56-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 2 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping revitalization districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded, return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 56-2017

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2 IN THE CITY OF BENSON, ARIZONA

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RESOLUTION 56-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 2 IN THE CITY OF BENSON, ARIZONA

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Findings. The Mayor and Council hereby make the following findings:

A. On or about October 13, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Community Facilities District Number 2 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners").

B. The City and the Petitioners agreed that the City would have until December 31, 2017 to consider the Petition for formation of the District.

C. The Petitioner has represented, attested and declared the following:

1. The name of the District is requested pursuant to the Petition to be "The Villages at Vigneto Community Facilities District Number 2",

2. The District is to be formed, and will exist, pursuant to the terms and provisions of the Act,

3. The District is to contain an area of approximately 1,675 acres of land, more or less, wholly within the corporate boundaries of the City, and is to be composed of the land described by metes and bounds as provided in Exhibit A hereto, which is made a part hereof for all purposes (hereinafter referred to as the "Property"),

4. The District is to be a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, the Act, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5, Arizona Revised Statutes, as amended; except as otherwise provided in the Act, and is to be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City; and is to be formed for, and have, all the purposes and powers of a "district" as such term is defined, and as provided, in the Act, and

5. Public convenience and necessity require the adoption of this resolution forming the District.

D. The Petitioner further represented, attested and declared that on the date thereof and hereof, as shown on the assessment roll for State and county taxes in Cochise County, Arizona, all of the land to be in the District is owned by the Petitioner or, if a person listed on such assessment roll is no longer the owner of the land in the District, that the name of the successor owner has become known and verified by recorded deed or similar evidence of transfer of ownership to the Petitioner and that the land to be included in the District shall be benefited from the improvements for which the District is proposed to be formed and that there are no qualified electors residing on the land to be in the District.

E. After representing, attesting and declaring the preceding, the Petitioner requested that the Petition be properly filed as provided by law and that, as the Petition is signed by the owners of all the land to be in the District, any requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof be waived, and that the City, upon receipt of the Petition, declare its intention to form the District and thereafter form the District without being required to comply with such provisions for posting, publication, mailing, notice, hearing or landowner election.

F. A Development and Intergovernmental Agreement (the "Development Agreement") has been presented to the Mayor and Council, executed by the owners of all the land in the District and it is now in order for the City to approve such Development Agreement.

Section 2. Agreements and Further Findings by the City. The Mayor and Council hereby agree to and find the following:

A. The Petitioner seeks formation of the District to exercise the powers and functions set forth in the Act.

B. The General Plan (as defined hereafter) has been filed with the Clerk of the City.

C. The Petition, and all necessary supporting materials, meets the requirements of A.R.S. § 48-707, subsections F and G and has been filed with the Council, and the showings in the Petition are each noticed by us and are hereby incorporated at this place as if set forth in whole.

D. The purposes for which the organization of the District is sought are as described in the Petition and General Plan and are purposes for which a community facilities district created pursuant to the Act may be lawfully formed.

E. The District is to be wholly comprised of the Property and the Property is wholly within the boundaries of the City.

F. The Property is benefited by the District and the public infrastructure and the public infrastructure purposes set forth in the General Plan.

G. Pursuant to A.R.S. § 48-707, subsections F and G, no hearing on the formation of the District will be held; written objections under A.R.S. § 48-704(A) therefore are not warranted.

H. The Petitioner is the owner of all of the Property and no qualified electors reside on the Property.

I. The public convenience and necessity require the adoption hereof.

Section 3. Approval of the General Plan. Prior to the adoption hereof, the Petitioner filed a "General Plan for the Proposed The Villages at Vigneto Community Facilities District No. 1" for the District was filed with the Clerk of the City setting out a general description of the improvements for which the District is proposed to be formed and the general areas to be improved and benefited (hereinafter referred to as the "General Plan"). The General Plan is hereby approved in all respects.

Section 4. Intention to Form the District. The Mayor and Council hereby declares, pursuant to the Act, its intention to form the District comprised of the Property as a community facilities district, pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. Based on the Petition and the findings set forth herein, all requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof are waived.

Section 5. Granting Petition; Formation of District. The Petition is hereby granted, and the District is hereby formed as a community facilities district pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. The Mayor and Council hereby determine February 6, 2018 to be the scheduled election date to submit the question of formation of the District to the qualified electors, if any, who reside within the boundaries of the District. As of the date hereof, which is a date within 50 days immediately preceding such scheduled election date, there are no resident electors or qualified electors residing on the Property, therefore, the submission of the formation of the District to an election of resident electors is hereby found to be unnecessary and no formation election will be held.

Section 6. Levy of Taxes. Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the costs of improvements constructed by the District and the administration of the District and for their operation and maintenance and the administration of the District.

Section 7. District Board and Officers. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of six years:

John Davis

Celia Jenkins

Mark Fenn

and comprised, initially, of the following members who shall serve terms of four years:

Cindy Batten

Richard Polheber

The subsequent members of the Board of Directors will be elected in accordance with the Act.

Section 8. Development Agreement and Intergovernmental Agreement. By this Resolution and pursuant to Arizona Revised Statutes Section 48-708, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. District Boundaries and Map. The District boundaries are set to be as described in metes and bounds in Exhibit A hereto. The map showing the District boundaries is set forth in Exhibit B hereto and is hereby approved.

Section 10. Dissemination of This Resolution. The City Clerk shall cause a copy of this resolution to be delivered to the County Assessor and the Board of Supervisors of Cochise County, Arizona, and to the Department of Revenue of the State of Arizona.

Section 11. No General Liability of or for the City. Neither the general fund or any other fund or moneys of the City, nor that of the State of Arizona or any political subdivision of either (other than the District) shall be liable for the payment or repayment of any obligation, liability, bond or indebtedness of the District, and neither the credit nor the taxing power of the City, the State of Arizona or any political subdivision of either (other than the District) shall be pledged therefor.

Passed by the Council of the City of Benson, Arizona, on December __, 2017.

_____
TONEY D., KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibits: A Legal description of district B Boundary map of district

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 2 (CFD-2)

Those portions of Section 31, Township 17 South, Range 20 East, Gila and Salt River Meridian; Section 6, Township 18 South, Range 20 East, Gila and salt River Meridian; Section 36, Township 17 South, Range 19 East, Gila and Salt River Meridian and Section 1, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Southwest corner of said Section 1;

Thence North 00 degrees 11 minutes 46 seconds East, 2647.37 feet along the West line of said Section 1 to the West Quarter corner thereof;

Thence North 00 degrees 16 minutes 18 seconds East, 2619.28 feet along the West line of said Section 1 to the Northwest corner thereof, also being the Southwest corner of said Section 36;

Thence North 00 degrees 04 minutes 41 seconds East, 2462.96 feet along the West line of said Section 36;

Thence departing said West line North 61 degrees 44 minutes 23 seconds East, 2131.29 feet;

Thence South 89 degrees 52 minutes 03 seconds East, 771.87 feet;

Thence North 51 degrees 12 minutes 56 seconds East, 2891.21 feet to the North line of said Section 36;

Thence North 89 degrees 43 minutes 03 seconds East, 400.04 feet along the North line of said Section 36 to the Northeast corner thereof, also being the Northwest corner of said Section 31;

Thence South 87 degrees 25 minutes 37 seconds East, 2373.90 feet along the North line of said Section 31 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence South 00 degrees 05 minutes 35 seconds West, 4.24 feet;

Thence South 00 degrees 11 minutes 49 seconds West, 5144.21 feet to the intersection with the line common to said Sections 31 and 6;

Thence South 00 degrees 02 minutes 49 seconds West, 5278.00 feet to the intersection with the South line of said Section 6;

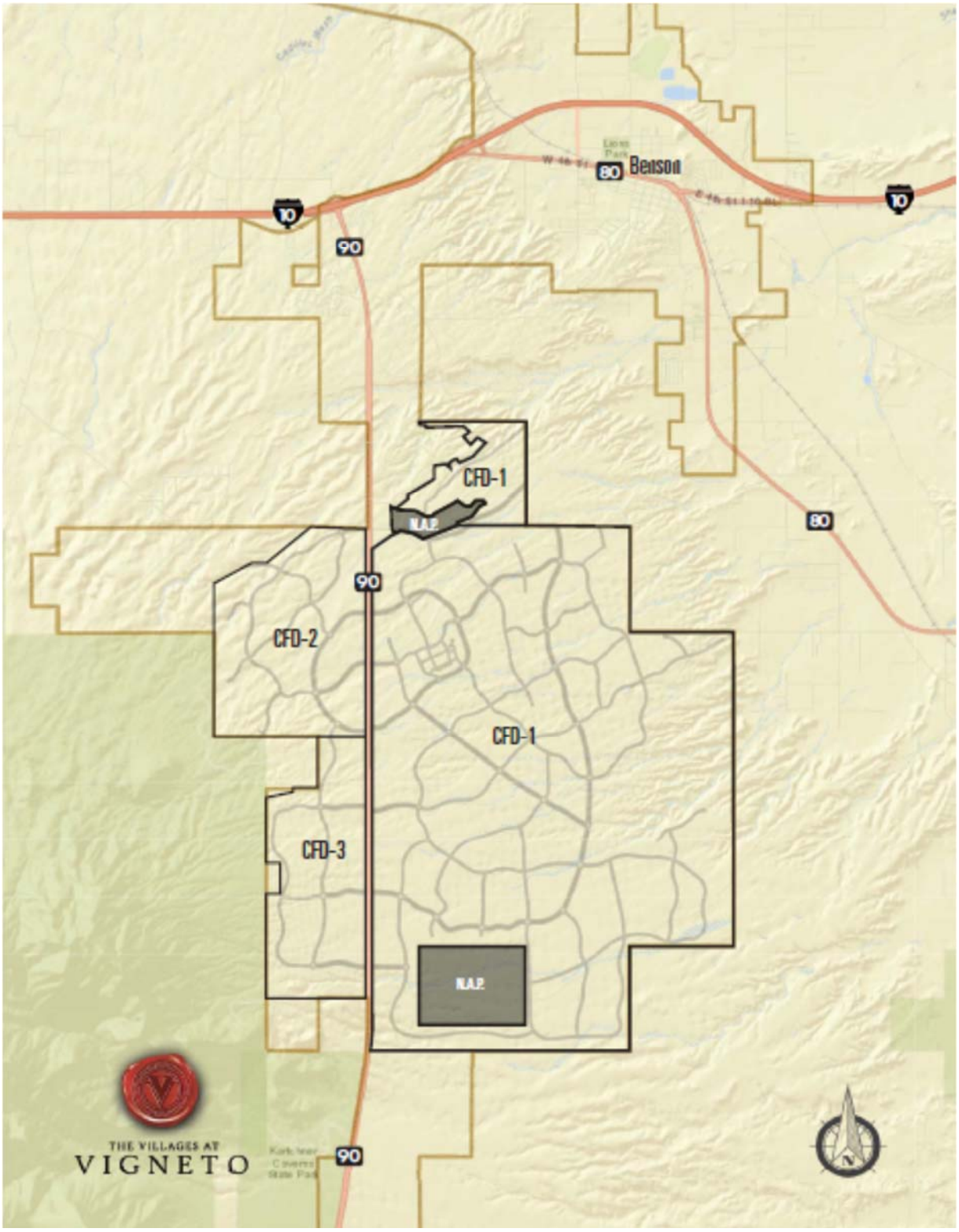
Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along the South line of said Section 6 to the Southwest corner thereof, also being the Southeast corner of said Section 1;

Thence South 89 degrees 41 minutes 11 seconds West, 2639.59 feet along the South line of said Section 1 to the South Quarter corner thereof;

Thence North 89 degrees 53 minutes 24 seconds West, 2640.06 feet along the south line of said Section 1 to the Southwest corner thereof and POINT OF BEGINNING.

CFD-2 containing 72,947,717 square feet (1,674.649 acres), more or less.

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 22

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding Resolution 57-2017 of the Mayor and Council of the City of Benson, Arizona, declaring intent to form a Community Facilities District; ordering and declaring formation of The Tax Levying The Villages at Vigneto Community Facilities District No. 3 in the City of Benson, Arizona

Discussion:

In October 2017, El Dorado Benson applied to the City to form three special taxing districts over the Vigneto project. If formed, these districts, known by the Statutes authorizing their formation as Community Facilities Districts, would have the ability to levy special assessments and/or ad valorem taxes upon the several lots in the subject Property in order to pay the costs of (a) the formation and operation of the District, (b) the construction of infrastructure improvements to be financed, constructed and acquired by the District, and (c) the operation and maintenance of such infrastructure improvements.

The Mayor and Council have adopted policies regarding the information staff has recommended to be reviewed prior to the adoption of a Resolution forming the taxing districts. This action on formation is only effective for properties located wholly within the City boundaries, and it is believed that all subject property meets that condition. Staff has reviewed the statutory requirements for formation and the options about how formation would proceed if Mayor and Council approve this Resolution (e.g., whether an election is required), and staff believes that the application complies with all statutory requirements. Staff further believes that public necessity and convenience will be furthered through formation of the special taxing districts, as it will better allow growth to pay for itself.

Note that the applicant also applied for the formation of overlapping revitalization districts, a separate type of special taxing district. From the respective applications, staff believes that the districts are intended essentially to have overlapping taxation authority to allow the districts to better separate costs that are incurred for more localized improvements (e.g., a neighborhood improvement) while allowing flexibility to assess a greater number of district residents for improvements with broader purposes (e.g., community centers). The ultimately amount of debt the districts can issue will depend on market conditions and the property values.

We have asked the Mayor to place an Executive Session on the agenda so that counsel can provide legal advice for any such questions the Mayor and Council have regarding the districts and the applications to form the districts.

Staff Recommendation:

Council pleasure

When recorded, return to:

Vicki L. Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, AZ 85602

RESOLUTION 57-2017

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3 IN THE CITY OF BENSON, ARIZONA

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RESOLUTION 57-2017

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, DECLARING INTENT TO FORM A COMMUNITY FACILITIES DISTRICT; ORDERING AND DECLARING FORMATION OF THE TAX LEVYING THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3 IN THE CITY OF BENSON, ARIZONA

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

Section 1. Findings. The Mayor and Council hereby make the following findings:

A. On or about October 13, 2017, the City of Benson (the "City") received a petition (the "Petition") for formation of The Villages at Vigneto Community Facilities District Number 3 (the "District") pursuant to Article 1, Chapter 39, Title 48 of the Arizona Revised Statutes (the "Act"), signed by the entities who or which, on the date of the Petition, were the owners of all of the real property described on *Exhibit A* to the Petition, and hereto, to be included in the District, as shown on the assessment roll for State and County taxes for Cochise County, Arizona (hereinafter referred to, collectively, as the "Petitioners").

B. The City and the Petitioners agreed that the City would have until December 31, 2017 to consider the Petition for formation of the District.

C. The Petitioner has represented, attested and declared the following:

1. The name of the District is requested pursuant to the Petition to be "The Villages at Vigneto Community Facilities District Number 3",

2. The District is to be formed, and will exist, pursuant to the terms and provisions of the Act,

3. The District is to contain an area of approximately 1,337 acres of land, more or less, wholly within the corporate boundaries of the City, and is to be composed of the land described by metes and bounds as provided in Exhibit A hereto, which is made a part hereof for all purposes (hereinafter referred to as the "Property"),

4. The District is to be a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, the Act, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1, 3.2, 4 and 5, Arizona Revised Statutes, as amended; except as otherwise provided in the Act, and is to be considered a municipal corporation and political subdivision of the State of Arizona separate and apart from the City; and is to be formed for, and have, all the purposes and powers of a "district" as such term is defined, and as provided, in the Act, and

5. Public convenience and necessity require the adoption of this resolution forming the District.

D. The Petitioner further represented, attested and declared that on the date thereof and hereof, as shown on the assessment roll for State and county taxes in Cochise County, Arizona, all of the land to be in the District is owned by the Petitioner or, if a person listed on such assessment roll is no longer the owner of the land in the District, that the name of the successor owner has become known and verified by recorded deed or similar evidence of transfer of ownership to the Petitioner and that the land to be included in the District shall be benefited from the improvements for which the District is proposed to be formed and that there are no qualified electors residing on the land to be in the District.

E. After representing, attesting and declaring the preceding, the Petitioner requested that the Petition be properly filed as provided by law and that, as the Petition is signed by the owners of all the land to be in the District, any requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof be waived, and that the City, upon receipt of the Petition, declare its intention to form the District and thereafter form the District without being required to comply with such provisions for posting, publication, mailing, notice, hearing or landowner election.

F. A Development and Intergovernmental Agreement (the "Development Agreement") has been presented to the Mayor and Council, executed by the owners of all the land in the District and it is now in order for the City to approve such Development Agreement.

Section 2. Agreements and Further Findings by the City. The Mayor and Council hereby agree to and find the following:

A. The Petitioner seeks formation of the District to exercise the powers and functions set forth in the Act.

B. The General Plan (as defined hereafter) has been filed with the Clerk of the City.

C. The Petition, and all necessary supporting materials, meets the requirements of A.R.S. § 48-707, subsections F and G and has been filed with the Council, and the showings in the Petition are each noticed by us and are hereby incorporated at this place as if set forth in whole.

D. The purposes for which the organization of the District is sought are as described in the Petition and General Plan and are purposes for which a community facilities district created pursuant to the Act may be lawfully formed.

E. The District is to be wholly comprised of the Property and the Property is wholly within the boundaries of the City.

F. The Property is benefited by the District and the public infrastructure and the public infrastructure purposes set forth in the General Plan.

G. Pursuant to A.R.S. § 48-707, subsections F and G, no hearing on the formation of the District will be held; written objections under A.R.S. § 48-704(A) therefore are not warranted.

H. The Petitioner is the owner of all of the Property and no qualified electors reside on the Property.

I. The public convenience and necessity require the adoption hereof.

Section 3. Approval of the General Plan. Prior to the adoption hereof, the Petitioner filed a "General Plan for the Proposed The Villages at Vigneto Community Facilities District No. 1" for the District was filed with the Clerk of the City setting out a general description of the improvements for which the District is proposed to be formed and the general areas to be improved and benefited (hereinafter referred to as the "General Plan"). The General Plan is hereby approved in all respects.

Section 4. Intention to Form the District. The Mayor and Council hereby declares, pursuant to the Act, its intention to form the District comprised of the Property as a community facilities district, pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. Based on the Petition and the findings set forth herein, all requirements of posting, publication, mailing, notice, hearing and landowner election otherwise required by the Act in connection with the formation of the District and adoption hereof are waived.

Section 5. Granting Petition; Formation of District. The Petition is hereby granted, and the District is hereby formed as a community facilities district pursuant to the terms and provisions of, and with the powers and authority established by, the Act, with jurisdiction over the Property. The Mayor and Council hereby determine February 6, 2018 to be the scheduled election date to submit the question of formation of the District to the qualified electors, if any, who reside within the boundaries of the District. As of the date hereof, which is a date within 50 days immediately preceding such scheduled election date, there are no resident electors or qualified electors residing on the Property, therefore, the submission of the formation of the District to an election of resident electors is hereby found to be unnecessary and no formation election will be held.

Section 6. Levy of Taxes. Formation of the District may result in the levy of taxes by the District on all taxable property located within the District to pay the costs of improvements constructed by the District and the administration of the District and for their operation and maintenance and the administration of the District.

Section 7. District Board and Officers. The District shall be governed by a Board of Directors comprised, initially, of the following members who shall serve terms of six years:

John Davis

Celia Jenkins

Mark Fenn

and comprised, initially, of the following members who shall serve terms of four years:

Cindy Batten

Richard Polheber

The subsequent members of the Board of Directors will be elected in accordance with the Act.

Section 8. Development Agreement and Intergovernmental Agreement. By this Resolution and pursuant to Arizona Revised Statutes Section 48-708, the District is hereby a party to that certain Development Agreement and Intergovernmental Agreement to be executed concurrently with this Resolution by the City and the Petitioner owning the land in the District, and the District Board will execute such Agreement at its first meeting.

Section 9. District Boundaries and Map. The District boundaries are set to be as described in metes and bounds in Exhibit A hereto. The map showing the District boundaries is set forth in Exhibit B hereto and is hereby approved.

Section 10. Dissemination of This Resolution. The City Clerk shall cause a copy of this resolution to be delivered to the County Assessor and the Board of Supervisors of Cochise County, Arizona, and to the Department of Revenue of the State of Arizona.

Section 11. No General Liability of or for the City. Neither the general fund or any other fund or moneys of the City, nor that of the State of Arizona or any political subdivision of either (other than the District) shall be liable for the payment or repayment of any obligation, liability, bond or indebtedness of the District, and neither the credit nor the taxing power of the City, the State of Arizona or any political subdivision of either (other than the District) shall be pledged therefor.

Passed by the Council of the City of Benson, Arizona, on December 28, 2017.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Counsel for City

Exhibits: A Legal description of district B Boundary map of district

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 3 (CFD-3)

Those portions of Sections 7, 18, and 19, Township 18 South, Range 20 East, Gila and Salt River Meridian and Sections 12, 13 and 24, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 33 seconds West, 2643.09 feet along the West line of said Section 7 to the Quarter corner common to said Sections 7 and 12;

Thence South 89 degrees 51 minutes 22 seconds West, 1320.01 feet along the East-West Mid-section line of said Section 12;

Thence South 00 degrees 05 minutes 31 seconds West, 233.00 feet;

Thence South 79 degrees 51 minutes 15 seconds West, 1341.69 feet to the intersection with the North-South Mid-section line of said Section 12;

Thence South 00 degrees 06 minutes 47 seconds West, 2176.57 feet along the said North-South Mid-section line of Section 12 to the Quarter corner common to said Section 12 and 13;

Thence South 00 degrees 11 minutes 06 seconds West, 1102.99 feet along the North-South Mid-section line of said Section 13;

Thence North 89 degrees 48 minutes 01 seconds East, 693.77 feet;

Thence South 00 degrees 15 minutes 22 seconds West, 631.48 feet;

Thence South 00 degrees 11 minutes 06 seconds West, 911.84 feet to the East-West Mid-section line of said Section 13;

Thence South 89 degrees 55 minutes 06 seconds West, 692.97 feet along the said East-West Mid-section line of Section 13 to the Center Quarter thereof;

Thence South 00 degrees 12 minutes 23 seconds West, 2645.80 feet along the North-South Mid-section line of said Section 13 to the Quarter corner common to said Sections 13 and 24;

Thence South 00 degrees 00 minutes 47 seconds West, 2648.04 feet along the North-South Mid-section line of said Section 24 to the Center Quarter corner thereof;

Thence North 89 degrees 56 minutes 35 seconds East, 2638.53 feet along the East-West Mid-section line of said Section 24 to the Quarter corner common to said Sections 19 and 24;

Thence South 89 degrees 54 minutes 56 seconds East, 2409.56 feet along the East-West Mid-section line of said Section 19 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence North 00 degrees 12 minutes 05 seconds East, 2654.03 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 2641.27 feet to the intersection with the Mid-section line of said Section 18;

Thence North 00 degrees 02 minutes 48 seconds East, 2645.86 feet to the intersection with the line common to said Sections 18 and 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2645.71 feet to the intersection with the Mid-section line of said Section 7;

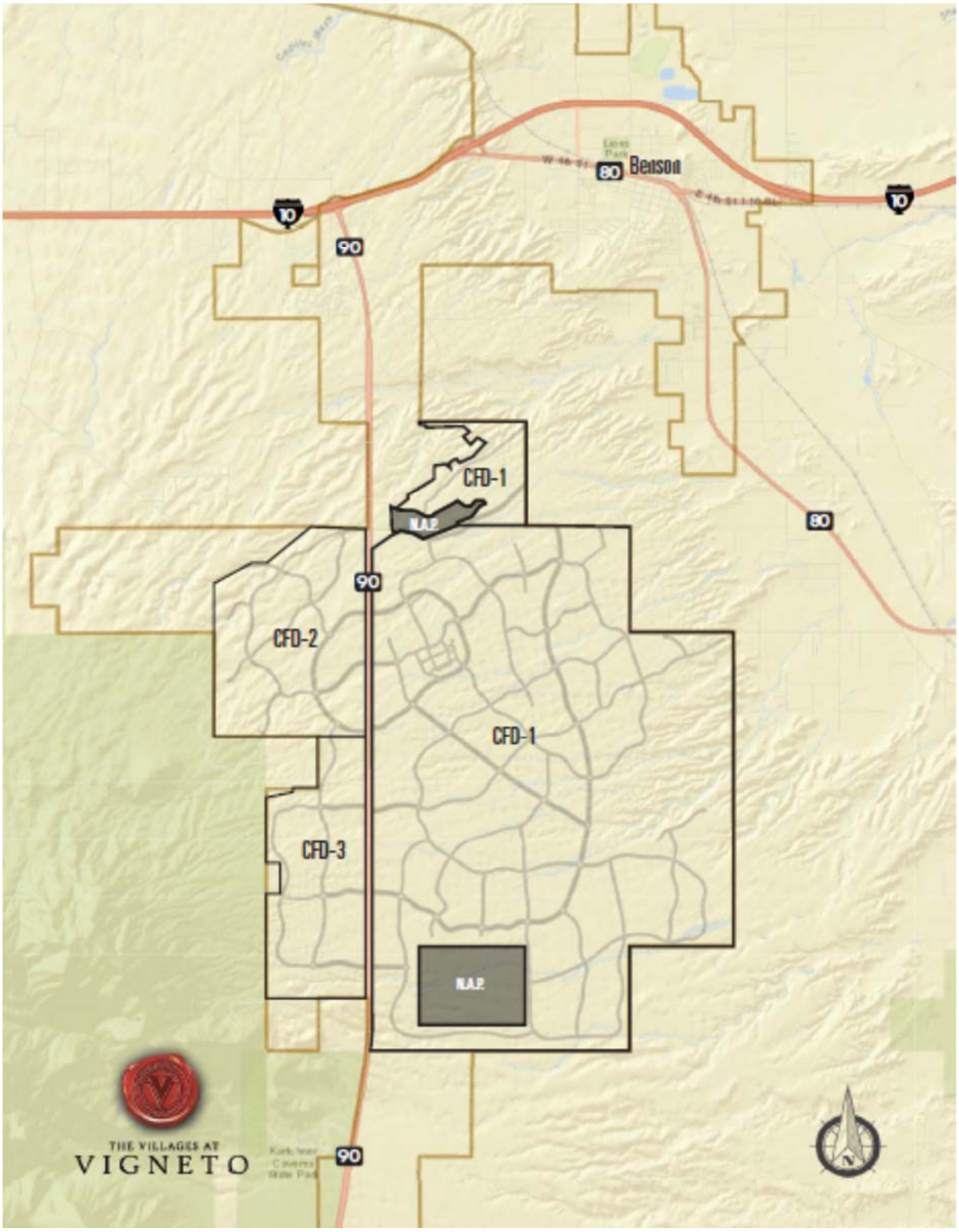
Thence North 00 degrees 02 minutes 13 seconds East, 2652.61 feet to the intersection with the North line of said Section 7;

Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along said North line to the POINT OF BEGINNING.

Total Area for CFD-3 is 58,254,220 square feet (1,337.333 acres) more or less.

EXPIRES 3/31/2018

The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map



City of Benson
City Council Communication

Special Meeting **December 28, 2017**

To: Mayor and Council Agenda Item # 23

From: Paul Loucks, City Attorney

Subject:

Discussion and possible action to ratify the vote of Mayor and Council taken on December 11, 2017 to not refer the petitions for formation of special taxing districts to Stifel Nicolaus for review

Discussion:

This item is on the agenda at the request of legal counsel.

Staff Recommendation:

Staff recommends that the Mayor and Council move to ratify their December 11, 2017 vote not to have Stifel Nicolaus review the petitions for formation of special taxing districts regarding the Vigneto project

Memorandum

On December 11, 2017, item three under New Business was noticed as follows:

Discussion and possible direction to staff regarding the City's use of Stifel, Nicolaus and Company, Inc. to review and advise the City on the special taxing district applications submitted by El Dorado Benson regarding the Vigneto Project.

After discussion on this item, the following motion was made:

I make a motion that the City Manager thank Stifel, Nicolaus and Company, Inc. for what they've done for us and say "no" to using them as a financial adviser on this agenda item and not use them on this development in the future.

The motion was seconded and approved by a majority of the City Council.

Following the meeting, various staff members have heard that one or more individuals intend to file a complaint that the Mayor and Council action exceeded the published notice to the public. While we do not agree that the motion exceeded the scope of the public notice, out of the abundance of caution we propose that the Mayor and Council ratify their action. Arizona's Open Meetings law allows a public body to place a proposed ratification on an agenda within thirty days of the original action. If the original action fell outside of an authorized action, ratification may be used to correct any oversight.

A motion to ratify could simply be stated as:

I move to ratify the December 11, 2017 action of the Mayor and Council not to refer to Stifel Nicolaus the applications for formation of Special Taxing Districts regarding the Vigneto Project.

Ratification is construed as a substantive vote on the issue, and so any council member who wishes to use Stifel Nicolaus' services in reviewing the applications should cast a "no" vote on any similar motion.

If the Mayor and Council do not wish to ratify, no action is required.