

RESOLUTION 2022-015

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND FRED FISCHER, A PRIVATE HOMEOWNER, CONCERNING PROPERTY LOCATED AT APN # 106-71-152, AND AUTHORIZING DIRECTION TO THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista and Fred Fischer, owner of the parcel numbered 106-71-152, have reached a Pre-Annexation Agreement attached as Exhibit "A" to this Resolution and incorporated by reference, for the property whose locations and boundaries are shown on the map attached as Exhibit "A" to the Pre-Annexation Agreement; and

WHEREAS, the execution of this Pre-Annexation Agreement is in the best interest of the City of Sierra Vista.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The Pre-Annexation Agreement between the City of Sierra Vista and Fred Fischer attached as Exhibit A to this Resolution, is authorized and approved.

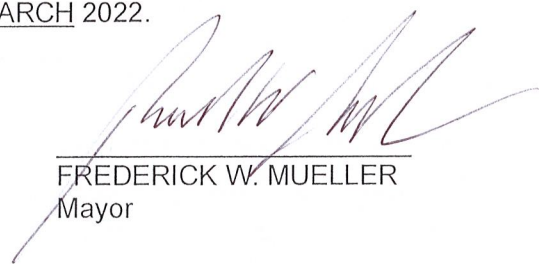
SECTION 2

The Mayor is authorized and directed to execute the Pre-Annexation Agreement for and on behalf of the City of Sierra Vista and the City Clerk is authorized and directed to attest the same.

SECTION 3

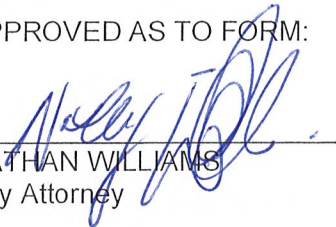
The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 24TH DAY OF MARCH 2022.



FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:



NATHAN WILLIAMS
City Attorney

ATTEST:



JILL ADAMS
City Clerk

PREPARED BY:

Blake Fisher
Planner I

[EXHIBIT A]

**PRE-ANNEXATION AGREEMENT BETWEEN
THE CITY OF SIERRA VISTA AND FISCHER FRED W**

This Pre-Annexation Agreement (hereinafter, the "Agreement") is made and entered into as of (date) 2-17-22, by and between the City of Sierra Vista, Arizona, a municipal corporation organized under the laws of the State of Arizona (hereinafter, the "City") and FISCHER FRED W (hereinafter, the "Owner").

RECITALS:

- A. Owner beneficially owns certain real property, currently located in an unincorporated area of Cochise County and is contiguous to the exterior boundary of the City:

(See next page)

APN#	SITE ADDRESS	COUNTY ZONING	COMPATIBLE CITY ZONE	LEGAL DESCRIPTION
106-71-152	218 N 1 ST STREET	MH-72	MHR	SECOND ADD TO FRY LOT 27 BLK 12

- B. All Property are located in portions of Section 19, Township 22 South, Range 21 East, of the Gila River and Salt River Base and Meridian, and more particularly described in Exhibit A attached hereto and made part hereof (hereinafter, the "Property").
- C. City and Owner desire that the Property be annexed into the corporate limits of the City and be developed as an integral part of the City and in accordance with VISTA 2030, the existing comprehensive plan for the City.
- D. City and Owner have determined that entering into this Agreement will be in the best interest of the City, the public, and the Owner; will be proper and legal exercise of City power; will promote orderly development of the Property and the surrounding area; will promote the health, safety and welfare and economy of the community in general; and meets the economic development goals of the City.
- E. The City and the Owner are entering into this Agreement pursuant to the provisions of A.R.S. §9-500.05 in order to facilitate the annexation and development of the Property by providing for, among other things:
 - 1. Establishment of the terms for annexation of the Property into the City.

AGREEMENT

In consideration of the foregoing premises, the mutual covenants and promises in this Agreement and the intent to legally bind City and Owner, the following is agreed:

- 1. **Annexation Consent.** Owner hereby consents to annexation of the Property into the City of Sierra Vista pursuant to A.R.S. § 9-471. This consent to annex the Property into the City shall operate as a covenant and shall run with the land and bind each of Owner's heirs, executors, administrators, successors and assigns to the Property.
- 2. **Durable Special Power of Attorney.** To facilitate annexation of the Property in a manner convenient to the City, Owner shall execute, simultaneously with the execution of this Agreement, a durable special power of attorney, attached and incorporated herein as Exhibit B, designating the City Clerk with the irrevocable power to sign and execute, on behalf of the Owner, any lawful annexation petition or other annexation document for the purpose of annexing the Property into the City of Sierra Vista. Any successor(s) to Owner shall execute a similar annexation petition or documents necessary to accomplish the annexation.

3. **Applicable Zoning.** Pursuant to A.R.S. §9-471(L), upon annexation, the City shall adopt a City zoning classification for the Property that permits densities and uses no greater than those permitted by the existing Cochise County zoning (the "Original City Zoning").
4. **City Wastewater Services.** The City agrees to provide wastewater services to the Owner, should Owner so choose to utilize such in the future, in the event that all required improvements are made as part of the sewer connection permitting process, as detailed by the City engineering department. If Owner, in his sole discretion, decides to connect to the City sewer in the future, Owner shall bear all costs associated with connection to the mainline and associated permitting fees.
5. **Private Properties Rights Development Act.** By signing this Agreement, Owner agrees to waive claims for diminution in value under the Private Properties Rights Development Act in connection with annexation of the Property as well as for any claim for diminution in value as a result of any subsequent rezoning of the Property by the City.
6. **Entire Agreement.** This agreement sets forth the entire understanding between the parties concerning the subject matter of this agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this agreement other than those set forth herein. No modification or amendment of this agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
7. **Negotiated Effort.** The parties agree that this Agreement represents the negotiated joint efforts of the parties. In the event a court of competent jurisdiction finds ambiguity, this Agreement shall not be construed against either party in favor of a non-drafting party.
8. **Authority.** All persons executing this document for City and Owner have all necessary and legal authority to enter into this Agreement for their respective corporations and the individual(s) executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf such individual is signing.
9. **Covenants Running with the Land.** This Agreement is made as part of a common scheme or plan for the development of the Property and a "Development Agreement" as defined in A.R.S. §9-500.05 and all rights and obligations hereunder subject to the provisions of Paragraph 3 contained herein shall be considered to run with the land and benefit and burden all owners of all or any portion of the Property, including owners who acquire title to any portion of the Property subsequent to the execution and recording of this Agreement. Nothing in this Agreement shall be construed as creating a partnership between Owner and the City.
10. **Governing Venue.** The laws of the State of Arizona shall govern this agreement and, in the event of a dispute, venue shall be in Cochise County, Arizona.
11. **Attorneys' Fees.** Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees will be paid to the prevailing party.

12. **Mediation.** If a dispute arises out of or relates to the Agreement or this Amendment, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

13. **Notices.** Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

City Clerk	Owner: <u>FISCHER FRED W</u>
City of Sierra Vista	<u>621 N 21st STREET</u>
1011 N. Coronado Drive	<u>COPPERAS COVE, TX 76522-1407</u>
Sierra Vista, AZ 85635	<u>_____</u>

14. **Non-Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable all other provisions hereof.

15. **Amendments, Modifications and Waivers.** This Agreement may not be amended, none of its terms may be modified and none of the provisions or any of its terms may be waived without the written consent of the parties hereto.

16. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.

17. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Section of this Agreement.

18. **Additional Documents and Acts.** The parties hereto shall execute, acknowledge, if applicable, and deliver such additional documents and do such other acts as may be reasonably required to fully implement the intent of this Agreement.

19. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

20. **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto.

CITY OF SIERRA VISTA:

By: [Signature]

Frederick W. Mueller, Mayor

STATE OF ARIZONA)
) ss
County of Cochise)

This instrument was acknowledged before me
this 20th day of March, 2022 by

[Signature]
Notary Public

My commission expires:

02-18-23



PROPERTY OWNER NAME::

By: [Signature]
Signature

Fred w. Fischer
Print Name

APPROVAL AS TO FORM

By: [Signature]
NATHAN WILLIAMS
City Attorney

ATTEST:

By: [Signature]
JILL ADAMS
City Clerk

Title

STATE OF ARIZONA)
) ss.
County of Cochise)

This instrument was acknowledged before me
this 17 day of February, 2022, by Fred Fischer

[Signature]
Notary Public

My commission expires:

9.11.2025



Exhibit A (map)



EXHIBIT B

DURABLE SPECIAL POWER OF ATTORNEY

FISCHER FRED W is the owner of the following real property:

APN#	SITE ADDRESS	COUNTY ZONING	COMPATIBLE CITY ZONE	LEGAL DESCRIPTION
106-71-152	218 N 1ST STREET	MH-72	MHR	SECOND ADD TO FRY LOT 27 BLK 12

I hereby appoint the CITY CLERK of the City of Sierra Vista, Arizona as its true and lawful Attorney for it and in its name, place, and stead, with full authority and full powers of substitution, to do and execute any or all of the following acts, deeds and things, relating to or in any way connected with the following described matter **AND NO OTHER**:

To execute all **ANNEXATION** documents, including, but not limited to, petitions, waivers, notices, grant all approvals or consents, and to do every act or perform everything necessary to authorize and achieve the **ANNEXATION** of the above described Property into the boundaries and limits of the City of Sierra Vista, County of Cochise, State of Arizona. It is the express intention and desire that said Property be annexed to the City of Sierra Vista.

I further certify that I have all necessary and legal authority to enter into this Durable Special Power of Attorney.

THIS SPECIAL POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY DISABILITY.

IN WITNESS WHEREOF, I have hereunto set my hand, this 17 day of Feb, 2022

By: *Fred Fischer*
Print Name: Fred W. Fischer

STATE OF ARIZONA)
)ss
COUNTY OF COCHISE)

On this 17 Feb, 2022, before me, Lisa McGowan, a Notary Public in and for the County of Cochise, State of AZ, on this day personally appeared Fred W. Fischer to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lisa McGowan
NOTARY PUBLIC

My Commission Expires: 9.11.2025



STATE OF ARIZONA

CERTIFICATION OF VITAL RECORD

ORIGINAL
STATE COPY

STATE OF ARIZONA DEPARTMENT OF HEALTH SERVICES-BUREAU OF VITAL RECORDS CERTIFICATE OF DEATH

State File Number
102-2022-002447

1. DECEDENT'S LEGAL NAME (FIRST, MIDDLE, LAST, SUFFIX) DIANNA, GALLION, FISCHER		2. AKA'S (IF ANY)		3. DATE OF DEATH 01/05/2022	
4. SEX FEMALE		5. SOCIAL SECURITY NUMBER 526-78-7161		6. DATE OF BIRTH 06/29/1948	
7. AGE 73 YEARS					
8. CITY/TOWN, COUNTY AND ZIP OR LOCATION OF DEATH HUACHUCA CITY, COCHISE, 85616					
9. PLACE OF DEATH (TYPE OF PLACE OF DEATH AND FACILITY NAME/ADDRESS) RESIDENCE - 2437 N CALLE VIS					
10. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY) DANBURY, CONNECTICUT		11. MARITAL STATUS DIVORCED		12. NAME OF SURVIVING SPOUSE PRIOR TO FIRST MARRIAGE (FIRST, MIDDLE, LAST, SUFFIX) NOT LISTED	
13. DECEDENT'S USUAL RESIDENCE ADDRESS (STREET, CITY, COUNTY, STATE, ZIP) 2437 N CALLE VIS, HUACHUCA CITY, COCHISE, AZ, 85616					
14. DECEDENT'S HISPANIC ORIGIN(S): NO, NOT SPANISH/HISPANIC/LATINO		15. DECEDENT'S RACE(S): WHITE		16. EVER IN ARMED FORCES NO	
17. OCCUPATION REAL ESTATE AGENT					
18. FATHER'S NAME (FIRST, MIDDLE, LAST, SUFFIX) ROBERT, LAWRENCE, RICHARD			19. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (FIRST, MIDDLE, LAST, SUFFIX) DORIS, MARIE, GREEN		
20. INFORMANT'S NAME (FIRST, MIDDLE, LAST, SUFFIX) JAMES, A, RICHARD				21. RELATIONSHIP BROTHER	
22. INFORMANT'S MAILING ADDRESS 1955 W BASELINE ROAD #113-228, MESA, AZ, 85202					
23. NAME AND ADDRESS OF FUNERAL FACILITY OR RESPONSIBLE PERSON SCIENCE CARE, INC 2001 W PINNACLE PEAK ROAD #SUITE 175, PHOENIX, AZ, 85027			24. FUNERAL DIRECTOR'S NAME OR RESPONSIBLE PERSON KENNIE, K, DAVIS		25. LICENSE NUMBER FDL-001133
26. METHOD(S) OF DISPOSITION DONATION/CREMATION		27. NAME AND LOCATION OF 1ST DISPOSITION FACILITY SCIENCE CARE, INC, PHOENIX, AZ, US		28. NAME AND LOCATION OF 2ND DISPOSITION FACILITY SERENITY MORTUARY SERVICES, INC, PHOENIX, AZ, US	
MEDICAL CERTIFICATION SECTION CAUSE OF DEATH PART I					
29. A. IMMEDIATE CAUSE OF DEATH RESPIRATORY FAILURE				30. APPROXIMATE INTERVAL	
31. B. DUE TO OR AS A CONSEQUENCE OF: HYPOXEMIA				32. APPROXIMATE INTERVAL ONE DAY	
33. C. DUE TO OR AS A CONSEQUENCE OF:				34. APPROXIMATE INTERVAL	
35. D. DUE TO OR AS A CONSEQUENCE OF:				36. APPROXIMATE INTERVAL	
CAUSE OF DEATH PART II					
37. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO THE DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I: THROMBOCYTOSIS, IRON DEFICIENCY ANEMIA, HYPOTHYROIDISM			38. INJURY? NO	39. INJURY AT WORK? NO	40. MANNER OF DEATH NATURAL DEATH
			41. TIME OF DEATH 16:37	42. WAS AN AUTOPSY PERFORMED? NO	43. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?
CAUSE AND MANNER CERTIFICATION					
TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ABOVE IS CORRECT AND THE DEATH OCCURRED DUE TO THE CAUSE(S) AND MANNER STATED.			44. NAME OF PERSON COMPLETING CAUSE OF DEATH PAMELA, G, ENRIGHT		45. DATE CERTIFIED 01/12/2022
46. CERTIFIER'S ADDRESS 1800 E WILCOX DRIVE, SIERRA VISTA, AZ, 85635					

Date Registered: 01/18/2022

Date Issued: 02/10/2022

VS-49 Rev. 12/2017



J2875892

This is a true certification of the facts on file with the Arizona Department of Health Services, Bureau of Vital Records, PHOENIX, ARIZONA.
Revised 07/2016

Krystal Colburn
**KRYSTAL COLBURN
ASSISTANT STATE REGISTRAR**



This copy not valid unless prepared on a form displaying the State Seal and impressed with the raised seal of the issuing agency.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE