

September 14, 2023

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager

FROM: Matt McLachlan, Director, Community Development

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
Resolution 2023-071
Approval of a Development Agreement with Sierra Charter
LLC and Castle & Cooke Arizona, Inc.

RECOMMENDATION:

The City Manager recommends approval.
The Assistant City Manager recommends approval.

BACKGROUND:

Location: This property is located in a portion of the southwest quarter of Section 18,
Township 22, South, Range 21 East

Owner: Sierra Charter, LLC. and Castle & Cooke Arizona, Inc.

The City is authorized by A.R.S. § 9-500.05 to enter into a development agreement with any person having a legal or equitable interest in real property within its jurisdiction. A development agreement may specify conditions, terms, restrictions, and requirements for public infrastructure, and the financing of public infrastructure and subsequent reimbursements over time. A development agreement may also include provisions for the dedication of land for public purposes. Moreover, development agreements must be consistent with the city's general plan or specific plan.

Sierra Charter, LLC has obtained the necessary approvals to construct a public charter school, American Leadership Academy (ALA), within the H3 Subarea of the Tribute Specific Plan. The first phase of the campus is scheduled to be completed by next summer in time for the start of the 2024 academic school year.

The proposed Development Agreement covers the design, construction, dedication and conveyance of the necessary right-of-way and improvements to Buffalo Solider Trail between the intersections of State Route 92 and Ben Franklin Boulevard (future collector street) to support expected traffic volumes. As a future minor arterial roadway, Buffalo Solider Trail is the city's cost responsibility under the City's Development Fee Study and Schedule. The FY 24 City Budget

includes \$2,000,000 for estimated construction expenses.

Constructing the required improvements to Buffalo Solider Trail concurrent with the development of the school campus is anticipated to achieve efficiencies on cost and schedule. New Gen Engineering Group, Inc. (dba McIntosh & Associates) prepared the Specific Plan for Tribute and the Site Plan for Sierra Charter, LLC and possesses the requisite knowledge and capability to perform the engineering design services. Moreover, they will be obligated to coordinate with the City's Engineering Staff to develop the construction documents for the Buffalo Solider Trail improvements in accordance with the City's standards which shall be first approved by the City's CIP and Development Manager prior to commencing construction.

Sierra Charter, LLC, will be responsible for constructing the improvements in accordance with the approved construction documents. The City will have the right to review and approve the contractor and any subcontractors selected by Sierra Charter, LLC. The City will be named as a third-party beneficiary and be entitled to enforce the agreement and the warranty from the contractor.

The City is obligated to reimburse Sierra Charter, LLC the amount of \$2,000,000 or the actual verifiable costs for constructing the Buffalo Solider Trail Improvements, whichever is less. If the construction bid exceeds the budgeted amount, the City and Sierra Charter, LLC will confer to determine whether modifications to the construction plans can be made to comply with the budgeted amount or additional funding can be secured to cover the difference.

Upon final inspection and written notice issued by the CIP and Development Manager stating that the Buffalo Solider Trail Improvements are ready for acceptance, Castle and Cooke Arizona, Inc. is required to dedicate and convey to the City the associated right-of-way parcel for acceptance.

Fiscal Impact

The construction of Buffalo Soldier Trail Improvements is estimated to cost \$2,000,000.

ATTACHMENTS:
Resolution 2023-071
Exhibit A- Development Agreement

RESOLUTION 2023-071

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING SETTLED POLICY GRANTING APPROVAL OF A DEVELOPMENT AGREEMENT WITH SIERRA CHARTER LLC AND CASTLE & COOKE ARIZONA, INC.; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, pursuant to various policies and laws of the City of Sierra Vista an agreement was negotiated which assured the mutual benefit of the Owners and the City of Sierra Vista; and

WHEREAS, Sierra Charter LLC is proposing to construct a charter school which requires the construction of Buffalo Soldier Trail, Ben Franklin Boulevard and Francis Lewis Street to access the property; and

WHEREAS, Buffalo Soldier Trail, is classified as a Minor Arterial roadway and is the City's responsibility to design and construct;

WHEREAS, the development agreement allows Sierra Charter LLC to design and construct the project with reimbursement from the City; and

WHEREAS, Castle & Cooke will be responsible for dedicating all proposed roadways following completion of construction.

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

SECTION 1

The policy of the City of Sierra Vista relating to development agreements, be, and hereby is, reaffirmed.

SECTION 2

The Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement attached hereto and made a part hereof by this reference.

SECTION 3

That 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 14TH DAY OF SEPTEMBER 2023.

CLEA MCCA II
Mayor

ATTEST:

APPROVED AS TO FORM:

JILL ADAMS
City Clerk

NATHAN WILLIAMS
City Attorney

PREPARED BY: Jeff Pregler, AICP
Senior Planner

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (defined in Section 4.1), by and between the CITY OF SIERRA VISTA, ARIZONA, a municipal corporation of the State of Arizona, whose address is 1011 North Coronado Drive, Sierra Vista, Arizona (the “City”), SIERRA CHARTER, LLC, an Arizona limited liability company, whose address is 6913 E. Rembrandt Avenue, Mesa, Arizona 85212 (“Sierra Charter”), and CASTLE & COOKE ARIZONA, INC, (“Castle & Cooke”), an Arizona for-profit corporation whose address is 8825 N 23rd Avenue, Suite 100, Phoenix, Arizona 85021, collectively with the City, referred to as the “Parties”).

RECITALS

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction; and

WHEREAS, the Mayor and the City Council has approved this Agreement by Resolution 2023-071 adopted on the 14th day of September 2023; and

WHEREAS, Sierra Charter represents and warrants that it is the owner in fee simple of certain real property located at Buffalo Soldier Trail and S. HWY 92, East of Hawes Sub Station, Sierra Vista, Arizona and more particularly described in Exhibit “A” attached hereto (the “Sierra Charter Property”); and

WHEREAS, Sierra Charter has obtained required development permits to construct a charter school and related facilities on the Sierra Charter Property (the “Project”) with the initial phase being certified for occupancy prior to the start of the 2024 academic school year; and

WHEREAS, the Project is located within the Tribute Specific Plan Area, adopted as Appendix “M” in the Sierra Vista General Plan, VISTA 2030; and

WHEREAS, vehicular access to the Sierra Charter Property will be from Buffalo Solider Trail (“BST”), designated to be a minor arterial roadway, and Ben Franklin Boulevard (“A” Street), designated to be a collector street, in the Tribute Specific Plan; and

WHEREAS, Castle & Cooke represents and warrants that it is the owner in fee simple of the real property reserved for future roadway development in the Tribute Specific Plan Area; and

WHEREAS, Castle & Cooke is obligated to dedicate and convey to the City rights-of-way needed to implement the Traffic Circulation Plan in concurrent with phasing of development in the Tribute Specific Plan; and

WHEREAS, the current and projected traffic volumes associated with the Project do not warrant the full build out of Buffalo Solider Trail within the Tribute Specific Plan Area and a phased approach will be taken; and

WHEREAS, due to the time sensitive nature of the Project, Sierra Charter agrees to design and construct the necessary roadway improvements to extend Buffalo Solider Trail to Ben Franklin Boulevard to serve their Project and future development in the Tribute Specific Plan in accordance with the terms of this Agreement; and

WHEREAS, the construction and improvement of arterial roadways to accommodate growth is the City's cost responsibility under its Development Fee Study and Schedule.

NOW THEREFORE, for and in consideration of the mutual benefits stated herein, the public interest, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

PART I: GENERAL PROVISIONS

Section 1. RECITALS AND EXHIBITS

The foregoing recitals are true and correct and are incorporated herein by reference. All exhibits to this Agreement are incorporated by reference and deemed to be a part hereof.

Section 2. DEFINITIONS

2.1 "Project" shall mean the campus construction proposed on the Sierra Charter Property associated with the approved site and building plans (Site Plan Permit Number: 23-1132 and Building Permit Numbers: 231533, 231534 and 231535).

2.2 "BST Improvements" shall mean the construction of that segment of BST between the intersection of State Route 92 and Ben Franklin Boulevard or whatever distance is safe to terminate the pavement to the dirt road, in accordance with the standards and specifications adopted by the City in the Tribute Specific Plan and Sierra Vista Development Code and those certain construction plans submitted to and approved by the CIP & Development Manager.

Section 3. RELATIONSHIP OF THE PARTIES

The Parties are unrelated and their relationship with respect to the subject matter of this Agreement is contractual and is set forth completely in this Agreement.

Section 4. DURATION OF AGREEMENT

4.1 This Agreement shall become effective on the last of the date reflected in the signature element of this Agreement on which the last of the parties to this Agreement has executed this Agreement.

4.2. The duration of this Agreement shall be from the date of execution and shall continue until the obligations of each of the Parties as outlined in the following sections have been fully performed.

Section 5. CASTLE & COOKE OBLIGATIONS

5.1 Castle & Cooke shall dedicate and convey to the City, and the City shall accept fee title to, the Buffalo Soldier Trail Right-of-Way Parcel as legally described and depicted in Exhibit “B” upon full and final completion and final acceptance of the constructed BST Improvements in accordance with the terms of this Agreement.

Section 6. SIERRA CHARTER OBLIGATIONS

6.1 Sierra Charter shall privately finance and construct the BST Improvements on the terms and conditions stated herein and in accordance with Construction Plans approved by the CIP & Development Manager. Sierra Charter shall use the firm of McIntosh and Associates, Inc. for engineering, design, and preparation of all construction plans and obtaining all necessary permits for the BST Improvements.

6.2 Sierra Charter shall construct the Project in accordance with those certain construction plans, permits and studies submitted to and approved by the CIP & Development Manager.

6.3 The City shall have the right to review and approve the contractor and subcontractors selected by Sierra Charter to construct the BST Improvements, the terms of the contract documents to be entered into by Sierra Charter with the contractor, inspect the Project during construction, and accept or reject the BST Improvements if such construction is not in accordance with the Construction Plans, all in accordance with the procedure set forth in this Section. Prior to beginning any construction on the BST Improvements, including pre-staging and personnel, Sierra Charter shall provide written notice of the name(s) of all contractors, subcontractors, and/or suppliers within fourteen (14) days of receipt of said written notice, and, if any contractor, subcontractor and/or supplier is rejected, including specific reasons therefor. The City’s failure to respond shall not be deemed acceptance of the contractor, subcontractor(s), and/or supplier(s). Sierra Charter shall not contract with any contractor, subcontractor, or supplier unless and until the City has provided express written approval of such contractor, subcontractor(s) and/or supplier. The City shall be named as a third-party beneficiary of the agreement between Sierra Charter and any contractor and shall be entitled to enforce said agreement through a warranty and required security from the contractor, in a form acceptable to the City in its sole discretion. If the City notifies Sierra Charter of any defects in construction, either during construction or after substantial completion, but before the City’s final acceptance of the BST Improvements, then Sierra Charter shall cause the contractor to correct any defects. Once all such defects are corrected and the BST Improvements are finally accepted by the City as evidenced by written notice issued by the CIP & Development Manager (“Final Acceptance”), Sierra Charter shall cause to be prepared any documents necessary for Castle & Cooke to convey the right-of-way parcel pursuant to Section 5 of this Agreement and all associated improvements to the City and to assign the City any and all rights of Sierra Charter under the construction contract and Sierra Charter’s contract with McIntosh and Associates, Inc., including but not limited to any warranties granted by the contractor.

6.4 The contractor shall offer a 2-year “materials and workmanship” warranty on the BST improvements. The warranty is effective on date of City acceptance of the completed project.

Section 7. CITY OBLIGATIONS

7.1 The City will reimburse Sierra Charter the amount of Two Million Dollars and 00/100's (\$2,000,000.00) or the actual verifiable costs for constructing the BST Improvements, whichever is less as follows: In progress payments at 25% completion, 50% completion, 75% completion, and 100% completion, verified by the City's Engineer. The final payment shall be due and payable upon the City's acceptance of the completed BST Improvements and Right-of-Way Parcel in accordance with the terms of this Agreement. If the construction bid for the BST Improvements exceeds Two Million Dollars and 00/100's (\$2,000,000.00), Sierra Charter and the City will confer within five (5) business days to review the bids to determine whether modifications to the construction plans can be made to comply with the budgeted amount or additional funding can be secured to cover the difference.

PART II. MISCELLANEOUS PROVISIONS

Section 1. ENTIRE AGREEMENT

1.1 This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings.

1.2 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.

Section 2. INDEMNIFICATION

2.1 Sierra Charter shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents and Castle & Cooke from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, directly or indirectly, in whole or in part, arising out of Sierra Charter's obligations and action arising under this Agreement except for negligent acts of the City.

2.2 Castle & Cooke shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents and Sierra Charter from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, directly or indirectly, in whole or in part, arising out of Castle & Cooke's obligations and action arising under this Agreement except for negligent acts of the City.

Section 3. COMPLIANCE WITH LAWS

3.1 Notwithstanding the provisions of Part I above, in the event the City is required to enact, take action, apply, or bind any future land use ordinances, rules, regulations, permit requirements and other requirements, and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state, or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.

Section 4. CHOICE OF LAW

4.1 The laws of the State of Arizona shall govern this Agreement, and, in the event of litigation, venue shall be in Cochise County, Arizona.

Section 5. ATTORNEY'S FEES

5.1 In the event a party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the non-prevailing party its expenses, court and/or arbitration costs, including taxed and untaxed costs, and reasonable attorneys' fees.

Section 6. TIME OF THE ESSENCE

6.1 Time shall be of the essence for all performance required hereunder.

Section 7. DISPUTE RESOLUTION

7.1 Notwithstanding the foregoing, if a dispute arises out of or relates to the Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first 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.

Section 8. SUCCESSORS AND ASSIGNS

8.1 All the provisions hereof shall inure to the benefit of and be binding upon the parties hereto and its respective successors and assigns unless otherwise specified in this Agreement.

Section 9. NOTICES

9.1 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 of Sierra Vista
1011 N. Coronado Drive
Sierra Vista, AZ 85635

Castle & Cooke Arizona, Inc.
8825 N 23rd Avenue, Suite 100
Phoenix, Arizona 85021

Sierra Charter, LLC
6913 E. Rembrandt Avenue
Mesa, Arizona 85212

Section 10. NON-COLLUSION AND NO JOINT VENTURE

10.1 Sierra Charter and Castle & Cooke warrant that to its knowledge no other person or entity has been an employee or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingency and that no member of the Council or employee of the City has any interest, financially or otherwise, in Sierra Charter and Castle & Cooke or its subcontractors. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability.

10.2 This Agreement is not intended to be, and shall not be construed as, a joint venture, partnership, or other business entity created by and between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.

10.3 No member, official, employee or agent of the City shall be personally liable to Sierra Charter and Castle & Cooke, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Sierra Charter and Castle & Cooke or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

Section 11. SEVERABILITY

11.1 Should any section, clause or provision of this Agreement be declared by the courts to be invalid, it shall not invalidate the other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties caused this instrument to be executed by their respective proper officials duly authorized to execute the same on the day and first year above written.

CITY OF SIERRA VISTA, ARIZONA

By: Charles Potucek
Its: City Manager

ATTEST:

Jill Adams (SEAL)
City Clerk

APPROVED AS TO FORM:

Nathan Williams
City Attorney

CASTLE & COOKE ARIZONA, INC.

By: Nathan Stockmeir
Its: President

STATE OF _____)
)ss
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2023, by:

Notary Public

My commission expires: _____

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

By: Richard S. Coffman
Its: Senior Vice-President

STATE OF _____)
)ss
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2023, by:

Notary Public

My commission expires: _____

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

SIERRA CHARTER, LLC.

By: Glenn L. Way
Its: Managing Partner

STATE OF ARIZONA)
)ss
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2023, by:

Notary Public

My commission expires: _____

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

EXHIBIT "A"

SIERRA CHARTER, LLC. AMERICAN LEADERSHIP ACADEMY SCHOOL CAMPUS PROPERTY

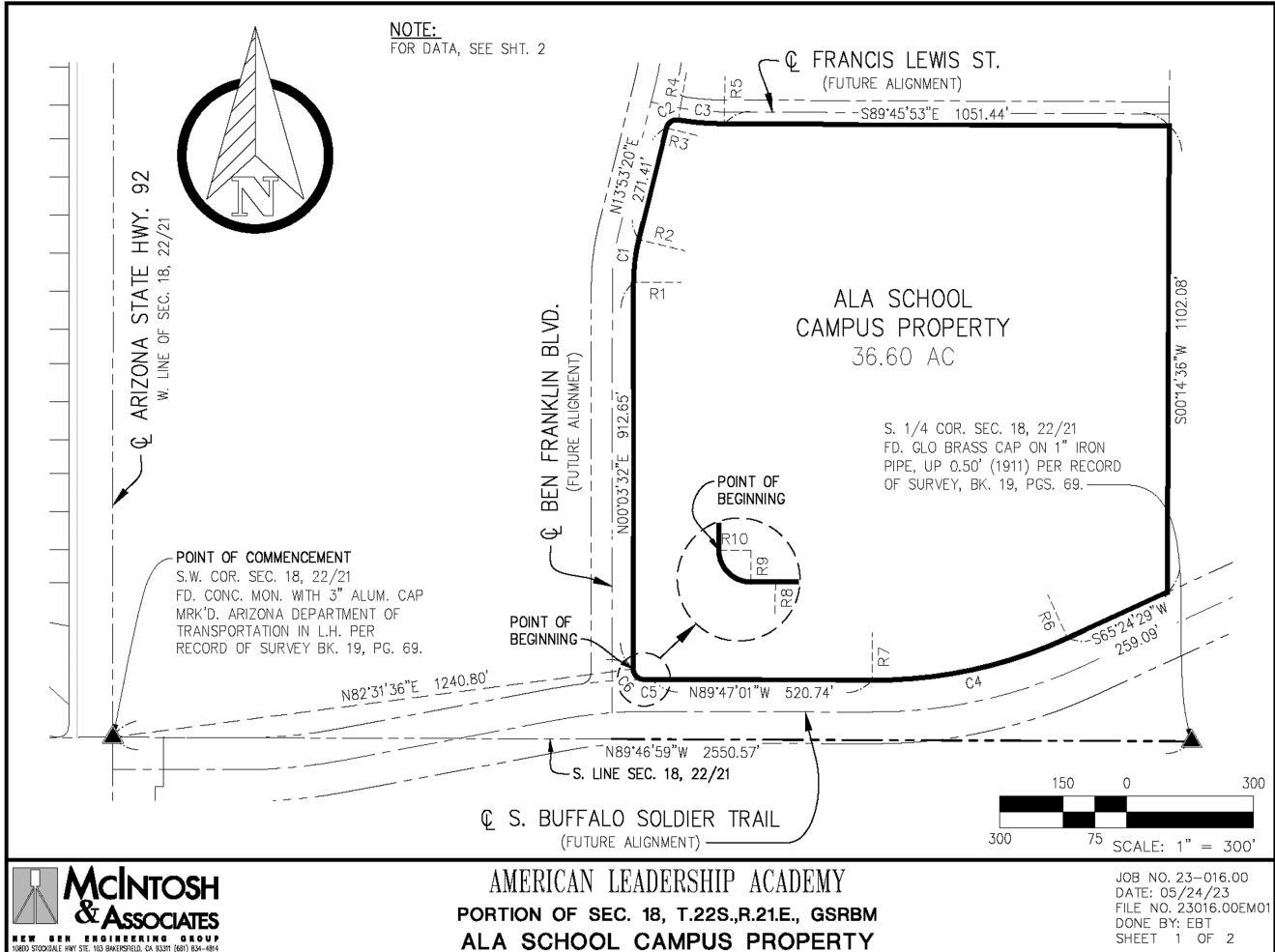
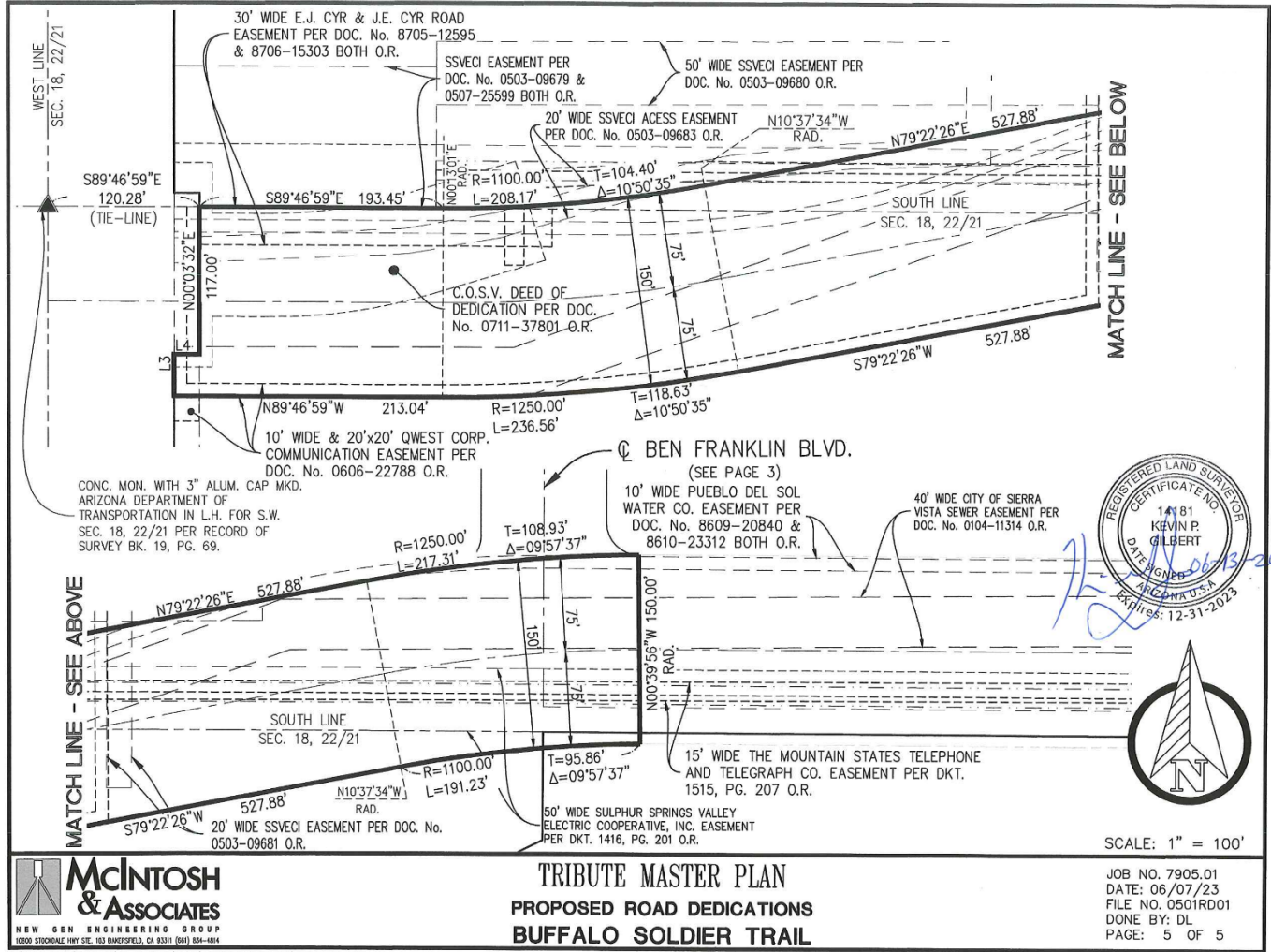


EXHIBIT "B"

BST ROADWAY DEDICATION



LEGAL DESCRIPTION:

BEING A PORTION OF SECTION 18, TOWNSHIP 22 SOUTH, RANGE 21 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, STATE OF ARIZONA, BEING MORE PARTICULARLY DESCRIBED AND FOLLOWS:

S. BUFFALO SOLDIER TRAIL

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 18, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 18 BEARS SOUTH $89^{\circ} 46' 59''$ EAST; THENCE SOUTH $89^{\circ} 46' 59''$ EAST ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 120.28 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF ARIZONA STATE HIGHWAY 92, AND BEING THE POINT OF BEGINNING: THENCE ALONG THE FOLLOWING COURSES:

- 1) SOUTH $89^{\circ} 46' 59''$ EAST, CONTINUING ALONG SAID SOUTH LINE, A DISTANCE OF 193.45 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORHTWESTERLY, HAVING A RADIUS OF 1100.00 FEET; THENCE
- 2) DEPARTING SAID SOUTH LINE, NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $10^{\circ} 50' 35''$, AN ARC LENGTH OF 208.17 FEET; THENCE
- 3) NORTH $79^{\circ} 22' 26''$ EAST, A DISTANCE OF 527.88 FEET, TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1250.00 FEET; THENCE
- 4) EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $9^{\circ} 57' 37''$, AN ARC LENGTH OF 217.31 FEET; THENCE
- 5) SOUTH $00^{\circ} 39' 56''$ EAST, A DISTANCE OF 150.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1100.00 FEET, TO WHICH POINT A RADIAL LINE BEARS NORTH $00^{\circ} 39' 56''$ WEST; THENCE
- 6) SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $9^{\circ} 57' 37''$, AN ARC LENGTH OF 191.23 FEET; THENCE
- 7) SOUTH $79^{\circ} 22' 26''$ WEST, A DISTANCE OF 527.88 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1250.00 FEET; THENCE

- 8) WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $10^{\circ} 50' 35''$, AN ARC LENGTH OF 236.56 FEET; THENCE
- 9) NORTH $89^{\circ} 46' 59''$ WEST, A DISTANCE OF 213.04 TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID STATE HIGHWAY; THENCE CONTINUING ALONG SAID RIGHT OF WAY THE FOLLOWING THREE (3) COURSES,
- 10) NORTH $00^{\circ} 03' 32''$ EAST, A DISTANCE OF 33.00 FEET, THENCE
- 11) SOUTH $89^{\circ} 46' 59''$ EAST, A DISTANCE OF 20.00 FEET; THENCE
- 12) NORTH $00^{\circ} 03' 32''$ EAST, A DISTANCE OF 117.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.97 ACRES MORE OR LESS

