

When Recorded Return to:
City of Mesa
Real Estate Services
P.O. Box 1466
Mesa, AZ 85211-1466

**Intergovernmental Agreement
for the Operation and Maintenance of Baseline Road between Country Club Drive and
Power Road and Power Road between Baseline Road and Pecos Road**

between
The Town of Gilbert
and
The City of Mesa

This Intergovernmental Agreement ("Agreement") is entered into between the Town of Gilbert, a municipal corporation ("Gilbert") and the City of Mesa, Arizona, a municipal corporation ("Mesa"). Gilbert and Mesa are collectively referred to as "Parties" or individually as a "Party".

This Agreement shall become effective when fully executed by Gilbert and Mesa.

STATUTORY AUTHORIZATION

1. Gilbert is empowered by Arizona Revised Statutes §§ 11-951 and 9-240 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Gilbert.
2. Mesa is empowered by Arizona Revised Statutes § 11-951 *et seq.* and Section 101 of the Mesa City Charter, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Mesa.

BACKGROUND

3. The Parties previously entered into the following intergovernmental agreements related to Baseline Road and Power Road.

3.1 Intergovernmental Agreements between Mesa and Gilbert only ("Prior Mesa-Gilbert Intergovernmental Agreements"):

3.1.1 Intergovernmental Agreement dated March 9, 1987, (Mesa #87-A026) for the purpose of design and construction of a raised median and street lights along Baseline Road from Country Club Drive to Power Road and plan review and construction inspection for new developments.

3.1.2 Intergovernmental Agreement dated March 29, 1988, (Mesa #88-A020) for the purpose of improvements to Baseline and Cooper Roads and Baseline and McQueen Roads.

3.1.3 Intergovernmental Agreement dated March 3, 1998, (Mesa #00-A017) recorded at 98-0164253 in the records of the Maricopa County Recorder's Office for the purpose of installation of traffic signals on Baseline Road.

3.1.4 Intergovernmental Agreement dated October 9, 1998, (Mesa #8-A117) recorded at 98-0915364 in the records of the Maricopa County Recorder's Office for the purpose of design and construction of improvements to Baseline Road between Stapley Drive to 2000 feet east.

3.1.5 Intergovernmental Agreement dated June 20, 2000, (Mesa #00-A061) recorded at 2000-0614069 in the records of the Maricopa County Recorder's Office for the purpose of improvements along Baseline Road from Horne Road to the Consolidated Canal.

3.1.6 Intergovernmental Agreement dated July 8, 2003, (Mesa #03-A054) recorded at 2003-1190856 in the records of the Maricopa County Recorder's Office for the purpose of improvements and maintenance of Power Road between Baseline Road and Ocotillo Road.

3.1.7 Intergovernmental Agreement dated July 22, 2003, (Mesa #03-A053) recorded at 2003-1190855 in the records of the Maricopa County Recorder's Office for the purpose of improvements along Baseline Road from SRP Consolidated Canal to Power Road.

3.2 Prior Intergovernmental Agreements Among Mesa, Gilbert and Maricopa County ("Prior Mesa-Gilbert-Maricopa County Intergovernmental Agreements"):

3.2.1 Intergovernmental Agreement dated May 10, 2005, (Mesa #05-A041) recorded at 2005-0616347 in the records of the Maricopa County Recorder's Office for the purpose of improvement of the intersection at Power Road and Monterey Road.

3.2.2 Intergovernmental Agreement dated July 24, 2006, (Mesa #04-A043) for the purpose of construction of improvements to Power Road between Guadalupe Road and Baseline Road.

3.2.3 Intergovernmental Agreement dated January 19, 2010, (Mesa #10-A003) recorded at 20100060524 in the records of the Maricopa County Recorder's Office for the purpose of improvement of the intersection of Power Road and Pecos Road.

3.2.4 Intergovernmental Agreement dated April 25, 2012, (Mesa #12-A0216) recorded at 20120397564 in the records of the Maricopa County Recorder's Office for the purpose of improvements to Power Road from Pecos Road to SR202 (Santan Freeway) to a six lane Urban Principal Arterial roadway.

4. Pursuant to the Prior Mesa-Gilbert Intergovernmental Agreements (as defined below) the Parties have agreed to assume responsibility for portions of Baseline Road and Power Road, including areas outside a Party's jurisdictional boundaries.

5. Because Baseline Road and Power Road are located within the jurisdictional boundaries of Mesa and Gilbert at different locations, the Parties desire to set forth their mutual responsibilities for operation and maintenance of Baseline Road and Power Road and to establish processes to facilitate the work required for the efficient operation and maintenance of Baseline Road and Power Road.

PURPOSE OF THE AGREEMENT

6. The purpose of this Agreement is to set forth the responsibilities of Mesa and Gilbert for the operation and maintenance of Baseline Road and Power Road and future construction of Baseline Road and Power Road, to establish processes for the Parties and others for work in and on Baseline Road and Power Road and to provide for cost-sharing in certain circumstances.

TERMS OF AGREEMENT

7. **Definitions.** The following terms shall have the following meanings when capitalized in this Agreement.

"Applicable Laws" means all federal and state laws governing any Maintenance or Project in a Right-of-Way and any Mesa or Gilbert codes or ordinances applicable within their respective jurisdictional boundaries.

"Baseline Road" means that portion of the existing and future Baseline Road right-of-way between the east right-of-way line of Country Club Drive and the west right-of-way line of Power Road, including both the traveled and non-traveled portions of the Baseline Road right-of-way, as depicted on Exhibit A, attached hereto and made a part hereof by this reference.

"Days" means calendar days.

"Emergency Work" means Maintenance or a Project that must be commenced immediately due to the risk to public health and safety or because of an immediate risk of greater damage to the infrastructure in the Right-of-Way.

"Jurisdictional Agency" means the Party whose jurisdictional boundaries include within it the portion of a Right-of-Way where Maintenance or a Project is located or will be located, as depicted on Exhibit A (including Exhibits A-1 through A-4).

"Lead Agency" means the Party that will perform Maintenance or work on a Project in a Right-of-Way.

“Maintenance” means routine maintenance and repair of (i) Traffic Signals and (ii) a Right-of-Way, including maintenance of the decorative wall described in Paragraph 8.2 and paving to keep a Right-of-Way in a condition safe for the traveling public up to and including reconstruction, pavement striping, maintenance of sidewalks, curb, gutter, bicycle lanes and signage, all in accordance with sound engineering practices and Applicable Law. “Maintenance” does not include streetlights, landscaping or street sweeping in a Right-of-Way or maintenance of Utilities of a Party.

“Non-Party Work” means construction or maintenance in a Right-of-Way not performed by Mesa or Gilbert, including but not limited to, non-party developers, utilities, telecommunications companies and cable television companies.

“Permit Fee” means the fees charged by the Jurisdictional Agency for a Permit.

“Permits” means authorizations to proceed with plan review, construction or inspections as applicable.

“Power Road” means that portion of the existing and future Power Road Right-of-Way between the north Right-of-Way line of Baseline Road and the south Right-of-Way line of Pecos Road, including both the traveled and non-traveled portions of the Power Road Right-of-Way, as depicted on Exhibit A, attached hereto and made a part hereof by this reference.

“Prior Mesa-Gilbert Intergovernmental Agreements” means the intergovernmental agreements described in Paragraphs 3.1.1 through 3.1.7 of this Agreement.

“Prior Mesa-Gilbert-Maricopa County Intergovernmental Agreements” means the intergovernmental agreements described in Paragraphs 3.2.1 through 3.2.4 of this Agreement.

“Project” means (i) specific design and construction proposed or performed by a Lead Agency in a portion of the Right-of-Way, (ii) repair or installation of Utilities, and (iii) installation of Traffic Signals. “Project” does not include Maintenance.

“Project Aesthetic Enhancements” means improvements desired by one Party but which are over and above what would be standard components of a Project, such as undergrounding of utility lines or decorative walls.

“Project Area” means the physical area required for a Project.

“Project Budget” means the budget prepared by a Lead Agency for a Project, including projected design costs, construction, construction management, real property and easement acquisitions, internal costs and Project Aesthetic Enhancements requested by a Party.

“Project Cost” means the sum of (i) actual design costs, (ii) actual cost of real property and easement acquisition, (iii) actual cost of construction management, and (v) actual internal costs not to exceed 7.5% of the sum of (i) through (iv) above. “Project Cost” does not include Project Aesthetic Enhancements.

“Right-of-Way” means Baseline Road or Power Road, as applicable.

“Traffic Signal” means a set of electrically operated signal lights used to direct or control traffic at intersections and which are owned or will be owned by a Party, including associated equipment required for the operation of the signal lights.

“Utilities” means water, sewer, electric, natural gas or telecommunications facilities owned by a Party.

“Utility Maintenance” means all repairs to a Party’s Utilities in the Right-of-Way, irrespective of whether the Utilities are located within the jurisdiction of the other Party or the area of responsibility for Maintenance of the other Party.

8. Right-of-Way Maintenance

8.1 *Applicability.* The procedures set forth in this Paragraph 8 apply to Maintenance of Rights-of-Way.

8.2 *Lead Agency.* Mesa shall be responsible for performing Maintenance on those portions of Baseline Road and Power Road depicted on Exhibit A (including A-1 through A-4) as Mesa’s responsible area for Maintenance. Mesa shall be the Lead Agency for Maintenance in such area. Gilbert shall be responsible for performing Maintenance on those portions of Baseline Road and Power Road depicted on Exhibit A (including A-1 through A-4) as Gilbert’s responsible area for Maintenance, Gilbert shall be the Lead Agency for Maintenance in such area.

8.2.1 Mesa shall also be responsible for maintenance of that portion of the decorative block wall located on the east side of Power Road as depicted on Exhibit A-4. Within thirty (30) days from the effective date of this Agreement, Gilbert shall convey the decorative wall to Mesa in its existing condition by execution of a Bill of Sale. Gilbert shall pay a one-time payment to Mesa in the amount of fifty-eight thousand dollars (\$58,000.00) to Mesa for the cost of maintaining the decorative block wall. Within thirty (30) days after completion and acceptance of the work described in Paragraph 8.2.2, Mesa will invoice Gilbert for this amount and Gilbert shall pay such amount within ninety (90) days from the date of the invoice.

8.2.2 Gilbert shall physically split the electrical and irrigation facilities that provide service to the east side of Power Road as depicted on Exhibit A-4. This work shall commence within twenty-four (24) months of the date of this Agreement and shall be completed within thirty (30) months of the date of this Agreement and shall comply with Mesa standards. Gilbert shall maintain the decorative wall described in Paragraph 8.2.1 until this work is completed. The scope of the work is as follows:

8.2.2.1 Gilbert shall install new water tap, irrigation control, point of connection and 120v electrical connection at Station 137+80 (as shown on Page 471 of 583 of the record drawings prepared for Project 07-066-001).

8.2.2.2 Gilbert shall install a new SRP Point of Service and meter on the existing electrical lines at Station 244+10. Gilbert shall work directly with SRP on the design and installation of the meter and pay the invoice received from SRP for the cost of design and installation of the meter. Within ninety (90) days from receipt of an invoice from Gilbert, Mesa shall reimburse Gilbert fifty percent (50%) of such cost.

8.2.3 Following completion of the work described in Paragraph 8.2.2 above, Mesa shall maintain the landscaping, irrigation system and streetlights in the area depicted as Mesa's area of responsibility, provided however, Gilbert shall provide water for the landscaping and electricity for the streetlights in this area.

8.2.4 The Lead Agency responsible for the Maintenance of a Right-of-Way pursuant to Paragraph 8.2 shall also maintain any required drainage basin in compliance with the Lead Agency's normal standards and processes. If the drainage basin is in the other Party's jurisdiction, the other Party shall issue a blanket permit for such maintenance, if a permit is required by that Party. If the drainage basin is modified due to new development, the Lead Agency shall coordinate with the developer on the modifications to the drainage basin and obtaining approvals from the Jurisdictional Agency. The Lead Agency shall be responsible for the maintenance of the drainage basin unless and until the developer becomes responsible for maintenance. In addition, when the property develops, the Lead Agency and the Jurisdictional Agency (if different from the Lead Agency) will support one another in requiring the developer to incorporate the temporary retention into their site plan (including reconfiguring it if appropriate) and take over maintenance responsibility so that neither agency is responsible for long-term maintenance.

8.3 When performing Maintenance, the Lead Agency shall:

8.3.1 Notify the other Party when Maintenance will be performed, in compliance with Paragraph 13.1, except that if Maintenance will be performed within the Lead Agency's jurisdictional boundaries and will not impact the other Party, notice is not required. If the Maintenance involves streetlights or landscaping and will cause a lane or sidewalk closure for more than sixty (60) minutes, the Lead Agency shall notify the Jurisdictional Agency, in compliance with Paragraph 13.1.

8.3.2 Comply with Applicable Laws of the Jurisdictional Agency in the performance of the Maintenance.

8.3.3 Obtain all required Permits and other approvals for the Maintenance in compliance with Paragraph 13.2.

8.3.4 Be responsible for Maintenance of bus pullouts and ramps at intersections. Maintenance includes but is not limited to failures that are not structural and are due to Maintenance of the surface of the pavement. Maintenance responsibility ends at the curb return or at the start/end of the pedestrian ramps, whichever extends the farthest.

8.3.5 Perform adjustments to sewer manholes and water valve boxes of the Jurisdictional Agency and to facilities installed as part of Non-Party Work within the Right-of-Way in coordination with the other Party prior to acceptance of the Maintenance in compliance with Paragraph 13.4.

8.3.6 Perform the Maintenance of the decorative wall depicted on Exhibit A-4 consistent with the existing design and aesthetic standards unless Gilbert agrees in writing that such standards may be modified. If Mesa fails or refuses to perform such Maintenance in compliance with this Paragraph, Gilbert may, after notice to Mesa, perform the Maintenance and deduct the costs from the amount set forth in Paragraph 8.2.

8.3.7 Be responsible for all costs of Maintenance, except for costs of Maintenance of Project Aesthetic Enhancements for which the other Party is responsible pursuant to Paragraph 8.4.3.

8.3.8 Notify the Jurisdictional Agency when the Maintenance has been completed, in compliance with Paragraph 13.1 and schedule final inspection by the Jurisdictional Agency.

8.4 *Jurisdictional Agency.* For that portion of a Right-of-Way within its jurisdictional boundaries, if the Jurisdictional Agency is not the Lead Agency, the Jurisdictional Agency shall:

8.4.1 Notify the Lead Agency of any conflicts with existing facilities owned by Jurisdictional Agency in the Right-of-Way.

8.4.2 Issue no-cost permits to the Lead Agency for temporary traffic control devices in compliance with Paragraph 13.2 for the Maintenance authorized to be performed by the Lead Agency.

8.4.3 Pay the cost of maintenance of Project Aesthetic Enhancements.

9. Traffic Signals.

9.1 *Applicability.* The procedures set forth in this Paragraph 9 apply to the purchase, installation, construction and Maintenance of all Traffic Signals in a Right-of-Way.

9.2 *Lead Agency.* Mesa shall be responsible for purchase, installation, construction and Maintenance of Traffic Signals in Baseline Road on that portion of Baseline Road depicted on Exhibit A and that portion of Power Road depicted on Exhibit A (including Exhibits A-1 through A-4), attached hereto and made a part hereof by this reference, as Mesa's responsible area for Maintenance, and Mesa shall be the Lead Agency for purchase, installation, construction and

Maintenance of all Traffic Signals in Baseline Road and Power Road in those areas. Gilbert shall be responsible for purchase, installation and construction of all Traffic Signals in Baseline Road on that portion of Baseline Road depicted on Exhibit A and that portion of Power Road depicted on Exhibit A (including Exhibits A-1 through A-4) as Gilbert's responsible area for Maintenance, and Gilbert shall be the Lead Agency for purchase, installation and construction of all Traffic Signals in Baseline Road and Power Road in those areas. The Lead Agency shall:

9.2.1 Notify the other Party that it intends to commence a Project involving Traffic Signals, in compliance with Paragraph 13.1; such notice shall include a description of the Project and Project Area.

9.2.2 Prepare and provide to the other Party a Project Budget that includes anticipated Projects Costs and, if requested by the other Party, schedule a meeting to discuss the Project and Project Budget.

9.2.3 Notify the other Party when the Project will commence, in compliance with Paragraph 13.1.

9.2.4 Prepare all drawings and specifications necessary for the Project and submit the drawing and specifications to the other Party for review and comment.

9.2.5 Comply with Applicable Laws in the purchase of all Traffic Signal equipment, materials and labor for the Traffic Signal.

9.2.6 Obtain all required Permits and other approvals for the Maintenance in compliance with Paragraph 13.2.

9.2.7 Install or contract for the installation of all Traffic Signal equipment, material, labor and other costs associated with the Project.

9.2.8 Allow the other Party to inspect the Project.

9.2.9 Be responsible for the installation and removal of temporary traffic control devices and for public safety and convenience during construction of the Project.

9.2.10 Be responsible for the Traffic Signal timing in accordance with its policies.

9.2.11 Arrange and pay for initial electrical hook-up for Traffic Signals.

9.2.12 Pay all third party invoices as they become due for the Project.

9.2.13 Notify the other Party when the installation of the Project has been completed, in compliance with Paragraph 13.1 and schedule final inspection by the other Party.

9.2.14 Within thirty (30) days of completion and acceptance of the Project, invoice the other Party for its proportionate share of the Project calculated as follows: Project Costs

divided by the number of legs owned by each Party divided by the number of legs in the intersection.

9.2.15 Maintain and pay all costs of Maintenance of Traffic Signals and pay all electrical costs associated with the Maintenance of Traffic Signal in their responsible areas.

9.2.16 If an existing Traffic Signal needs to be relocated or modified, the Parties shall meet and determine where the new location shall be or the extent of the required modification. Prior to commencement of any work, the Parties shall mutually agree to any cost-sharing for the Project.

9.3 *Party other than the Lead Agency.* The other Party shall:

9.3.1 Review the proposed Project, Project Area and Project Budget and promptly notify the Lead Agency of any objections.

9.3.2 Review plans, drawings, and specifications within twenty-one (21) days of receipt. Notify the Lead Agency of any conflicts with existing facilities in the Right-of-Way with respect to the Traffic Signal in compliance with Paragraph 13.1.

9.3.3 Issue no-cost permits to the Lead Agency for temporary traffic control devices in compliance with Paragraph 13.2 for the Traffic Signal installation authorized to be performed by the Lead Agency.

9.3.4 Pay the invoice submitted by the Lead Agency within thirty (30) days of receipt unless there is an objection to the invoice, in which case the Jurisdictional Agency shall pay the undisputed amount and schedule a meeting with the Lead Agency to discuss the invoice.

10. **Utilities**

10.1 *Applicability.* The procedures set forth in this Paragraph 10 shall apply only if the Lead Agency is different from the Jurisdictional Agency. Each Party shall be responsible for Utility Maintenance of their respective Utilities in a Right-of-Way.

10.2 *Lead Agency.* The Lead Agency is the owner of the Utilities in or to be installed, repaired or maintained in a specific portion of a Right-of-Way. The Lead Agency shall:

10.2.1 Notify the Jurisdictional Agency when it intends to commence repairs or installation of Utilities or Utility Maintenance will occur, in compliance with Paragraph 13.1. Such notice shall include a description of the Project and Project Area.

10.2.2 Prepare all drawings and specifications necessary for the repair or installation of Utility facilities, including any Project Aesthetic Enhancements requested by a Party, and submit the drawings and specifications to the Jurisdictional Agency for review and comment.

10.2.3 Obtain all Permits and other required approvals for the Project.

10.2.4 Perform or cause to be performed the repairs or installation of the Utilities at its cost in compliance with Applicable Laws.

10.2.5 Perform adjustments to sewer manholes, water valve boxes and facilities installed as part of Non-Party Work within the Right-of-Way in coordination with the other Party prior to acceptance of the Project in compliance with Paragraph 13.4.

10.2.6 Provide or cause to be provided all equipment, material, labor and other costs associated with the Project.

10.2.7 Be responsible for the installation and removal of temporary traffic control devices and for public safety and convenience during construction of the Project.

10.2.8 Pay all third party invoices as they become due for the Project.

10.2.9 Notify the Jurisdictional Agency when the Project has been completed, in compliance with Paragraph 13.2 and schedule final inspection by the Jurisdictional Agency in compliance with Paragraph 13.4.

10.2.10 Perform Utility Maintenance in compliance with its maintenance standards for the specific Utility facilities.

10.2.11 Within thirty (30) days of completion and acceptance of the Project, invoice the Jurisdictional Agency for any Project Aesthetic Enhancements that are the responsibility of the Jurisdictional Agency.

10.2.12 Allow the Jurisdictional Agency to inspect the Project in compliance with Paragraph 13.4.

10.3 *Jurisdictional Agency.* The Jurisdictional Agency is the Party that is not the owner of the Utilities in a specific portion of a Right-of-Way. The Jurisdictional Agency shall:

10.3.1 Review plans, drawings, and specifications within fourteen days of receipt Notify the Lead Agency of any conflicts with existing Utilities or other facilities in a Right-of-Way with respect to the Project in compliance with Paragraph 13.1.

10.3.2 Issue no-cost permits for temporary traffic control devices to the Lead Agency in compliance with Paragraph 13.2 for the Project.

10.3.3 Pay the invoice submitted by the Lead Agency for Project Aesthetic Enhancements within thirty (30) days of receipt unless there is an objection to the invoice, in which case the Jurisdictional Agency shall pay the undisputed amount and schedule a meeting with the Lead Agency to discuss the invoice.

10.4 *Mutual Responsibilities.*

10.4.1 The Parties shall schedule semi-annual planning meetings between their respective staffs to discuss upcoming plans for Utility Maintenance and replacement that may impact the Right-of-Way and/or other utilities in the Right-of-Way. Such meetings shall occur each year in January and July.

10.4.2 Each Party may construct, repair, replace, maintain and remove its own Utilities according to its own adopted standards and specifications. Any deviation from the tolerances thereof shall not exceed those tolerances allowed per Maricopa Association of Governments Standard Details.

10.4.3 Each Party shall comply with pavement cut ordinances applicable to the Right-of-Way.

10.4.4 If, during the course of performing the repair, installation or Utility Maintenance of the Utilities, the Lead Agency damages or otherwise compromises Utilities belonging to the Jurisdictional Agency, the Lead Agency shall immediately notify the Jurisdictional Agency. The Lead Agency shall be responsible for the repair and/or replacement of any Utility facilities in the impacted area only that are damaged as a result of its work.

11. **Construction Projects other than Traffic Signal Installation and Utilities.**

11.1 *Applicability.* Unless otherwise provided in a separate intergovernmental agreement, the procedures set forth in this Paragraph 11 shall apply only if the Lead Agency is different from the Jurisdictional Agency unless the Jurisdictional Agency has Utilities or other facilities in the Project Area. Projects completely within one Party's jurisdictional boundaries are not subject to this paragraph unless the other Party has Utilities or other facilities in the Project Area. If a Project will be designed and/or constructed pursuant to this Paragraph 11 and an intergovernmental agreement with Maricopa County is entered into related to the design and/or construction of the Project, the provisions of this Intergovernmental Agreement shall be referenced in the agreement with Maricopa County and to the extent not in conflict with the agreement with Maricopa County, the provisions of this Intergovernmental Agreement shall apply.

11.2 *Lead Agency.* For Projects that are or will be located within the jurisdictional boundaries of the Jurisdictional Agency, the Lead Agency shall:

11.2.1 Notify the Jurisdictional Agency that it intends to commence a Project, in compliance with Paragraph 13.1; such notice shall include a description of the Project and Project Area.

11.2.2 Prepare and provide to the other Party a Project Budget that includes anticipated Projects Costs and, if requested by the other Party, schedule a meeting to discuss the Project and Project Budget.

11.2.3 Notify the Jurisdictional Agency when construction work on the Project will occur, in compliance with Paragraph 13.1.

11.2.4 Prepare all drawings and specifications necessary for the Project, including any Project Aesthetic Enhancements requested by a Party, and submit the drawings and specifications to the Jurisdictional Agency for review and comment.

11.2.5 Comply with Applicable Laws during design and construction of the Project.

11.2.6 Provide or cause to be provided all equipment, material, labor and other costs associated with the Project.

11.2.7 Be responsible for the installation and removal of temporary traffic control devices and for public safety and convenience during construction of the Project.

11.2.8 Perform adjustments to sewer manholes, water valve boxes and facilities installed as part of Non-Party Work within a Right-of-Way in coordination with the other Party prior to acceptance of the Project in compliance with Paragraph 13.4.

11.2.9 Pay all third party invoices as they become due for the Project.

11.2.10 Notify the Jurisdictional Agency when the Project has been completed, in compliance with Paragraph 13.2 and schedule final inspection by the Jurisdictional Agency in compliance with Paragraph 13.4.

11.2.11 Within thirty (30) days of completion and acceptance of the Project, invoice the Jurisdictional Agency for its proportionate share of the Project Costs and the costs of any Project Aesthetic Enhancements requested by a Party. The Party that requested Project Aesthetic Enhancements shall pay one hundred percent (100%) of the cost of Project Aesthetic Enhancements.

11.2.11.1 Except for Projects that are new construction in the intersections described in Paragraphs 11.2.11.2 through 11.2.11.4, each Party's proportional share shall be fifty percent (50%) of the Project Costs, after first deducting any amounts paid by another entity or grant or as otherwise agreed by the Parties for a Project.

11.2.11.2 The proportional share of Project Costs to be paid by the Parties for Projects that are new construction at the intersection of Power Road and Baseline Road shall be twenty-five percent (25%) for Gilbert and seventy-five percent (75%) for Mesa, after first deducting any amounts paid by another entity or grant or as otherwise agreed by the Parties for a Project. Such intersection is defined as that area lying within the north and south right-of-way lines of Baseline Road and the east and west right-of-way lines of Power Road.

11.2.11.3 The proportional share of Project Costs to be paid by the Parties for Projects that are new construction at the intersection of Country Club Drive and Baseline Road shall be twenty-five percent (25%) for Gilbert and seventy-five percent (75%) for Mesa, after first deducting any amounts paid by another entity or grant or as otherwise agreed by the Parties for a Project. Such intersection is defined as that area lying within the north and south right-of-way lines of Baseline Road and the east and west right-of-way lines of Country Club Drive.

11.2.11.4 Gilbert shall pay one hundred percent (100%) of the Project Costs for new construction at the intersection of Higley Road and Baseline Road, after first deducting any amounts paid by another entity or grant or as otherwise agreed by the Parties for a Project. Such intersection is defined as that area lying within the north and south right-of-way lines of Baseline Road and the east and west right-of-way lines of Higley Road.

11.2.12 Allow the Jurisdictional Agency to inspect the Project in compliance with Paragraph 13.4.

11.3 *Jurisdictional Agency.* The Jurisdictional Agency shall:

11.3.1 Review the proposed Project, Project Area and Project Budget and promptly notify the Lead Agency of any objections.

11.3.2 Review plans, drawings, and specifications within fourteen days of receipt Notify the Lead Agency of any conflicts with existing Utilities or other facilities in a Right-of-Way with respect to the Project in compliance with Paragraph 13.1.

11.3.3 Issue no-cost permits to the Lead Agency in compliance with Paragraph 13.2 for the Project.

11.3.4 Acquire all real property and/or easements for the Project in compliance with the Jurisdictional Party's standard policies and procedures.

11.3.5 Pay the invoice submitted by the Lead Agency within thirty (30) days of receipt unless there is an objection to the invoice, in which case the Jurisdictional Agency shall pay the undisputed amount and schedule a meeting with the Lead Agency to discuss the invoice.

12. **Non-Party Work in the Right-of-Way.**

12.1 *Applicability.* The procedures set forth in this Paragraph 12 shall apply only if the Lead Agency is different from the Jurisdictional Agency and the Jurisdictional Agency has Utilities or other facilities in the Project Area. Non-Party Work that will occur completely within one Party's jurisdictional boundaries is not subject to this paragraph unless the other Party has Utilities or other facilities in the Project Area.

12.2 *Lead Agency.* The Lead Agency shall:

12.2.1 Be responsible for requiring compliance with Applicable Laws and any dedication requirements for the Non-Party Work.

12.2.2 Notify the Jurisdictional Agency when the Non-Party Work will occur, in compliance with Paragraph 13.1.

12.2.2 Review all drawings and specifications necessary for the Non-Party Work and submit the drawing and specifications to the Jurisdictional Agency for review and comment in compliance with Paragraph 13.3.

12.2.3 Issue permits for the Non-Party Work that will occur within the jurisdictional boundaries of the Lead Agency.

12.2.4 Notify the Jurisdictional Agency when the Non-Party Work has been completed, in compliance with Paragraph 13.2 and schedule final inspection by the Jurisdictional Agency in compliance with Paragraph 13.4.

12.2.5 Allow the Jurisdictional Agency to inspect the Non-Party Work.

12.3.3 *Jurisdictional Agency.* The Jurisdiction Agency shall:

12.3.1 Review plans, drawings, and specifications within fourteen days of receipt.

12.3.2 Notify the Lead Agency of any conflicts with existing facilities in a Right-of-Way with respect to the Non-Party Work in compliance with Paragraph 13.1.

12.3.3 Issue permits for the Non-Party Work that will occur within the jurisdictional boundaries of the Jurisdictional Agency.

13. **Procedures**

13.1 *Notification Procedures.*

13.1.1 Where notice is required to be given by a Lead Agency to the other Party for Maintenance or a Project, the notice shall include (i) the estimated duration of the Maintenance or Project, and (ii) the name of the contractor and contact information for the contractor that will perform the work.

13.1.2 If the Maintenance will take one day or less, the notice shall be given at least ten (10) days prior to commencement of the Maintenance or Project. If the Maintenance or Project will take more than one day, the notice shall be given at least twenty (20) days prior to commencement of the Maintenance or construction of a Project. If the Maintenance involves streetlights or landscaping and will cause a lane or sidewalk closure for more than sixty (60) minutes and the Lead Agency is not the Jurisdictional

Agency, the Lead Agency shall notify the Jurisdictional Agency and obtain approval for the closure prior to commencing the Maintenance.

13.1.3 The Party receiving the notice from a Lead Agency shall notify the Lead Agency by the close of business on the tenth day after the date of the notice of any conflicts or technical concerns with the proposed Maintenance or Project. If the other Party does not respond within the ten-day period, then the Maintenance or Project may commence the following day. If, however, the other Party reasonably believes that the Maintenance or Project cannot proceed without undue risk to its own facilities or to the public, then the Parties shall meet or discuss by telephone or email within 48 hours of such determination to attempt to resolve those concerns.

13.1.4 All notices, requests, demands or other communications ("Notices") required by this Agreement or otherwise given in respect of any transactions contemplated hereby, shall be in writing and served by personal delivery, telephonic facsimile or deposited with the United States Postal Service certified mail, return receipt requested, with proper postage affixed, addressed and directed to the Party to receive the same as follows:

If to the TOWN: Town of Gilbert
 Town Manager
 50 E. Civic Center Drive
 Gilbert, Arizona 85296

If to the CITY: City of Mesa
 City Engineer
 20 E. Main Street, POB 1466
 Mesa, Arizona 85211-1466

Both parties shall send written notification to the other of any address changes over the life of the Agreement.

13.1.5 Except as otherwise specifically stated in this Agreement, all Notices shall be effective upon delivery and shall be deemed delivered on the date and time of delivery if delivered in person, upon the time and date of confirmed transmission if delivered by telephonic facsimile or if deposited with the U.S. Postal Service, on the second business day following the date of mailing. Any party may designate a different person or entity or change the place to which any Notice shall be given as herein provided, which Notice shall be effective after the same is actually received by the other party.

13.1.6 In the event Emergency Work is required, the Lead Agency may proceed with the Maintenance required but shall notify the Jurisdictional Agency within twenty-four (24) hours after of commencement of the Emergency Work and the nature of the emergency. Any Permits that would have been required shall be obtained as soon as practicable.

13.2 *Permitting Procedures.*

13.2.1 Permits will be issued in compliance with the requirements of the Jurisdictional Agency.

13.2.2 Permit Fees required by a Jurisdictional Agency shall be paid by the Lead Agency, except fees for temporary traffic control devices shall be waived.

13.2.3 Permits for Non-Party Work in a Right-of-Way shall be issued by the Jurisdictional Agency at the fees established by the Jurisdictional Agency.

13.3 *Plan Review Procedures.*

13.3.1 Unless otherwise agreed by the Parties, at least twenty-eight (28) calendar days prior to commencement of Maintenance or construction of a Project, the Lead Agency shall submit the plans for the Maintenance or Project to the Jurisdictional Agency for review and comments.

13.3.2 The Jurisdictional Agency shall complete its review of plans for Maintenance or a Project within twenty-eight (28) calendar days of receipt of the plans and shall notify the Lead Agency in writing of any comments or revisions to the plans.

13.3.3 The Lead Agency shall incorporate such comments and/or revisions submitted by the Jurisdictional Agency into the final plans or notify the Jurisdictional Agency of the grounds for rejecting the comments and/or revisions submitted, in which case the Parties shall meet and agree upon the final plans or follow the procedures in Paragraph 13.6 for dispute resolution.

13.4 *Inspection, Close-out and Acceptance Procedures*

13.4.1 Inspections shall be performed in compliance with the requirements of the Jurisdictional Agency.

13.4.2 Inspection Fees shall be waived by the Jurisdictional Agency.

13.4.3 Inspections for Non-Party Work in a Right-of-Way shall be performed by the Jurisdictional Agency at the fees established by the Jurisdictional Agency.

13.5 *Warranties*

13.5.1 Maintenance or Projects performed or constructed under a contract with an independent contractor: This Paragraph applies when the Lead Agency is not the same as the Jurisdictional Agency and the Lead Agency contracts with an independent contractor to perform the Maintenance or Project Construction. Contracts between a Lead Agency and an independent contractor shall include a warranty provision warranting the Maintenance or Project construction shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations, the approved plans, drawings and specifications, the quality assurance inspection and

documents, and all other terms and conditions of the Contract Documents, free of defects in materials and workmanship. Such warranty shall be for a period of at least one year. Any omission on the part of the Lead Agency to reject defective work or materials at the time of Maintenance or Project construction shall not be deemed an acceptance, and the independent contractor shall be required to correct defective work or materials at any time before final acceptance and within one year thereafter, unless a manufacturer's warranty provides greater warranty rights. The Lead Agency shall cooperate with the Jurisdictional Agency in the enforcement of such warranty. Notwithstanding anything contained in the above warranties, the Lead Agency shall warrant Maintenance performed or Projects designed and/or constructed for a period of one year from final acceptance against defective design and workmanship, ordinary wear and tear and unusual abuse or neglect excepted. After the end of the warranty period, for a new construction Project, the Jurisdictional Agency shall be responsible for any subsequent defects in the Project unless future damage is caused to the Project by the other Party. After the end of the warranty period for Maintenance, the Lead Agency shall be responsible for any subsequent defects in the Maintenance unless future damage is caused to the Maintenance by the other Party.

13.5.2 Maintenance or Projects performed or constructed by a Lead Agency: This Paragraph applies when the Lead Agency is not the same as the Jurisdictional Agency and the Lead Agency performs the Maintenance or Project design and/or construction. The Lead Agency shall warrant the Maintenance performed or Projects designed and/or constructed to be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the approved plans, drawings and specifications, free of defects in materials and workmanship ordinary wear and tear and unusual abuse or neglect excepted. Such warranty shall be for a period of at least one year. Defective work or materials shall be corrected at any time before final acceptance and within one year thereafter, unless a manufacturer's warranty provides greater warranty rights. After the end of the warranty period for a new construction Project, the Jurisdictional Agency shall be responsible for any subsequent defects in the Project unless future damage is caused to the Project by the other Party. After the end of the warranty period for Maintenance, the Lead Agency shall be responsible for any subsequent defects in the Maintenance unless future damage is caused to the Maintenance by the other Party.

13.5.3 Non-Party work in the Right-of-Way: When Non-Party work is performed in the right-of-way, the Lead Agency shall require the Non-Party to warrant the work be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and approved plans, drawings and specifications, free of defects in materials and workmanship ordinary wear and tear and unusual abuse or neglect excepted. Such warranty shall be for a period of at least one year. Defective work or materials shall be corrected at any time before final acceptance and within one year thereafter, unless a manufacturer's warranty provides greater warranty rights. After the end of the warranty period for such work, the Lead Agency shall be responsible for any subsequent defects unless future damage is caused to the work by the other Party.

13.6 *Escalation; Dispute Resolution*

If a dispute arises out of or related to this Agreement, or breach thereof, the City/Town Managers of Gilbert and Mesa shall first meet as soon as reasonably possible, but in no case later than thirty (30) days after a request, to attempt to resolve the dispute. Prior to any meetings between the Managers, the Parties shall exchange relevant information that will assist the Parties in resolving the dispute. If the Managers are unable to resolve the dispute, the Parties shall try to settle the dispute through mediation before resorting to litigation. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, or within a different time agreed to by the Parties, each Manager shall select a mediator and those selected mediators shall select the mediator to be used. Such selection shall be binding on the Parties. The cost of any such mediation shall be divided equally between Mesa and Gilbert. If mediation does not resolve the dispute, either Party may pursue their legal remedies.

14. **Term.**

The term of this Agreement is for twenty-five (25) years from the Effective Date and shall be renewable for successive twenty-five (25)-year terms unless otherwise terminated by the Parties.

15. **Indemnification.**

Each Party shall indemnify, defend, and hold harmless the other Party, its agents, officers, employees, agents, successors or assigns against any and all claims, actions, costs, expenses or reasonable attorneys' fees, caused by and/or related and/or arising out of the actions and/or omissions of the other Party, its agents, officers, employees and agents.

16 **Personnel not Employees.**

The personnel of the Mesa or Gilbert will not for any purpose be considered employees or agents of the other and each Party assumes full responsibility for the actions of its personnel while performing services under this agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits.

17. **General Provisions.**

17.1 *Administrative Conflict of Interest.* This Agreement is subject to cancellation by either Party pursuant to the provisions of Arizona Revised Statutes § 38-511.

17.2 *Attorney Determinations.* Attached to this Agreement or contained herein, are the written determinations by the appropriate attorneys for the Parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.

17.3 *Subsequent Legislation.* If legislation is enacted after the effective date of this Agreement, which changes the relationship, or structure of one or more Parties to this

Agreement, the Parties agree that this Agreement shall be renegotiated at the written request of either party.

17.4 *Prior Mesa-Gilbert Intergovernmental Agreements Superseded.* The Prior Mesa-Gilbert Intergovernmental Agreements, as that term is defined in this Agreement, are hereby superseded and shall be of no further force nor effect, and the Prior Mesa-Gilbert Intergovernmental Agreements shall be replaced in their entirety by this Agreement.

17.5 *Prior Mesa-Gilbert-Maricopa County Intergovernmental Agreements.* The Parties acknowledge that the design and construction work for those projects described in the Prior Mesa-Gilbert-Maricopa County Intergovernmental Agreements, as that term is defined in this Agreement, have been completed and agree that this Agreement sets forth requirements of the Parties for future maintenance and other work in the areas covered by the Prior Mesa-Gilbert-Maricopa County Intergovernmental Agreements.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this agreement.

TOWN OF GILBERT,
An Arizona municipal corporation

By: _____
Jenn Daniels, Mayor Date

ATTEST:

By: _____
Lisa Maxwell, Town Clerk Date

The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes § 11-952 by the undersigned Town Attorney who has determined that it is in proper form and within the power and authority granted to the Town of Gilbert under the laws of the State of Arizona.

By: _____
Chris Payne, Town Attorney Date

**CITY OF MESA,
An Arizona municipal corporation**

By: _____
Christopher J. Brady, City Manager Date

Attest:

By: _____
Dee Ann Mickelsen, City Clerk Date

The foregoing Intergovernmental Agreement IGA has been reviewed pursuant to Arizona Revised Statutes § 11-952 by the undersigned City Attorney who has determined that it is in proper form and within the power and authority granted to the City of Mesa under the laws of the State of Arizona.

By: _____
James N. Smith, City Attorney Date

EXHIBITS

Exhibit A: Maintenance Responsibilities for Locations & Intersections along Baseline Rd. & Power Rd.

Exhibit A-1: Detail Map – Baseline Rd. & Country Club Dr.

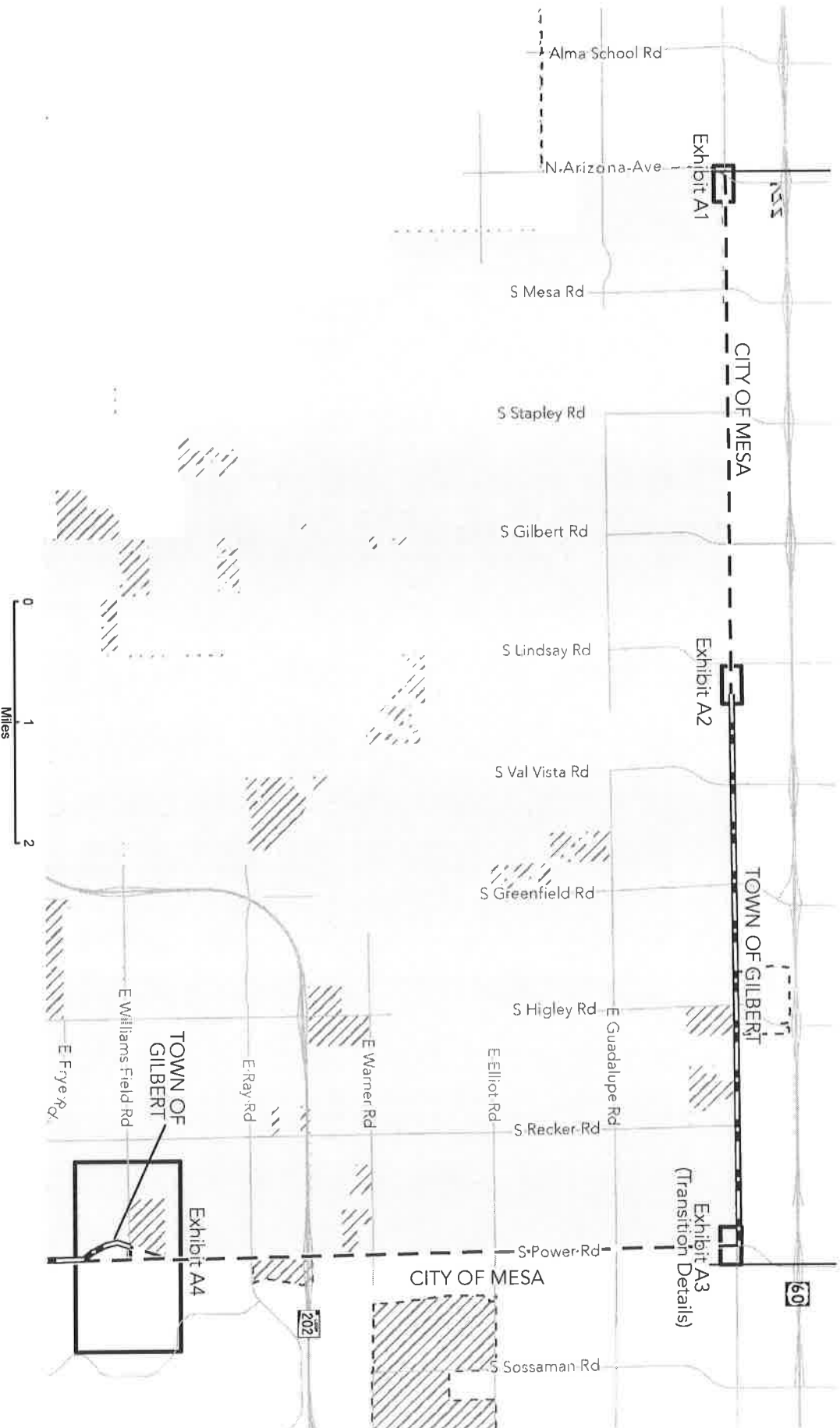
Exhibit A-2: Detail Map – Baseline Rd. & Consolidated Canal

Exhibit A-3: Detail Map – Power Rd. & Baseline Rd.

Exhibit A-4: Detail Map – Power Rd. & Williams Field Rd., including Landscape, Irrigation, Streetlights, Wall



EXHIBIT A



IGA Exhibits:
Maintenance Responsibilities for Locations &
Intersections along Baseline Rd. & Power Rd.

City of Mesa Responsibility

Town of Gilbert Responsibility

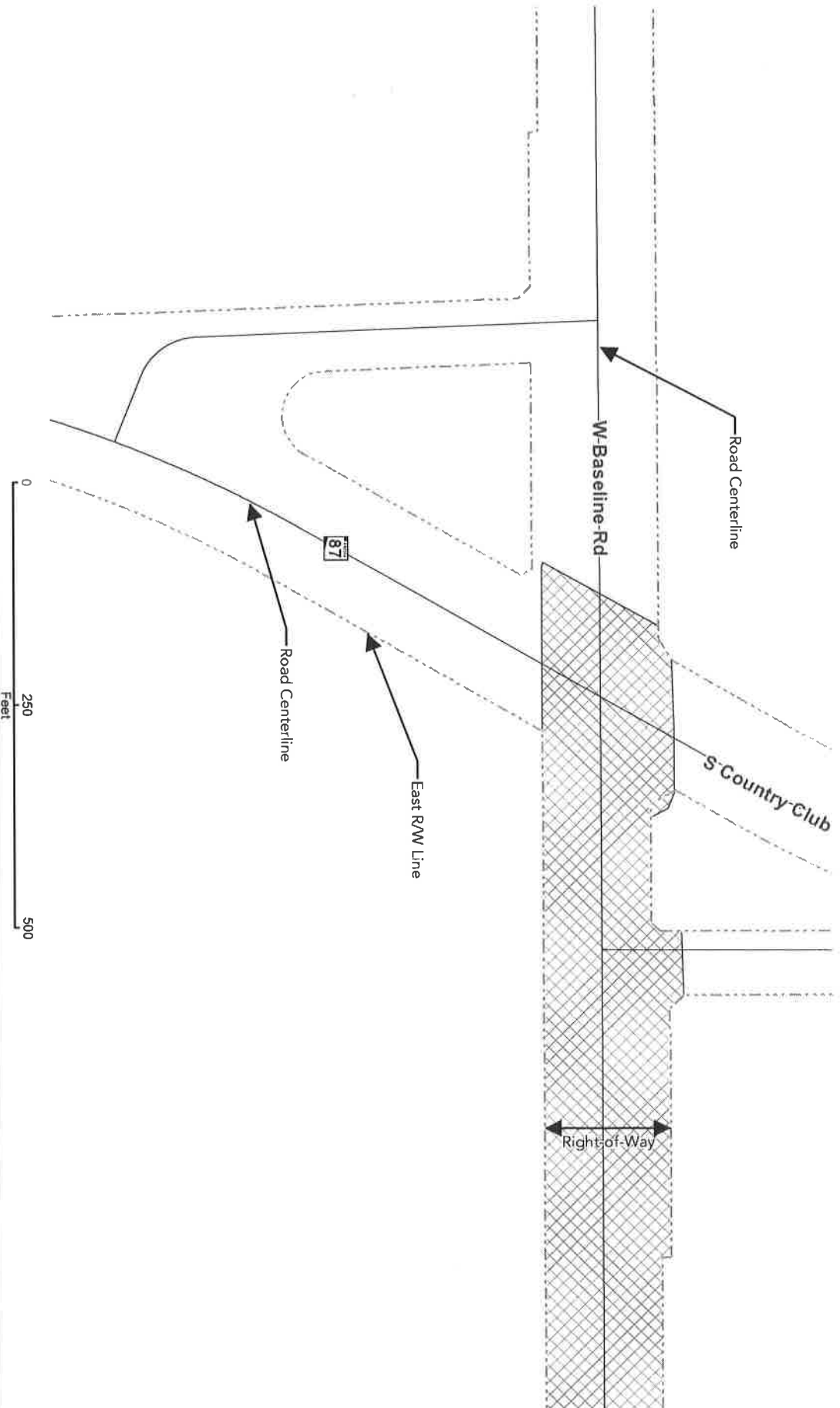
City of Mesa

Town of Gilbert

Maricopa County



EXHIBIT A1



IGA Detail Map

Baseline Rd. & Country Club Dr.

-- Street R/W

— Street Centerline

City of Mesa Responsibility

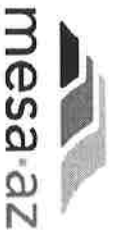
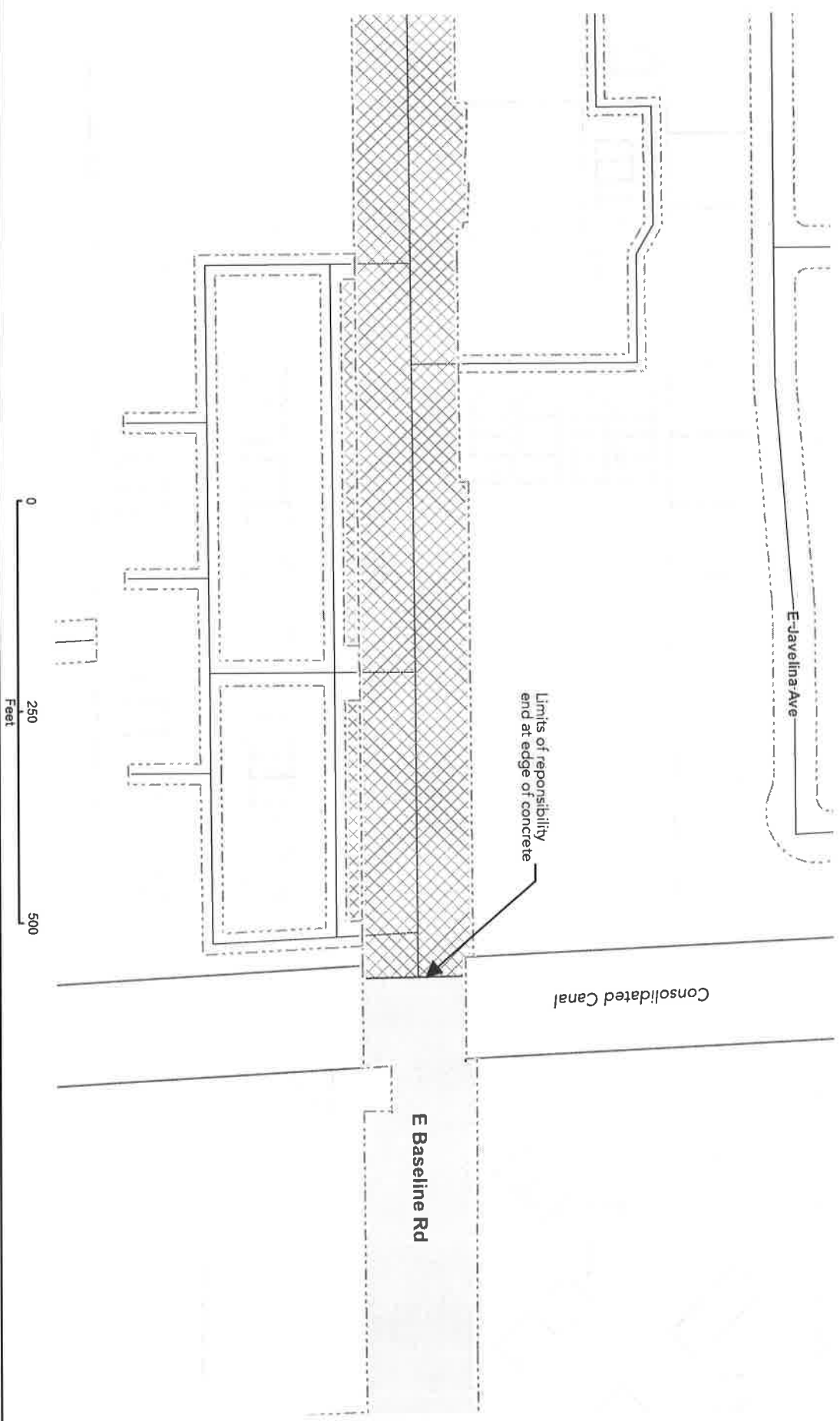
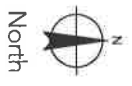


EXHIBIT A2

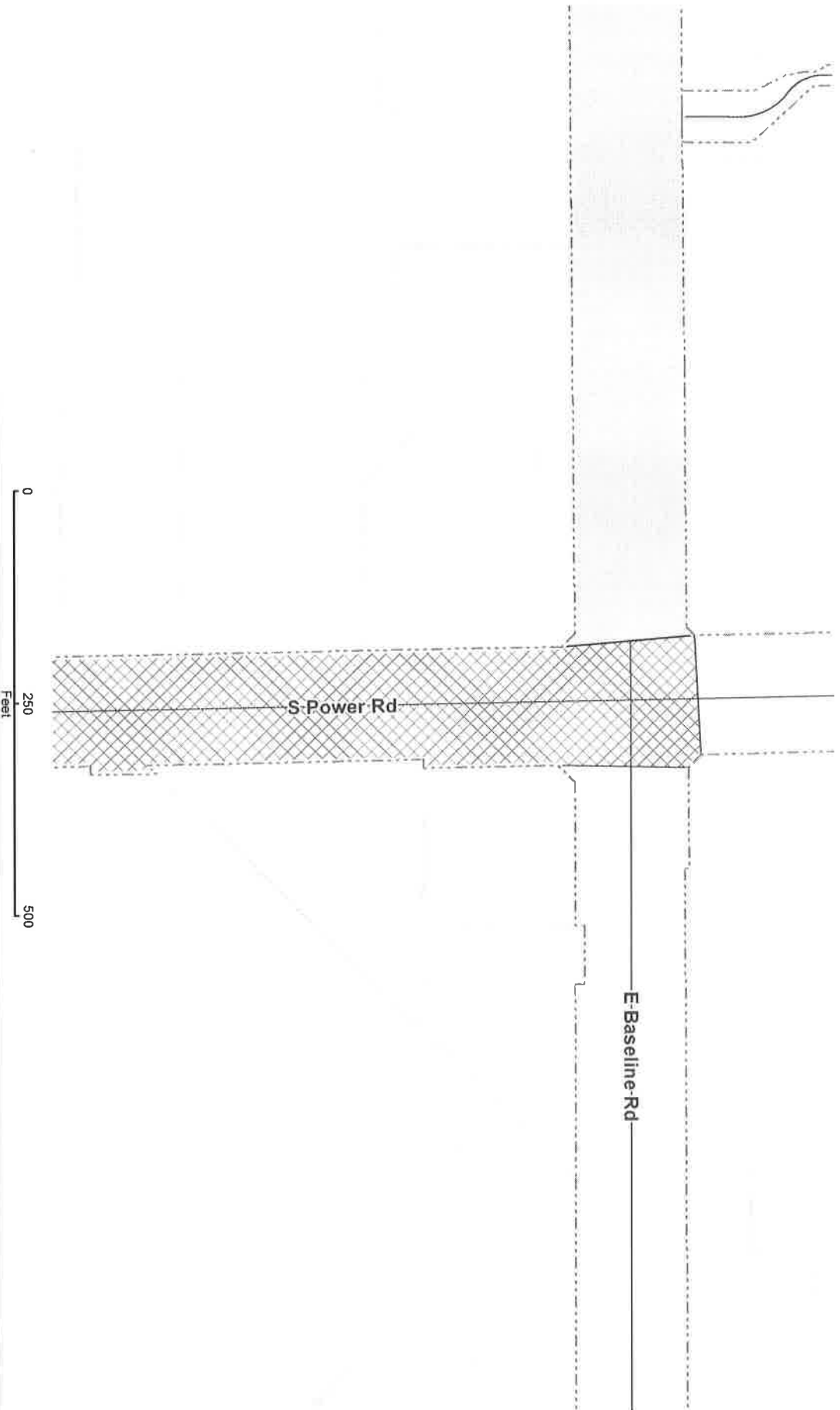


IGA Detail Map
Baseline Rd. & Consolidated Canal

- Street RW
- Canal RW
- Street Centerline
- ☒ City of Mesa Responsibility
- ☐ Town of Gilbert Responsibility



EXHIBIT A3



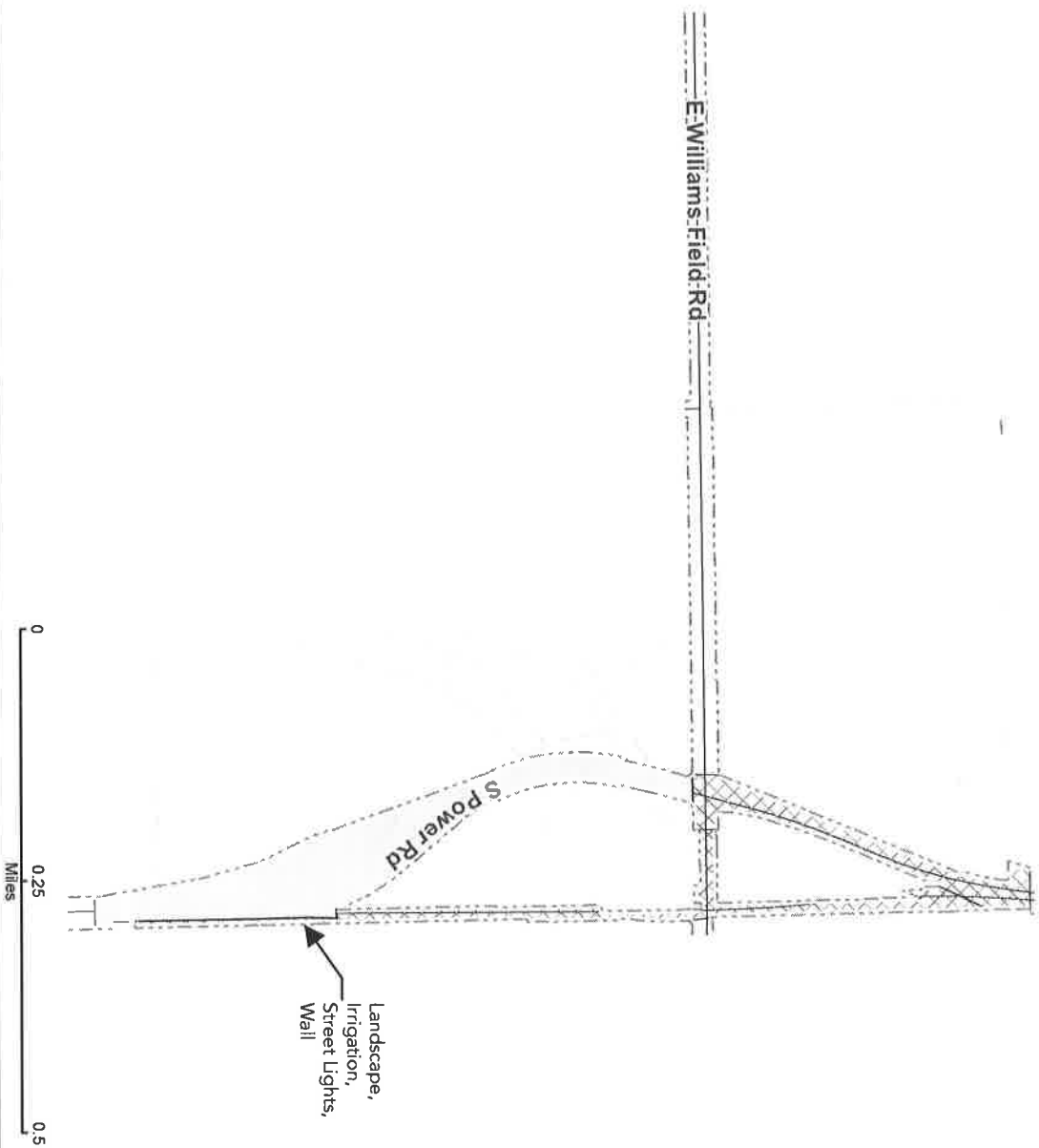
IGA Detail Map

Power Rd. & Baseline Rd.

- Street RW
- Street Centerline
- ☒ City of Mesa Responsibility
- ☐ Town of Gilbert Responsibility



EXHIBIT A4



IGA Detail Map

Power Rd. & Williams Field Rd.

-- Street RW

— Street Centerline

☒ City of Mesa Responsibility

☐ Town of Gilbert Responsibility