

GALLAGHER & KENNEDY
P.A.
ATTORNEYS AT LAW

TODD C. WILEY
DIRECT DIAL: (602) 530-8514
E-MAIL: TCW@GKNET.COM



0000040963

RECEIVED

2002 DEC 11 P 2: 59
75 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
PHONE: (602) 530-8000
AZ CORP COMMISSION
DOCUMENT CONTROL
FAX: (602) 530-8500
WWW.GKNET.COM

December 11, 2002

VIA HAND-DELIVERY

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

DEC 11 2002

DOCKETED BY	CTR
-------------	-----

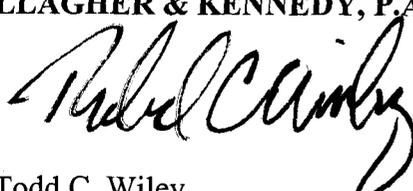
Re: *Arizona-American Water Company Franchise Agreement
In Accordance with Decision No. 64307
Docket Nos. W-01032B-00-1043; SW-03454A-00-1043*

Dear Sir/Madam:

In compliance with Decision No. 64307 docketed December 28, 2001, Arizona-American Water Company hereby files an original and fifteen copies of the Grant of Franchise by the Town of Buckeye to Arizona-American Water Company.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
Todd C. Wiley

Original and 15 copies filed with
Docket Control this 11th day of
December, 2002.

Letter to Docket Control
December 11, 2002
Page 2

Copy of the foregoing hand-delivered
this 11th day of December, 2002, to:

Pat Williams
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Copy of the foregoing mailed this 11th
day of December, 2002, to:

Ray Jones
Blaine Akine
Arizona-American Water Company
19820 N. 7th Street, Suite 201
Phoenix, Arizona 85024

Robert Kammerle
DMB Associates
7600 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Beth Oakley

15015-0003/1067041v1

RESOLUTION NO. 38-02

RESOLUTION DECLARING THE RESULT OF, AND ADOPTING A CERTIFICATE OF RESULT OF, THE SPECIAL ELECTION HELD ON SEPTEMBER 10, 2002; ORDERING THE RECORDING OF SUCH CERTIFICATE AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, as follows:

Section 1. After careful examination of the final official results of the special election held in and for the Town of Buckeye on September 10, 2002, it is found and determined by the Mayor and Council as follows:

(A) A majority of those qualified electors voting at the aforementioned special election voted in favor of the Franchise Agreement as shown on the attached Certificate of Result of Election;

(B) By the results of the election, the Mayor is authorized to sign the Franchise Agreement and the Clerk to attest such signature;

(C) The Mayor and members of this Council present this date will execute the attached Certificate of Result of Election;

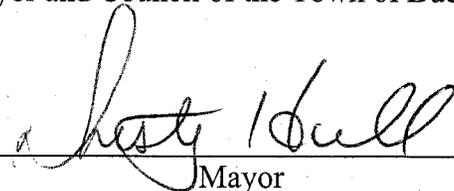
(D) The Clerk is hereby authorized and directed to attach the Certificate of Result of Election to the Franchise Agreement, entitled "Grant of Franchise by the Town of Buckeye to Arizona-American Water Company" and, once the Franchise Agreement is fully executed, to record the Franchise Agreement in the office of the County Recorder of Maricopa County, Arizona, and to return said copy with the recording data shown thereon to the official records of this body.

Section 2. The immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this resolution will be in full force and effect from and after its passage and approval by the Mayor and Council as required by law and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Mayor and Council of the Town of Buckeye, Arizona, on September 25, 2002.

ATTEST:


Clerk


Mayor

CERTIFICATE

I, Joseph Blanton, the duly appointed and acting Town Clerk of the Town of Buckeye, Arizona, do hereby certify that the above and foregoing Resolution No. 38-02 was duly passed by the Town Council of the Town of Buckeye, Arizona, at a special meeting held on September 25, 2002, and the vote was 7 aye's and 0 nay's and that the Mayor and 6 Council Members were present thereat.


Town Clerk

CERTIFICATE OF THE MAYOR AND COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, RELATIVE TO THE SPECIAL ELECTION HELD IN AND FOR THE TOWN OF BUCKEYE, ARIZONA, ON SEPTEMBER 10, 2002.

The Mayor and Council of the Town of Buckeye, Arizona, hereby certify as follows:

1. Pursuant to the resolution passed and adopted by the Mayor and Council on April 23, 2002, an election was duly and regularly held on September 10, 2002, for the purpose of authorizing the entry into a Franchise Agreement with Arizona-American Water Company to construct wastewater and water facilities in the streets, avenues, alleys, rights-of-way and easements of the Town and to provide water and wastewater (sewer) services to the residents and other users located within a Franchise Area.

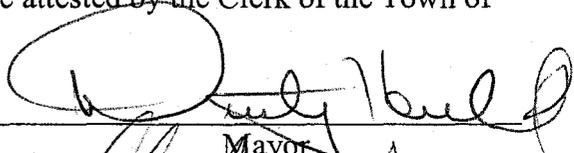
2. The election has been conducted and the official returns thereof have been filed as required by law and the total number of votes cast at the special election in answer to the question submitted were as follows:

<u>PRECINCT</u>	<u>VOTES, YES</u>	<u>VOTES, NO</u>	<u>TOTAL</u>
Buckeye 1	189	39	228
Buckeye 2	117	28	145
Gila Bend	0	0	0
Hassayampa	1	0	1
Liberty	61	34	95
Tuthill	0	1	1
Wittman	0	1	1
White Tank	4	0	4
TOTAL	372	103	475

The tabulated votes are set forth in the attached final results.

3. An executed copy of the Franchise Agreement, entitled "Grant of Franchise by the Town of Buckeye to Arizona-American Water Company" is attached to this Certificate.

IN WITNESS WHEREOF, the Mayor and members of this Council have hereunto placed their hands and caused the same to be attested by the Clerk of the Town of Buckeye on September 24, 2002.



 Mayor


 Council Member


 Council Member

Melie Charman

Council Member

Cliff P. Childs

Council Member

W. J. Dink

Council Member

Genevieve Wein

Council Member

ATTEST:

Joseph Stanton

Clerk

THIS DOCUMENT MUST BE RECORDED IN THE OFFICE OF THE COUNTY
RECORDER OF MARICOPA COUNTY, ARIZONA.

When recorded, return to:

Mr. Joe Blanton, Town Clerk
101 North Apache, Suite A
Buckeye, AZ 85326

GRANT OF FRANCHISE BY THE TOWN OF BUCKEYE
TO ARIZONA-AMERICAN WATER COMPANY

GRANT OF FRANCHISE BY THE TOWN OF BUCKEYE
TO ARIZONA-AMERICAN WATER COMPANY

Section 1. Grant of Franchise. There is hereby granted to Arizona-American Water Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (herein called "Grantee"), its successors and assigns, the right, privilege, and franchise to construct, maintain, and operate upon, over, along, across and under the present and future public rights-of-way (including but not limited to streets, alleys, ways, highways and bridges) in the portion of the Town of Buckeye, Arizona (herein called "Municipality"), that is described in the immediately following paragraph (the "Franchise Area"), a potable water delivery system and a wastewater collection, treatment and disposal system, together with all necessary or desirable appurtenances (including but not limited to wells, well sites, storage, pumping facilities, transmission mains, distribution mains, service lines, wastewater collection and transportation mains and treatment and disposal and equipment, fire hydrants, meters and equipment for their own use) (herein called the "Franchise"), for the purpose of supplying potable and non-potable water ("water services") and providing wastewater collection, treatment and disposal services ("wastewater services") to all individuals and entities within the limits of the Franchise Area (and to individuals and entities located beyond the present limits of Municipality) for all purposes. Notwithstanding Arizona Revised Statutes § 40-281(B) or any other law, Grantee shall not serve any customers within Municipality who are outside the

Franchise Area without first obtaining a separate franchise from Municipality for such services. Notwithstanding the foregoing, if Municipality annexes any area in Maricopa County that is within a certificated service area of Grantee, Grantee shall be entitled to continue to provide services in that area for the remaining term of the applicable county franchise.

For purposes of this Franchise, the Franchise Area comprises:

a. The area more particularly described in Exhibit A, which is Grantee's present certificated service area within Municipality established by the Arizona Corporation Commission.

b. The portion of Municipality more particularly described in Exhibit B which is located north of Interstate 10 and which is not within Grantee's present certificated area, provided, however, that (with respect to the area described in this paragraph (b)) water and wastewater services shall be provided by Grantee only within certificated service areas which are established by the Arizona Corporation Commission from time to time.

Section 2. Grantee's Compliance with Municipality Practice; Plans Submitted for Approval; Municipality Construction Near Grantee's Facilities. All construction under this Franchise shall be performed in accordance with established practices of Municipality with respect to such public rights-of-way. Before Grantee makes any installations in the public rights-of-way, Grantee shall submit for approval a map showing the location of such proposed installations to Municipality's Manager.

Section 3. Construction and Relocation of Grantee's Facilities. All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the public rights-of-way. Those places of construction of Grantee's facilities relating to traffic control,

backfilling, compaction and paving, as well as the location or relocation of facilities herein provided for, shall be subject to regulation by the Council of Municipality. Grantee shall keep accurate records of the location of all facilities in the public right-of-way and furnish them to Municipality upon request. Upon completion of new or relocation construction of underground facilities in the public right-of-way, Grantee shall provide Municipality's Manager with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location approved in the permit plans.

Grantee shall protect, remove or relocate any of its facilities located in public rights-of-way, whether or not Grantee may have a prior right or easement predating the public right-of-way, as and when required by Municipality to accommodate right-of-way improvements. Such removal or relocation shall be done at the sole expense of Grantee on a determination by Council of Municipality that such removal or relocation is necessary.

Section 4. Indemnification. Grantee shall indemnify, defend and hold Municipality harmless from any and all claims, costs, losses or expenses incurred as a result of injury or damage to third persons occasioned by the exercise of this Franchise by Grantee.

Section 5. Restoration of Rights-of-Way. Whenever Grantee shall cause any opening or alteration whatever to be made for any purpose in any public right-of-way the work shall be completed with due diligence within a reasonable prompt time, and Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such openings or alteration. Grantee shall bear the full cost of any barricades, signing, rerouting of traffic, or other action or expense which Municipality shall consider necessary or desirable in the interest of public safety during any such opening or alteration within the public right-of-way.

Section 6. Franchise Fee. Grantee agrees to pay Municipality in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts (excluding from gross receipts any taxes or levies based on gross receipts) of Grantee from sale by it of water or provision of wastewater services, within the Franchise Area, as shown by Grantee's billing records (the "Franchise Fee"). This Franchise Fee shall be due and payable quarterly. For the purpose of verifying the amounts payable hereunder, the books and records of Grantee shall be subject to inspection of duly authorized officers or representatives of Municipality at reasonable times.

The amount payable under the Franchise Fee shall not be reduced by reason of the payment of any general ad valorem taxes, assessments for special improvements, general sales or transaction privilege license taxes, or any similar general amount of such sales tax or similar levy measured by Grantee's receipts or sales within Municipality.

Section 7. Additional Fees. Notwithstanding any provision contained herein to the contrary, Grantee shall, in addition to the payment provided in Section 6, pay any occupation tax established by Municipality, provided the tax is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by the other businesses with comparable gross revenue from sales operated within Municipality.

Section 8. Term. This Franchise shall continue and exist for a period of twenty-five (25) years from and after the date of acceptance by Grantee.

This Franchise shall be void and of no effect if written acceptance thereof by Grantee is not filed in the office of the Clerk of Municipality within sixty (60) days after Municipality's verification of the franchise election results.

Section 9. Franchise; Non-Exclusive. This Franchise is not exclusive, and nothing herein contained shall be construed to prevent Municipality from granting other like or similar grants or privileges to any other person, firm or corporation, and Grantee may assign this Franchise to any other person, firm or corporation.

Section 10. Conflicting Ordinances. This agreement shall control over all ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised potable water and/or wastewater public service corporation.

Section 11. Independent Provisions. If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 12. Condemnation; Right Reserved by Municipality. Municipality reserves the right and power to purchase and condemn the water and wastewater plant, equipment, properties and facilities of Grantee within the corporate limits or any additions thereto, as provided by law.

Section 13. Expiration. Municipality and Grantee hereby expressly agree that the following provision shall survive the termination or expiration of this Franchise: Upon the termination or expiration of the Franchise, if Municipality shall not have authorized an extension or renewal hereof, Grantee at its sole expense may remove its facilities and systems within the Franchise Area.

PASSED AND ADOPTED BY THE TOWN COUNCIL AND APPROVED BY THE MAYOR OF THE TOWN OF BUCKEYE, ARIZONA THIS 23rd DAY OF April, 2002.

Dustin Hull

Mayor

ATTEST:

Joseph J. Stanton

Town Clerk

APPROVAL AS TO FORM:

Gust Rosenfeld, P.L.C.

By: Gust Rosenfeld
Special Counsel

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 25th day of September, 2002, by Dustin Hull, as Mayor on behalf of the Town of Buckeye, an Arizona municipal corporation.

Linda Garrison
Notary Public

My Commission Expires:

March 31, 2005



EXHIBIT A

**LEGAL DESCRIPTION AND MAP OF
GRANTEE'S PRESENT CERTIFICATED
AREA WITHIN MUNICIPALITY**

See attached legal description and map

EXHIBIT A

EXHIBIT A

Legal description and map of Grantee's present certified area within Maricopa County, Arizona

Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

All of Section 7; All of Section 18; All of Section 19; The South half of Section 20; All of Section 30; All of Section 31;

Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

All of Section 3; All of Section 10; All of Section 11; All of Section 12; All of Section 13; All of Section 23; All of Section 24; All of Section 25;

Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

That portion of Section 6, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 6, said point also being the **TRUE POINT OF BEGINNING**; thence along the North line of Section 6, N 89°57'39"E, 2437.60 feet; thence S14°06'52"E, 206.19 feet; thence S00°04'51"E, 491.44 feet to a point on the Northerly right-of-way line of Interstate 10 and the beginning of a non-tangent curve; thence westerly along said curve having a radius of 11602.57 feet, concave Southerly, whose radius bears S02°39'27"E, through a central angel of 12°26'54", 2520.84 feet to a point on the West line of Section 6 and a point of intersection with a non-tangent curve; thence along the West line of N00°09'05"W, 1078.18 feet to the **TRUE POINT OF BEGINNING** and the end of this line description;

Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

The Northeast Quarter of Section 1. Excepting therefrom this description all land lying South of Interstate 10.

EXHIBIT B

PARCEL NO. 1: The North 587.56 feet of the Southeast quarter of Section 36, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; **EXCEPT** the East 741.36 feet thereof; and also **EXCEPT** that portion of said Northwest quarter of the Southeast quarter of said Section 36 which lies Westerly of the following described line: **BEGINNING** at a point on the South line of said Section 36, which point bears South 89 degrees 37 minutes 44 seconds West, 674 feet from the South quarter corner of said Section; **THENCE** North 24 degrees 36 minutes 58 seconds East, 2930.38 feet to a point on the East-West midsection lines of said Section 36, which point bears South 89 degrees 46 minutes 11 seconds West, 2090.00 feet from the East quarter corner of said Section 36; and also **EXCEPT** all mineral deposits and rights as reserved by the State of Arizona in Deed recorded in Docket 427, page 469, and as set forth in Patent from the United States of America recorded in Docket 2089, page 257.

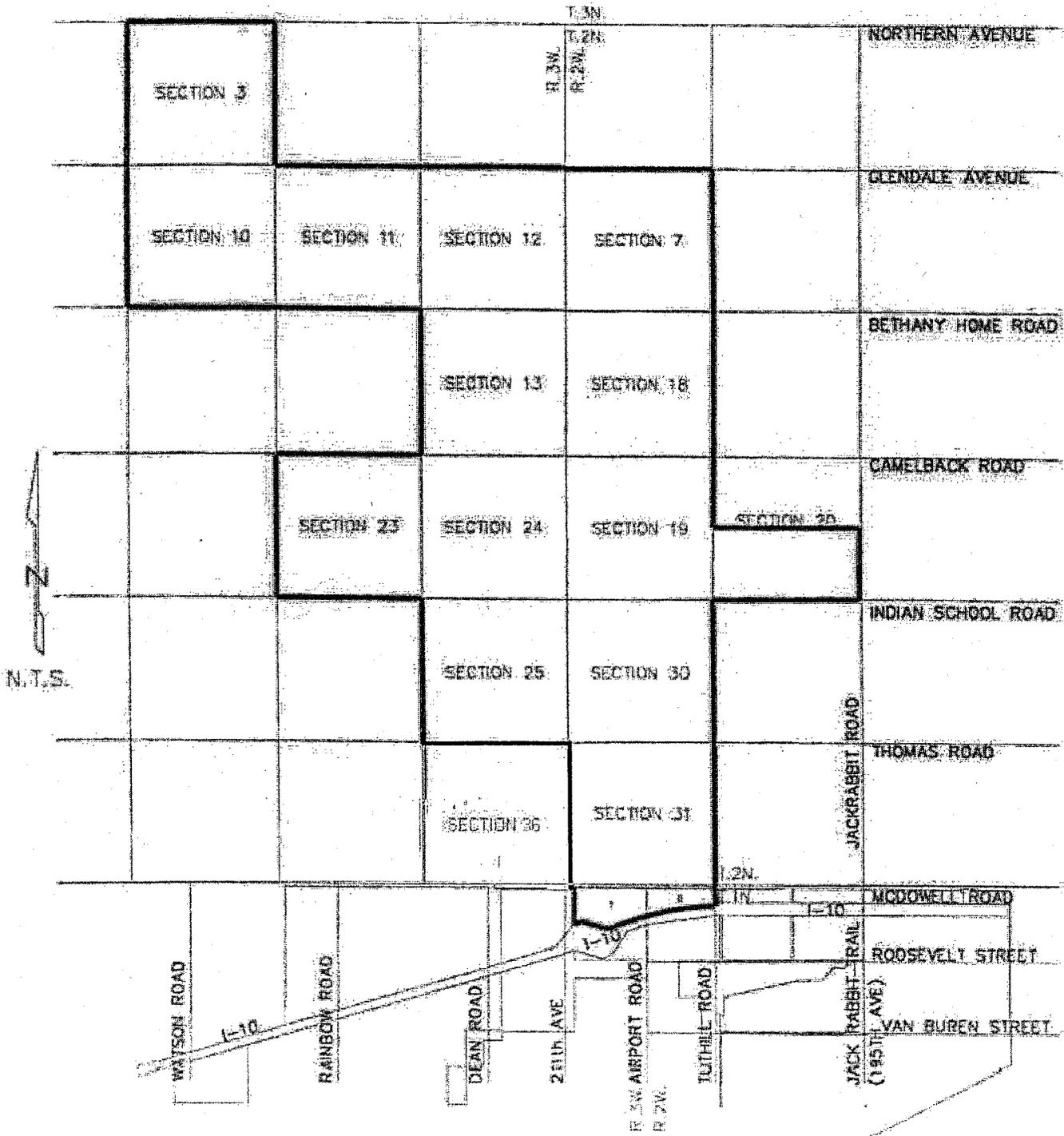
PARCEL NO. 2: The Southeast quarter of Section 36, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; **EXCEPT** the North 587.56 feet thereof; and also **EXCEPT** that portion of said Southeast quarter of Section 36 which lies Westerly of the following described line: **COMMENCING** at the East quarter corner of said Section 36; **THENCE** North 89 degrees 49 minutes 08 seconds West along the mid-Section line, a distance of 2090.00 feet to the **TRUE POINT OF BEGINNING**; **THENCE** South 24 degrees 25 minutes 35 seconds West a distance of 1324.48 feet to a point on the North to South mid-Section line of said Section 36, said point bearing North 00 degrees 02 minutes 28 seconds West, a distance of 1473.86 feet from the South quarter corner of said Section 36; and also **EXCEPT** all mineral deposits and rights as reserved by the State of Arizona in Deed recorded in Docket 427, page 469, and as set forth in Patent from the United States of America recorded in Docket 2089, page 257.

PARCEL NO. 3: The North 587.56 feet of the East 741.36 feet of the Southeast quarter of Section 36, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. **EXCEPT** all mineral deposits and rights as reserved by the State of Arizona in Deed recorded in Docket 427, page 469, and as set forth in Patent from the United States of America recorded in Docket 2089, page 257.

PARCEL NO. 4: The North half and the North half of the Southwest quarter of Section 36, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; **EXCEPT** the East half of the Northwest quarter of the Southwest quarter of said Section 36; and also **EXCEPT** the Northeast quarter of the Southwest quarter of said Section 36; and also **EXCEPT** that portion of the North half of said Section 36 described as follows: **BEGINNING** at a point on the East-West mid-Section line of said Section 36, which point bears South 89 degrees 46 minutes 11 seconds West, 2090.00 feet from the East quarter corner thereof; **THENCE** North 45 degrees 00 minutes 00 seconds East, 1000.00 feet; **THENCE** North 45 degrees 00 minutes 00 seconds West, 1300.00 feet; **THENCE** South 45 degrees 00 minutes 00 seconds West, 1877.87 feet; **THENCE** South 304.60 feet to the aforesaid East-West mid-Section line; **THENCE** North 89 degrees 46 minutes 11 seconds East along said East-West mid-Section line, a distance of 1540.00 feet to the point of beginning; and also **EXCEPT** all mineral deposits and rights as reserved by the State of Arizona in Deed recorded in Docket 427, page 469, and as set forth in Patent from the United States of America recorded in Docket 2089, page 257.

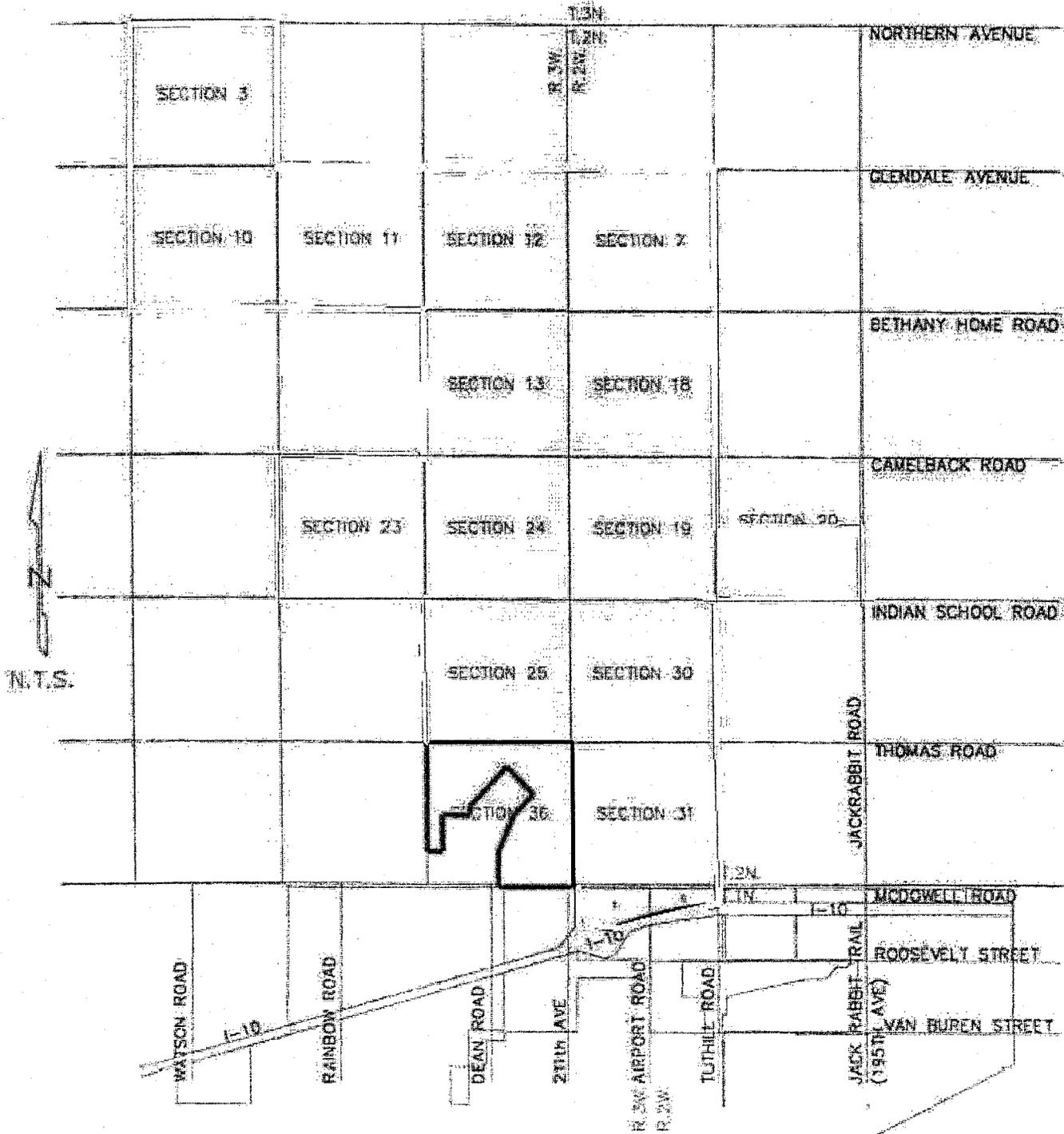
Exhibit A

TOWN OF BUCKEYE
SECTIONS 3, 10, 11, 12, 13, 23, 24, 25 AND 36
T2N., R3W., AND
SECTIONS 7, 18, 19, 30, 31 AND A PORTION
OF SECTION 20, T2N., R2W.,
OF GILA AND SALT RIVER BASE AND MERIDIAN,
MARICOPA COUNTY, ARIZONA



 PROPOSED FRANCHISE FILER AREA

TOWN OF BUCKEYE
 SECTIONS 3, 10, 11, 12, 13, 23, 24, 25 AND 36
 T2N., R3W., AND
 SECTIONS 7, 18, 19, 30, 31 AND A PORTION
 OF SECTION 20, T2N., R2W.,
 OF GILA AND SALT RIVER BASE AND MERIDIAN,
 MARICOPA COUNTY, ARIZONA



 PROPOSED EXPANSION SECTION AREA