

PRE-ANNEXATION AGREEMENT  
BETWEEN THE CITY OF FLAGSTAFF AND THE GOSCH FAMILY LIVING TRUST

This Pre-Annexation Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Flagstaff, an Arizona municipal corporation (the "City") and the Gosch Family Living Trust, Tom and Melanie Gosch, Trustees, an Arizona trust, located at 4392 W. Route 66, Flagstaff, Arizona 86001 (the "Owner") (collectively "Parties").

RECITALS

- A. The Owner owns certain parcels of real property depicted and legally described in Exhibits A and B attached hereto. For purposes of this Agreement, the parcels described in this exhibit are referred to as the "Property."
- B. The Property is currently located in an unincorporated area of Coconino County, Arizona. Although the Parties desire to annex the property into the City, annexation is not currently legally permissible because the Property does not meet the contiguity prerequisite for annexation found in A.R.S. § 9-471(H). The Owner acknowledges and understands that other properties adjacent to the Property may be added to future annexation proposals in order to meet the contiguity prerequisite necessary for annexation of the Property.
- C. The City has determined that entering into this Agreement will be in the best interests of the City and the public; will be a proper and legal exercise of City power; will promote orderly development of the Property and the surrounding area; and will promote the health, safety, welfare and economic development of the community in general.
- D. The Owner believes that annexation of the Property into the City, and development of the Property pursuant to the terms of this Agreement, will result in significant benefits to the Property, increase certainty concerning the City's regulatory treatment of the Property, and provide assurances regarding infrastructure affecting the Property.
- E. Pursuant to Flagstaff City Code §§ 2-04-001-0008 through 2-04-001-0009, the Owner has applied for out-of-City water service for the Property. The City's Water Commission has recommended the City grant this extension subject to the condition that the Owner agrees to the annexation of the Property.
- F. A.R.S. § 9-500.05 authorizes the City to enter into a development agreement with the Owner for the purpose of establishing the conditions, terms, restrictions and requirements for annexation of the Property by the City and other matters relating to the future development of the Property.
- G. The Owner's proposed development of the Property is in conformity with the City's Regional Plan 2030.

- H. The Owner's proposed out-of-City water service requires a deviation from the Council's adopted Water Policy because the Property is not located within or contiguous to the City of Flagstaff corporate limits.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:

1. Incorporation of Recitals and Exhibit. The foregoing recitals and exhibit are incorporated into this Agreement by this reference.
2. Annexation of Property. Owner hereby consents to the annexation of the Property into the City pursuant to A.R.S. § 9-471 et seq. When it becomes legally permissible for the City to annex the Property, the Owner will a) apply for annexation which includes executing and filing with the City an annexation petition as required by A.R.S. § 9-471 et seq. to initiate annexation, and b) sign any lawful annexation petition or other annexation document for the purpose of annexing the Property into the City of Flagstaff. The City will then hold such hearings and take such action as is necessary pursuant to A.R.S. § 9-471 et seq. to annex the property. Any successor(s) to Owner shall execute, file or sign any similar petitions or documents necessary to accomplish annexation of the Property.
3. Applicable Zoning. Pursuant to A.R.S. § 9-471(L), upon annexation, the City shall adopt a City zoning classification for the Property that permits densities and uses no greater than those permitted by Coconino County immediately before annexation.
4. Water. The City agrees to provide water services to the Property, in accordance with the provisions of this Agreement and all applicable City, County and State requirements, prior to the Property's annexation into the City. The City Council hereby approves a deviation to the Water Policy to permit water service to the Property although it is not within the City of Flagstaff corporate boundaries or contiguous to those boundaries because the Property is adjacent to the new waterline that the City is building along West Route 66. The water line shall be designated and extended by Owner at Owner's expense, consistent with City Code, and in accordance with the City of Flagstaff Engineering Design and Construction Standards. This agreement allows for only one ¾ inch pipe with one water meter for one single-family home. If the Owner wishes to split or subdivide the Property and obtain water service for additional structures, besides structures ancillary to the single-family home, the Owner must pursue an amendment to this Agreement. The City, County and State shall provide joint review and approval of the construction plans and permits. The City and County shall review and approve the development plans and permits and inspect the off-site water service installation(s).
5. Water Connection and Capacity Fees. Owner agrees that upon the extension of water services to the Property, Owner shall pay all fees required by the Flagstaff City Code as a condition for connection to the City's water system.

6. City Standards. The Owner agrees that if it develops the Property prior to annexation, it shall develop in general accordance with City development standards, and that it shall develop in specific compliance with all City standards, including but not limited to those related to a) police and fire access and on-site needs, b) City design review standards, and c) City landscaping standards. Owner agrees to cooperate with the City to provide review by City staff during any development efforts through the County prior to annexation.
7. Waiver of Proposition 207 Rights. The Parties agree that the Property is subject to the provisions of Proposition 207, as adopted by the voters of the State of Arizona at the November 7, 2006, General Election, which is codified at A.R.S. § 12-1131, et seq. ("Proposition 207"). The Owner acknowledges that the Owner and the City are empowered to agree to a waiver of the terms and requirements of Proposition 207, in particular those items codified at A.R.S. § 12-1134, pursuant to A.R.S. § 12-1134(I). The Owner on behalf of itself and all other parties having an interest in the Property acknowledge and knowingly waives the provisions of Proposition 207, in particular A.R.S. § 12-1134, in connection with the future annexation of the Property as well as for any claim for diminution in value as a result of any subsequent rezoning of the Property by the City as a result of the annexation.
8. Negotiated Effort. The Parties agree that this Agreement represents the negotiated joint efforts of the Parties. In the event a court of competent jurisdiction finds ambiguity, this Agreement shall not be construed against either Party in favor of a non-drafting Party.
9. Authority. All persons executing this document for the City and the Owner have all necessary and legal authority to enter into this Agreement for their respective corporations and the individual(s) executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the party on whose behalf such individual is signing.
10. Successors and Assigns. The burdens and benefits of this Agreement will run with the land and be binding and inure to the benefit of the parties hereto and their respective successor and assigns. Upon the transfer of any portion of the Property, the transferring party will be released from any liability arising after the transfer with respect to the portion of the Property transferred.
11. Jurisdiction. The laws of the State of Arizona shall govern this Agreement and, in the event of a dispute, venue shall be in Coconino County, Arizona.
12. Attorney's Fees. If legal action by either Party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and court costs.
13. Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled, in whole or in part and with respect to all or any portion of the Property, with the mutual written consent of the Parties hereto. Within ten (10) days after any such amendment or cancellation of this Agreement, the City will record such amendment or cancellation in the Official Records of Coconino County, Arizona.

14. Notice.

14.1 Manner of Service. All notices, filings, consents, approvals or other communications provided for herein or given in connection herewith ("Notices") will be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:                   City of Flagstaff  
  Attn: City Manager  
  211 West Aspen Avenue  
  Flagstaff, Arizona 86001

With a copy to:                 Flagstaff City Attorney's Office  
  211 West Aspen Avenue  
  Flagstaff, Arizona 86001

If to the Owner:                Tom and Melanie Gosch, Trustees  
  Gosch Living Trust  
  4392 West Route 66  
  Flagstaff, AZ 86001

or to such other addresses as either Party may from time to time designate in writing and deliver in like manner. Any such change of address Notice will be given at least ten (10) days before the date on which the change is to become effective.

14.2 Mailing Effective. Notice given by mail must be certified and will be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth herein, or the next business day if sent by overnight delivery or courier.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
16. Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and will not control or affect the meaning or construction of any of the provisions of this Agreement.
17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and will not be changed or added to except in the manner provided in Section 13. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representation and understandings of the City with any other parties, oral or written,

other than specifically incorporated herein by reference, regarding any portion of or all of the Property, are superseded by this Agreement.

18. Recordation. No later than ten (10) days after the City and the Owner have executed this Agreement, it will be recorded in its entirety by the City in the Official Records of Coconino County, Arizona.
19. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable all other provisions hereof.
20. Cancellation. This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.
21. Term. This Agreement shall be effective upon its recordation and shall automatically terminate upon the effective date of the City Ordinance annexing the Property, provided, however, the City shall not discontinue applicable municipal services to the Property, once commenced, except as permitted by applicable law.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein:

City of Flagstaff, an Arizona Municipal Corporation

By: \_\_\_\_\_  
Gerald W. Nabours, Mayor

Date: \_\_\_\_\_

Attested by:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Approved As to Form:

By: \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

OWNER:

Tom and Melanie Gosch, Trustees  
Gosch Family Living Trust, an Arizona trust.

By: \_\_\_\_\_  
Name:  
Title: Trustee

By: \_\_\_\_\_  
Name:  
Title: Trustee

Date: \_\_\_\_\_

STATE OF ARIZONA    )  
                                  ) ss.  
County of Coconino    )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_, the trustee of the Gosch Family Living Trust.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

STATE OF ARIZONA    )  
                                  ) ss.  
County of Coconino    )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_, the trustee of the Gosch Family Living Trust.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires