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City Clerk
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

PREANNEXATION, DEVELOPMENT AND OVERSIZING AGREEMENT BETWEEN W. L. GORE & ASSOCIATES, INC. AND CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this 11th day of February, 2014, by and between W. L. GORE & ASSOCIATES, INC., a Delaware Corporation (hereinafter "Owner"), and the CITY OF FLAGSTAFF, an Arizona Municipal Corporation, (hereinafter "City").

RECITALS

A. The Owner is the owner of certain parcels of real property situated within Coconino County, Arizona, currently located inside and outside the incorporated boundaries of the City. The property, generally known as the "Woody Mountain Campus," is shown on the attached Exhibits A, B, and B-1 (collectively the "Property"). That portion of the Property located outside the City Limits is depicted and legally described in Exhibits B and B-1 (collectively the "County Property.") The Owner hereby represents and warrants to the City that it is the sole fee-title owner of the Property and that to the best of its actual knowledge no other person or entity has any legal or equitable ownership interest in the property except: easements and conditions of record.

B. The City and the Owner are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") § 9-471 (pertaining to annexation) and A.R.S. § 9-500.05 (pertaining to development agreements) in order to facilitate the annexation, municipal zoning designation, design and construction of off-site water and sewer facilities, and development of the Property providing for among other things: (1) conditions, terms, restrictions and requirements for annexation of the County Property to the City; (2) the permitted uses for the Property; and (3) other matters related to development of the property.

C. The Owner desires and intends to develop the Property for research and development (the "Project") pursuant to the terms and conditions of this Agreement and the Preliminary Site Plan for W.L. Gore & Assoc. (concept plan) prepared by Kenneth A. Krenke, dated April 15, 1997, that is attached as Exhibit C (the "Concept Plan"). The City agrees that the Owner may develop the Property and pull building permits for the County Property in the event that annexation is delayed, pursuant to Coconino County's approval process.

D. The City and Owner acknowledge that the annexation and ultimate development of the Property within and as an integral part of the City would be a project of significance, and the Owner desires assurances from the City of the City's willingness to proceed with the

required procedures so that the Property will be consistent with the Flagstaff Area Regional Land Use and Transportation Plan ("Land Use Plan"). This Agreement is consistent with the City Land Use Plan applicable to the Property on the date this Agreement is executed.

E. The Owner acknowledges that annexation of the County Property pursuant to this Agreement will be beneficial and advantageous to the Owner by providing assurances to the Owner that it will have the ability to develop the County Property pursuant to this Agreement in a manner consistent with Owner's abutting property within the City, currently zoned R&D-E (Research and Development Industrial District Established) with a Business Park (BP) designation and/or current zoning for the County Property .

F. Pursuant to the City's current out-of-City water and sewer service extension policy, as set forth in Resolution No. 1521, adopted December 15, 1997 (the "Resolution") and current Section 2-04-001-0008 and -0009 of the Flagstaff City Code, owner has applied for out-of-City water and sewer service for parcels 116-04-008E and 116-04-003Y. Under this policy, the City may consider out-of-City water and sewer service extension requests on a case-by-case basis, and to grant such requests subject to special conditions. The City's Water Commission had recommended that the City grant such service extension subject to the express special condition that Owner agrees to execute a Preannexation Agreement for the above-mentioned parcels with the City of Flagstaff.

G. The City shall provide new and additional water service to parcels 116-04-008E and 116-04-003Ypursuant to the terms of this Agreement and applicable City ordinances. The off-site water facilities required to provide the new and additional services will be designed and constructed by the Owner. The City will pay for oversizing of the off-site facilities to provide a regional benefit to the area. Upon completion of the construction and acceptance of the work by the City, the City will acquire ownership of the off-site water facilities.

H. The Property currently has an on-site water and fire hydrant system that the Owner wishes to dedicate to the City, along with easements for those facilities. The Owner and the City desires and intends to negotiate an agreement regarding those on-site facilities separate from this Agreement. The City desires and intends to accept those water improvements into the City system that provide water and fire protection to existing buildings of Owner after Owner brings the system up to then current City Code requirements as determined by independent consultant, WLB Group, attached as Exhibit E hereto and incorporated herein by reference. The City Utility Director has authority to negotiate and execute the above mentioned agreement discussed in this Section H.

I. City and Owner acknowledge and agree that the development and construction of a regional water loop for the City of Flagstaff will result in economic benefit to the City and its residents by improving water quality and dependability.

J. The City shall provide water and sewer service to the Property pursuant to the terms of this Agreement.

K. The City confirms that prior to the execution of this Agreement, the City has met all legal requirements for its approval under state and local law.

L. This Agreement is not intended to in any way limit City's remaining obligations to provide water, sewer, fire and emergency services under the terms of the Preannexation and Development Agreement between Owner and City dated June, 2005, as it relates to parcel 116-04-007F.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, City and Owner state, confirm and agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals and all exhibits are incorporated into this Agreement by this reference.

2. Agreement to Annex. Following the execution of this Agreement and upon Ninety (90) days written notice from the City Manager, Owner shall submit an application for annexation of the County Property to the City. By executing this Agreement, the Owner is agreeing to the annexation of the County Property at a future date subject to the requirements of A.R.S. §§ 9-471 through 9-472 relating to annexation of the County Property and conditioned only upon those provisions and conditions contained in this Agreement, the requirements of the laws of the State of Arizona and the currently existing ordinances of the City. Owner further agrees to timely sign the petition required by law for annexation.

3. Duration of this Agreement. If not sooner terminated in accordance with the provisions hereof, this Agreement, including the right of the City to annex the County Property into the City and the Owner's agreement to annex the County Property, shall continue in full force and effect from the recording date of this Agreement for a period of ten(10) years, except that if a signed annexation petition has been filed with the Coconino County Recorder and the annexation process is pending adoption of an ordinance annexing the County Property or other Flagstaff City Council action, this Agreement shall stay in effect for any additional time necessary to complete the annexation. The failure to complete annexation prior to expiration of this Agreement shall not affect the extension of the water and sewer lines to the Property or the Owner's right to use City water and sewer services pursuant to the terms currently established by the City Water Commission and all applicable City ordinances as though the County Property had been annexed to the City.

4. Zoning.

4.1. Zoning and Land Use Plan Designation Upon Annexation. The City and the Owner acknowledge that A.R.S. § 9-471(L) requires the City to initially zone annexed property for densities and land uses no greater than the previously

existing county zoning for such lands. The City determined that the zoning designations under the Flagstaff Zoning Code most comparable to the Coconino County ("County") zoned MP-20,000 (Industrial Park Zone) designation is RD, Research and Development Zone. The most comparable City zone for the land in the County zoned CH-10,000 (Commercial General) is CC, Community Commercial Zone. If the County Property is annexed under this Agreement, the City agrees to adopt the RD, Research and Development, zoning classification for the County Property currently in the MP-20,000 to be effective after the annexation has become final. As to all County Property within the CH-10,000 Zone, the City agrees to adopt the CC, Community Commercial, zoning classification for the County Property to be effective after the annexation has become final.

4.2. Vested Zoning and Protected Development Rights. As to the Property, the City's RD zoning district currently allows development on the Property that is compatible and consistent with the established research and development use on the Owner's abutting development per the Concept Plan, set forth in the Preliminary Site Plan for W.L. Gore & Assoc. (concept plan) prepared by Kenneth A. Krenke, dated April 15, 1997, that is attached as Exhibit C (the "Concept Plan"). The City agrees that for construction occurring on properly zoned property in the City, upon the Owner's commencement of grading pursuant to a validly issued permit, the Owner's right to complete the construction as shown on the Concept Plan vests, and the Owner has a protected development right to complete the Project pursuant to the Concept Plan and the existing zoning. Any revocation of the Owner's development rights after annexation shall be pursuant to A.R.S. § 9-1204.

4.3. Further Zoning Changes. Upon annexation, the portion of the County Property that will be zoned CC, Community Commercial, will not be compatible and consistent with research and development uses as proposed on the Concept Plan. The Owner may apply for zoning map amendment from CC to the RD, Research and Development Zone. This zoning classification is consistent with the current Office/Business Park Designation of the Regional Land Use and Transportation Plan and thus no amendment to the plan will be required. The Owner can apply for the zoning map amendment concurrently with the annexation application. If this zoning is approved by the Council, the zoning of the entire Property will be compatible and consistent with the current research and development uses as anticipated on the Concept Plan and only site-plan approval will be required for the individual development(s) within the Property to assure that the individual proposed development(s) will be in complete compliance with the City of Flagstaff development requirements, so long as the current zoning code remains in effect, and is not changed by Owner's request.

4.4. Growth Boundary. The City hereby acknowledges that the Property is within the current Urban Growth Boundary (UGB) Stage 1 established by the Land Use Plan.

5. Regulation of Development; Fees.

5.1. Jurisdiction. Except as otherwise specified in this Agreement, until such time as the County Property is annexed into the City, the Property shall be governed by the ordinances, rules, regulations, permit requirements, building codes, and other requirements of Coconino County, Arizona, including fee provisions. After the annexation is complete, and subject to the requirements of Sections 5 and 6 of this Agreement, the development of the Property shall be governed by the ordinances, rules, regulations, permit requirements, and other requirements of the City, including fee provisions.

5.2. Off-Site Water Facility Review Fees. Owner shall pay to the City all plan review, permitting and inspection fees associated with construction of off-site water facilities and any other City infrastructure improvements for which the initial review will be conducted by the City. The Owner will pay for the City's cost for inspecting the installation work through the fee for issuance of the City's permit.

5.3. Mutual Review. On-site grading, drainage plans, site plans, and building elevation plans shall be reviewed and approved by Coconino County with City comments provided through a mutual review process. Drainage structures within the current City limits shall meet City design criteria. The design engineer shall provide Rough and Final Grading Certification that certifies the grading was performed according to the approved drainage plans to the City if in the City, and to the County if in the County.

6. Water Infrastructure.

6.1. Water Facilities. The Owner retained Turner Engineering, Inc. to provide design services for the off-site water facilities. Specifically, the scope and nature of the off-site water facilities to be constructed are as described in Exhibit D and more particularly described in the plans prepared by Turner Engineering, Inc. (the "Water Facilities"). The proposed extension of the Water Facilities has been designed and will be constructed by Owner at Owner's cost. The Owner will follow the City's procurement requirements for all construction. The City will pay for the cost of oversizing the water-utility facilities to meet regional needs as described in Exhibit D-1. Owner and City may, pursuant to current ordinances, implement a Recapture Agreement to be reimbursed for certain costs of the waterline by other property owners along the waterline extension.

6.2. Construction of Public and Other Related Improvements. Following construction of the Water Facilities, dedication of the Water Facilities to the City, and acceptance by the City Engineer as prescribed in the Flagstaff City Code, the City agrees to assume, at its expense, the ownership, maintenance and repairs of the Water Facilities in accordance with City policies. The Owner, however, warrants

workmanship and material for the Water Facilities to the benefit of the City for a period of one (1) year from the date of acceptance.

6.3. Water Main, Responsibility for Repairs and Replacements, Indemnification. Owner shall provide the City all required easements for the on-site water main and the easements necessary to access the main upon reasonable request. Owner will obtain required permits or other required land rights from Coconino County for all facilities placed in County right-of-way. The Owner agrees to provide a diagram of all property that may be served by any main and appurtenances upon completion and acceptance of the work by the City. The Owner is responsible for any and all repairs or replacements that become necessary as a direct or indirect result of the creation, building or construction of the Water Facilities, including but not limited to repairs or replacement of sidewalks, paving or other utilities. The Owner agrees to indemnify and hold harmless the City from any loss or damage of any nature arising in connection with any act or omission of Owner, its agents, employees, contractors or subcontractors in the course of the performance of the Owner's obligations under this Section 6.

7. City Water Services.

7.1. Comparable Service. Once the Water Facilities are accepted by the City Engineer, the City agrees to provide the Property with comparable levels of water infrastructure and services to the level generally provided for like properties in the City of Flagstaff.

7.2. Approval of Plan for Facilities. The City, by executing this Agreement, approves the Water Facilities as shown on Exhibit D hereto and more particularly described by the design prepared by Turner Engineering, Inc. In the case of conflict between Exhibit D and the design and construction documents prepared by Turner Engineering, Inc., the more detailed plan controls.

7.3. Coordination of Facilities and Timing of Annexation. Owner and City shall mutually cooperate to coordinate the timing of the Water Facilities installation to the Property. This Preannexation Agreement must be filed by the Owner with the Coconino County Recorder before the City begins to provide additional water services to parcels 116-04-008E and 116-04-003Y as a result of the construction of the Water Facilities.

7.4. Water Connection and Capacity Fees, Out-of-City Service. The parties expressly acknowledge and agree that when the new and additional water service is established for parcels 116-04-008E and 116-04-003Y as the result of the construction of the Water Facilities, Owner shall pay those water-capacity fees generally required by the Flagstaff City Code as a condition for connecting to the City's water distribution system, whether or not the County Property has been annexed. The size of the meter purchased with the water-capacity fees will determine the allocation of water capacity consistent with the City's ordinances

said parcel contains 0.0164 acres of land, more or less, including any easements of record over the above described parcel.

PARCEL 4:

BEGINNING at the 1/4 of said Sections 24 and 25, said point being a found 3" Cap, thence S 00° 53' 23" W [Basis of Bearing (1/4 corner to Northeast section corner): N 88° 44' 28" E (R1)], along the North-South centerline of said Section 25, for a distance of 29.85 feet to a found Cap 14671, said point being a non-tangent point of curvature;

thence Northwesterly along a curve to the right, having a central angle of 19° 42' 24" and a radius of 500.00 feet, for a distance of 171.97 feet, the chord of said curve bears N 81° 18' 57" W for 171.13 feet, to a found Cap 14671, said point being a point of tangency;

thence N 71° 27' 45" W for a distance of 221.77 feet to a found Cap 14671, said point being on the Southerly Right-of-Way line of Flagstaff Ranch Road as shown on Westwood Estates recorded in Case 6, Map 35;

thence N 88° 39' 55" E, along said Southerly Right-of-Way line, for a distance of 38.94 feet, to a found Cap 18215, said point being a non-tangent point of curvature;

thence Northeasterly along the Easterly Right-of-Way line of said Flagstaff Ranch Road, along a curve to the left, having a central angle of 00° 26' 32.3" and a radius of 4777.44 feet, for a distance of 36.88 feet, the chord of said curve bears N 16° 37' 59" E for 36.88 feet to a set ½" rebar w/Cap 14671, said point being a non-tangent point;

thence S 76° 16' 51" E for a distance of 186.99 feet to a set ½" rebar w/Cap 14671, said point being a point of curvature;

thence Southeasterly along a curve to the left, having a central angle of 13° 43' 09" E and a radius of 250.00 feet, for a distance of 59.86 feet, the chord of said curve bears S 83° 08' 26" E for 59.72 feet, to a set ½" rebar w/Cap 14671, said point being a point of tangency;

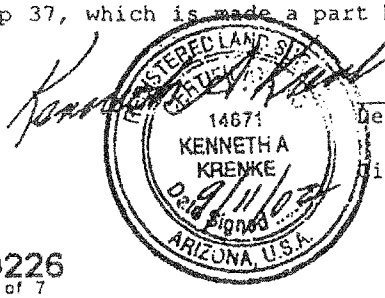
thence East for a distance of 467.01 feet to a point on the West parcel line of a parcel described in a Combination/Split Request Form recorded in Docket 1359, Page 585, said parcel line also being the West corporate limit line of the City of Flagstaff;

thence S 13° 07' 30" W, along said West parcel line, for a distance of 44.35 feet to a point on the Section line between said Sections 24 and 25;

thence S 88° 44' 27" W, along said section line, for a distance of 367.57 feet to the **POINT OF BEGINNING**,

said parcel contains 0.9326 acres of land, more or less, including any easements of record over the above described parcel, as shown as the above mentioned parcel numbers on "Results of Survey" map recorded in Book 18 of Surveys, Map 37, which is made a part hereof by this reference.

NES # 01-112-C.



Descriptive Title _____

City File No. _____

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