



City of Avondale
City Council Meeting
Monday, January 6, 2020

Mayor and Council

Kenn Weise, Mayor

Pat Dennis, Vice Mayor

Tina Conde, Council Member | Bryan Kilgore, Council Member
Veronica Malone, Council Member | Curtis Nielson, Council Member
Mike Pineda, Council Member

Administration

Charles A. Montoya, City Manager
Gina Montes, Assistant City Manager
Michael Wawro, City Attorney
Marcella Carrillo, City Clerk

City Council Chambers

11465 West Civic Center Drive
Avondale, AZ 85323



City Council Meeting
Agenda
Monday, January 6, 2020

CITY COUNCIL CHAMBERS | 11465 WEST CIVIC CENTER DRIVE | AVONDALE, AZ 85323

WORK SESSION
6:30 PM

CALL TO ORDER BY MAYOR

1. ROLL CALL BY THE CITY CLERK

2. 2020 STATE LEGISLATIVE AGENDA

Council will review and provide guidance to staff on the proposed 2020 City of Avondale State Legislative Agenda. This report presents state legislative policy priorities that have been identified by staff as well as the Council.

3. ADJOURNMENT

Request to Speak: Anyone wishing to address the Council regarding items listed on the agenda or under unscheduled public appearance should fill out a card located at the back of the Council Chambers and hand it to the City Clerk prior to consideration of that agenda item.

REGULAR MEETING

7:00 PM

CALL TO ORDER BY MAYOR PLEDGE OF ALLEGIANCE MOMENT OF REFLECTION

1. ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

3. PRESENTATION ITEMS

a. NEW EMPLOYEE INTRODUCTION

Introduction of the new Director of Development & Engineering Services, Kevin Murphy

b. PROCLAMATION FOR SPEAK UP, STAND UP, SAVE A LIFE

Mayor and Council to issue a Proclamation recognizing the month of January 2020 as Speak Up, Stand Up, Save a Life Month.

4. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. MINUTES

City Council will consider a request to approve the November 18, 2019 City Council Meeting Minutes. The Council will take the appropriate action.

b. TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF AVONDALE AND ZAYO, LLC.

City Council will consider a request to approve a new Wired Telecommunications License and Right of Way Use Agreement with Zayo, LLC to allow the placement of fiber telecommunication infrastructure in the City right of way, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

c. FISCAL YEAR 2018-2019 YEAR END BUDGET AMENDMENT

City Council will consider a request to approve a budget amendment for Fiscal Year 2018-2019 (FY2019), utilizing savings in the Finance and Budget Department's budget to cover budget overages caused by an accounting adjustment.

d. RESOLUTION 1002-0120 - ECONOMIC DEVELOPMENT AGREEMENT WITH MGN1 LLC

City Council will consider a request to adopt Resolution 1002-0120, approving an Economic Development Agreement with MGN1 LLC not to exceed \$300,000 towards the reimbursement of public improvements for the construction of a business service hotel and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. RESOLUTION 1003-0120 - SUPPORTING TRELIS GRANT APPLICATION TO MARICOPA COUNTY FOR HOME COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) FUNDS

City Council will consider a request to adopt Resolution 1003-0120 associated with a grant application submitted by Trellis to Maricopa County for HOME CHDO funds, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. ORDINANCE 2001-0120 - ROOSEVELT IRRIGATION DISTRICT AGREEMENT AND PERPETUAL EASEMENT FOR WATER AND SEWER PIPELINES.

City Council will consider a request to adopt Ordinance 2001-0120 for an Agreement and dedication of a Perpetual Easement with the Roosevelt Irrigation District (RID) for the City of Avondale to operate, repair and maintain water and sewer lines and associated facilities across RID right-of-way and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. ORDINANCE 2002-0120 - SALE OF REAL PROPERTY LOCATED AT 801 N AVONDALE BOULEVARD

City Council will consider a request to adopt Ordinance 2002-0120 authorizing the sale of real property located at 801 N Avondale Boulevard and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

5. REGULAR AGENDA

a. PUBLIC HEARING - EXTENDING THE LOCALLY CONTROLLED ALTERNATIVE EXPENDITURE LIMITATION - HOME RULE OPTION

City Council will hold the second of two required public hearings on the alternative expenditure limitation-home rule option.

6. ADJOURNMENT

SPECIAL MEETING
Convene immediately following Regular City Council Meeting

CALL TO ORDER BY MAYOR

1. ROLL CALL NOTED BY THE CITY CLERK

2. RESOLUTION 1001-0120 - EXTENDING THE LOCALLY CONTROLLED ALTERNATIVE EXPENDITURE LIMITATION - HOME RULE OPTION

City Council will consider a request to adopt Resolution 1001-0120 proposing to submit to the qualified electors at the August 4, 2020 election a question to continue an alternative expenditure limitation - home rule option, in place of that provided by the State of Arizona and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

3. ADJOURNMENT INTO EXECUTIVE SESSION

Ariz. Rev. Stat. § 38-431.03(A)(7) for the purpose of discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase of real property located at 100 N. Clubhouse Dr.

Council Members of the City of Avondale will attend either in person or by telephone conference call.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica.

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

CITY COUNCIL REPORT

SUBJECT: 2020 State Legislative Agenda

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Jessica Blazina, Intergovernmental Affairs Administrator, (623) 333-1612

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

Council will review and provide guidance to staff on the proposed 2020 City of Avondale State Legislative Agenda. This report presents state legislative policy priorities that have been identified by staff as well as the Council.

BACKGROUND:

Legislation enacted at the state level can have significant effects on the ability of municipal government to serve its citizens. Therefore, it is important to identify the City of Avondale's Legislative priorities regarding potential or pending legislative actions.

The approved Agenda will define the City's legislative priorities and guide the staff's advocacy efforts. Updates will be provided during the Session as necessary.

The 2nd Regular Session of the Fifty-Fourth Legislature will convene on Monday, January 13, 2020. Governor Ducey will give his State of the State address on this same day.

Representative Rusty Bowers, District 25, serves as Speaker of the House while Senator Karen Fann, District 1, serves as Senate President. The Senate is comprised of 17 Republicans and 13 Democrats, while the House is comprised of 31 Republicans and 29 Democrats.

DISCUSSION:

Avondale's Guiding Principles

To prioritize and guide staff's lobbying efforts, staff recommends that the Council endorse the following two key principles as our highest priorities.

- Support to Preserve Local Funding Mechanisms
Protect existing federal and state funding sources and authorities that generate revenue to the City of Avondale. Work to maintain local taxing authority and oppose unfunded mandates to local governments.
- Oppose any Preemption of Local Authority
Support efforts to ensure continuing local decision-making authority and to prohibit preemption. Like other municipalities, Avondale has unique needs and characteristics and those needs are best met by

policies set by its local governing body. Statewide preemptive efforts to remove the ability to set policy at the local level should be opposed.

- Avondale's Legislative Priorities

In addition to the guiding principles described above, staff recommends the review and consideration of additional issues to include in its agenda for 2020. These issues have been identified by staff as well as the Council to respond to the specific needs of the community.

- Financial Stability

Support the maintenance of state-shared revenues from sales and income tax revenues and oppose any state action that would reduce state-shared revenues.

The City's budget includes revenues from several state sources, most notably state-shared revenues. State-shared revenues comprise approximately 35% of the City's general fund, which assists in supporting police, fire, streets, parks and other critical City services. Staff recommends opposing any action that would reduce state-shared revenue.

BUDGET IMPACT:

Staff will closely monitor any legislation that may have a budgetary impact on the City.

RECOMMENDATION:

Staff seeks input and direction from Council regarding the 2020, City of Avondale State Legislative Agenda.

Speak Up, Stand Up, Save a Life Month

January 2020

WHEREAS, the Speak Up, Stand Up, Save a Life movement presents an ideal opportunity to help bridge the gap between our local community, government, and law enforcement in a positive way; and

WHEREAS, our local schools are facing unnecessary tragedies where warning signs are placed on social media or observed in person, but are not being reported as serious threats or cries for help; and

WHEREAS, our youth need to be empowered to report concerning posts or comments to law enforcement or school representatives, and to help spread the message that it is okay to care enough to speak up, stand up and save a life; and

WHEREAS, more than 3,000 students from 300 Arizona schools will learn the message and create communication programs in their schools and communities.

NOW THEREFORE, I Kenneth N. Weise, by virtue of the authority vested in me as Mayor of the City of Avondale, Arizona do hereby proclaim January 2020 as Speak Up, Stand Up, Save a Life Month in Avondale and encourage all schools, students, parents, educators and residents to engage in a variety of awareness and prevention activities designed to make our communities safer for all children and adolescents.

Mayor

ATTEST:

City Clerk



CITY COUNCIL REPORT

SUBJECT: Minutes

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Marcella Carrillo, City Clerk, (623) 333-1214

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to approve the November 18, 2019 City Council Meeting Minutes. The Council will take the appropriate action.

BACKGROUND:

n/a

DISCUSSION:

n/a

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

Staff recommends City Council approval of the November 18, 2019 City Council Meeting minutes.

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
November 18, 2019

A **Work Session** of the City Council of the City of Avondale, Arizona was convened at 11465 Civic Center Drive in open and public session at 6:32 p.m.

Members Present: Mayor Kenn Weise; Vice Mayor Pat Dennis; Council Members Tina Conde, Bryan Kilgore, Veronica Malone, Curtis Nielson, and Mike Pineda.

Members Absent: None.

Other Municipal Officials Present: Gina Montes, Assistant City Manager; Tracy Stevens, Deputy City Manager; Michael Wawro, City Attorney; Marcella Carrillo, City Clerk; Cindy Blackmore, Public Works Director; Jessica Blazina, Intergovernmental Affairs Administrator; Lindsey Duncan, Finance and Budget Director; Chris Lopez, Neighborhood and Family Services Director; Dale Nannenga, Police Chief; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Community Relations and Public Affairs Director.

Audience: Approximately 15 members of the public were present.

1 ROLL CALL BY THE CITY CLERK

2. GARDEN LAKES PARKWAY CORRIDOR STUDY

Dave Janover, City Engineer, provided an overview of the Garden Lakes Parkway Corridor Study and request input from City Council. Staff and its consultant, Wood Environment and Infrastructure Solutions, Inc., will incorporate that feedback into the final report. This is for information and discussion only.

Presentation by Mr. Janover included the following:

The Garden Lakes Parkway Corridor runs from Thomas Road to 107th Avenue. In 2018, the City restriped Garden Lakes Parkway to reduce vehicle speed. Prior to the restriping, there were 20-foot wide travel lanes, a 14-foot two-way left turn lane and two 5-foot bike lanes. The 85th percentile speed was 52 miles per hour with a posted speed limit of 25 miles per hour. After gathering public feedback and discussion with City Council, the 2018 configuration reduced the 20-foot travel lanes to 11 feet wide; a 14-foot two-way left turn lane; a 9-foot bike buffer with a 5-foot bike lane was striped on the east side; a 6-foot wide pedestrian lane next to the 5-foot bike lane and 3-foot wide buffer. After the restriping, the 85th percentile speed was reduced to 32 miles per hour. Input from area residents and HOA's was encouraging; however, they indicated there was still work left to do.

Wood Environment & Infrastructure Solutions was tasked with completing the subsequent study. A technical advisory committee (TAC) was formed, consisting of City staff and a

representative from the Garden Lakes Neighborhood and the Roosevelt Irrigation District. Public outreach included a neighborhood meeting on May 15th, 2019 as well as a survey to the community. The survey resulted in 135 responses which included the following comments:

- Excessive parking on bike paths.
- Buffer lane, bike lane, walking path and center turn lanes were all being used for illegal passing of vehicles.
- Speeding throughout the corridor.
- Insufficient areas for pedestrian crossing.
- Replace flexible delineators with pavement markers.

Mr. Janover identified a comment that had been received prior to the restriping stating drivers have missed the curve at the canal and crashed into the walls. Although the comment was received prior to the restriping, it warranted identification as part this report.

A public meeting was held on September 19, 2019 and comment cards were provided to the attendees. Presentation at the meeting included alternatives for the following areas:

- Garden Lakes Parkway Corridor
- Thomas Road and Garden Lakes Parkway
- 111th Avenue and Garden Lakes Parkway
- Canal Crossing
- Lakeshore Drive and Garden Lakes Parkway
- Garden Lakes Elementary School

Positive comments were received regarding the installation of center median on Garden Lakes Parkway, the proposed changes to Thomas Road and Garden Lakes Parkway intersection, and the speed table or raised crosswalk at the canal crossing.

Recommendations arising from the study include the following:

Garden Lakes Parkway:

- Install raised medians with turn lanes at the intersections along Garden Lakes Parkway from Thomas Road to east of Carnation Drive, to eliminates the use of the center turn lane for passing.
- Convert the existing at-grade footpath on the west side to be a raised sidewalk with curb and curb ramps.
- Install buffered bike lane with raised curb median islands in the bike buffer at the intersections and at mid-block locations, to reduce passing maneuvers and control speeding.

Thomas Road and Garden Lakes Parkway Intersection:

- Reduce the eastbound and westbound approaches to provide one left turn lane, one right turn lane and one through lane.

- Reduce the intersection width and geometry at the northwest corner, using pavement marking and raised pavement markers.

111th Avenue and Garden Lakes Parkway Intersection:

- Add a mini roundabout at the intersection.
- Add a landscaped area to the south side of the intersection, with raised medians and islands.
- Islands allow pedestrians to make two-stage crossings, providing refuge islands on north and east legs.
- Modeling shows that the mini-roundabout operates at a similar level compared with the stop-controlled intersection.
- Discourages large vehicles from using Garden Lakes Parkway.

Lakeshore Drive and Lakes Parkway Intersection:

- Install a raised intersection and reduce the curb returns at all four corners.
- Provides improved pedestrian visibility and will force speed reduction, as the raised intersections double as speed tables.
- The bulb-outs create a smaller intersection and reduce the pedestrian crossing distance.
- Install advance speed table warning signs.
- Install the median improvements along Garden Lakes Parkway.

Canal Crossing:

- Install speed tables approximately 50 feet from the crosswalk at the northbound and southbound approaches to the canal and install advance speed table warning signs.
- Install textured crosswalk.
- Install streetlights adjacent to the crosswalks.
- A rectangular rapid flashing beacon (RRFP) is being considered to provide advanced warning signs for an additional level of safety.
- Install the median improvements along Garden Lakes Parkway up to the crosswalks.

School Area:

- Install on-street parking on Garden Lakes Parkway in front of the school.
- Install an eastbound right-turn lane at the school entrance and extend this turn lane up to 109th Drive.
- Install high visibility crosswalk on the east side of 109th Avenue.
- Widen the sidewalk along Garden Lakes Parkway to 10-foot wide multiuse path between 109th Drive and 107th Avenue.
- Install buffered bike lane along Garden Lakes Parkway, east of Carnation Drive to 109th Drive.
- Provides a continuous eastbound through lane to the school entrance.

The cost projection for the Garden Lakes Parkway medians and raised sidewalks, the 111th Avenue and Garden Lakes Parkway mini roundabout, the Lakeshore Drive and

Garden Lakes Parkway intersection and the Canal crossing projects total \$4.1 million. Staff will seek funding through the Maricopa Association of Government (MAG) Road Safety Program (RSP) and other appropriate grant funding programs. The Thomas Road and Garden Lakes Parkway intersection is projected at \$50,000 and the school area striping is projected at \$90,000. Funds have been identified in fiscal year 2020 for the finalization of the Garden Lakes Park Corridor study.

Next steps include receiving Council feedback on the recommendations as well as finalization of the Garden Lakes Corridor study.

Mayor Weise commented on the impressiveness of the presentation and described the reduction of the speeds from 52 to 32 miles per hour as incredible but acknowledged that further reduction is needed. The process is an educational process and is going to take longer than normal for these types of projects. Mayor Weise shared his personal experience of riding his mountain bike through Garden Lake Parkway and almost being hit as a result of the presence of the delineators. He commented that the delineators are an eyesore and is in favor of having speed tables through the intersections. He asked about the timeline for applying for MAG RSP funds. Mr. Janover said that RSP is a new program but as soon as more information is available from MAG, they will move forward with the application.

Mayor Weise requested Dale Nannenga, Police Chief, to comment on traffic enforcement in the area. Chief Nannenga explained that police presence within the area is based on complaints. Additionally, traffic officers are tasked with periodic checkups and he estimates that approximately once per month, officers are operating radar detail in the area, including tracking speeds and issuing citations.

Council Member Conde thanked the team and members of the community for their input and engagement. She lives in Garden Lakes and she shares many of the concerns that have been set forth in the presentation. She is pleased with the addition of the beacons, which will alert drivers that pedestrians are crossing. She noted that there are no crosswalks from Thomas Road to Kimberly Park and inquired on the potential plans to address this. Tom Peterson, City Traffic Engineer, stated that they can certainly look at additional crossings in the area mentioned but mentioned the suggestions presented were in response to the survey results and concentrated on areas in which were requested the most. Council Member Conde suggested the addition of a crosswalk due to the distance from Thomas Road to Kimberly Park.

Council Member Conde inquired on the addition of a sidewalk to the west side of Garden Lakes Parkway. Mr. Peterson stated due to several mature trees on the west side of the road, there has been hesitation to add a sidewalk in fear of impacting the tree. He explained there may be a possibility to build up the existing pedestrian way as a sidewalk without having to encroach into the trees.

Council Member Conde stated that she likes the changes to Thomas and Garden Lakes Parkway, however, there has been additional traffic. She asked about consideration for adding a stop light. Mr. Peterson confirmed that this is under consideration. Mr. Janover added that during the work on Thomas and Garden Lakes Parkway, they will be striping in a similar manner to what exists at lower Buckeye Road and Avondale Boulevard, where there are stop signs in the middle of the roadway. The same process will be used on the south, east and west. Both approaches on Thomas and the south approach from Avondale Boulevard will have the same striping and mid-roadway stop signs to assist with slowing traffic.

Council Member Malone thanked Mr. Janover for the presentation. In looking at Garden Lakes Parkway, there are similarities to the way the City shrunk down Central Avenue in Historic Avondale. Mr. Janover stated Central Avenue is different as it has a continuous landscaped buffered bike lane. Garden Lakes Parkway will continue to be open but will have a small island as a buffer in key locations.

Council Member Malone asked about the impact on Police and Fire regarding the addition of the medians and inquired if there will be adequate space for cars to pull over for emergency vehicles. Mr. Janover assured her that there will be room for emergency vehicles to pass.

Council Member Malone asked about the phases of completion. Mr. Janover stated that stretches of the roadway would be completed in phases so that the entire roadway is not under construction at the same time.

Council Member Malone noted that improvements will be taking place at the school location and asked whether the school district will be allocating any funds or whether the homeowners association for Garden Lakes will provide any funding. Mr. Janover said that City funds will be used completely for the striping work located near the school.

Council Member Pineda thanked staff for the presentation. He made the point that this is a reactive approach to an issue that needs to be addressed moving forward with upcoming projects, including south of Alamar. Being proactive at the beginning of the process will alleviate the need to address problematic issues later.

Mayor Weise noted the area that caught his attention the most was the on-street parking drop-off for Garden Lakes Elementary. Parents have been seen dropping off students in the middle of the street at both Rancho Santa Fe Elementary School and La Jolla Elementary School. Some of these issues are enforcement issues; however, parents must be able to drop off their children in a safe environment. Some streets will not be conducive to significant change such as Rancho Santa Fe as it is not as wide as Garden Lakes Parkway. He is interested to see how this same approach is implemented in other areas of the City.

Council Member Nielson stated that he read in the report that some parents are dropping their children off at Westview High School and walking them across the street. There are no crosswalks, so this is illegal. Parents need to be educated as to how to maneuver in this regard. He also read that the speed had dropped with the new striping; however, the crash data showed an increase from 9 to 21 incidents over five years. If the City is unable to fund the \$4.1 million at one time, steps should be taken to prioritize and complete the work in stages. He pointed out that there are no right turn arrows within the newly striped area at Avondale and Thomas. Mr. Janover stated that City staff also observed the actions by parents walking their children across the street and have reached out to the high school, who agreed to close and lock the gate in the mornings.

Vice Mayor Dennis thanked staff as well as residents of Garden Lakes, who have been engaged in the process. She inquired on the alignment on the west side of Thomas, asking whether the number of lanes will be reduced or will be consistent with the other side. Mr. Janover said it will be consistent, including a left turn lane, a through lane and a right turn lane with the same configuration on the east side. The goal is to be consistent with all approaches.

Vice Mayor Dennis questioned whether there would be sufficient right-of-way. Specifically, she mentioned Dysart and Thomas having two lanes on both sides, plus a turn lane which tapers down toward the turn onto Rancho Santa Fe. Mr. Janover said there are five lanes on Avondale Boulevard, five lanes on the westbound approach while you are heading west on Thomas and there are four lanes while you are heading east on Thomas due to the drop right turn lane on the westbound approach. Due to the drop right turn lane, only four lanes are needed on the west side. If volume increases significantly on Thomas Road in the future, they will certainly assess the area as it is part of the design concept report for the Thomas Road bridge, which is being analyzed for existing requirements.

Vice Mayor Dennis asked whether the amount of traffic at Thomas and Garden Lakes Parkway would justify a signal. Mr. Janover stated that a series of warrants that need to be met for signal installation. The currently activity does not yet meet the current standard.

Council Member Malone asked if school safety grants could be obtained for this project or other projects near schools. Mr. Janover said that a Safe Routes to School study was done for Garden Lakes Parkway but the funds from Safe Routes to School program only covers the cost of the study and not construction. Funding would come from the school district, if on school property, or from the City, if it will be in the right-of-way. The work being presented is located on the right-of-way which is the responsibility of the City.

Council Member Kilgore complimented Mr. Janover on the presentation and stated he echoes the comments mentioned from Council. In reference to the additional crosswalk suggested by Council Member Conde, he commented that there are occasions where schools do not want to have certain crosswalks installed as it may require additional staffing or resources from the school that they may not have at the time. He suggested

staff reach out to the schools to determine if there is a need. He acknowledged that everyone wants the children to be safe but while doing so, work with the school to ensure the changes do not add a burden onto the school. Council Member Kilgore stated he liked everything presented, staff's hard work, as well as the involvement of the residents of Garden Lakes.

In response to a comment from Council Member Malone, Council Member Nielson stated that the school plan for Alamar consists of two lanes into the school property.

In response to an inquiry from Vice Mayor Dennis, Council Member Conde provided additional clarification on the location of the requested cross walk. Additionally, Vice Mayor Dennis asked staff to review bus stops to assess the safest locations to cross the street.

Mayor Weise requested that staff, in preparation for the Council budget retreat in the next three weeks, provide Council budget options for next year. He further requested that they provide quarterly updates going forward.

3 ADJOURNMENT

There being no further business before the Council, Council Member Kilgore moved to adjourn the Work Session meeting; Council Member Conde seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Meeting adjourned at 7:19 p.m.

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened at 11465 Civic Center Drive in open and public session at 7:19 p.m.

Followed by a moment of silent reflection in remembrance of the 69 police officers who have lost their lives so far in 2019, Mayor Kenn Weise led the Pledge of Allegiance.

Members Present: Mayor Kenn Weise; Vice Mayor Pat Dennis; Councilmembers Tina Conde, Bryan Kilgore, Veronica Malone, Curtis Nielson, and Mike Pineda.

Members Absent: None.

Other Municipal Officials Present: Gina Montes, Assistant City Manager; Tracy Stevens, Deputy City Manager; Michael Wawro, City Attorney; Marcella Carrillo, City Clerk; Cindy Blackmore, Public Works Director; Jessica Blazina, Intergovernmental Affairs Administrator; Lindsey Duncan, Finance and Budget Director; Chris Lopez, Neighborhood and Family Services Director; Dale Nannenga, Police Chief; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Community Relations and Public Affairs Director.

Audience: Approximately 50 members of the public were present.

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 UNSCHEDULED PUBLIC APPEARANCES

Mr. Jeff Uber asked about the City's plans for the west side Historic Avondale and noted traffic and population related issues. Mayor Weise requested staff review the issue.

3 PRESENTATION ITEMS

a. AVONDALE YOUTH ADVISORY COMMISSION DEMOCRASEED UPDATE

Lauren Twigg, Community Engagement Coordinator, and members of the Avondale Youth Advisory Commission provided Council with an update regarding the Avondale Youth Advisory Commission's participation in the Center for the Future of Arizona and Arizona State University's (ASU) Public Service Academy, DemocraSeed program.

Presentation included the following:

Ms. Twigg stated that the Youth Advisory Commission participated with the Center for the Future of Arizona in a friendly competition amongst youth commissions. Each year, four cities are selected to participate. The program challenges youth commissions with identifying a problem within their community and finding a solution. The DemocraSEED design thinking process involves the following steps: empathize, define, ideate, prototype and test. The process was completed over the entire school year.

The following commission members introduced themselves to Mayor and City Council:

- Sadie Goforth, Chair of the Youth Advisory Commission
- Camila Vitela, Vice Chair of the Youth Advisory Commission
- Aissatou Camara, Treasurer of the Youth Advisory Commission
- Luis Chavez, Youth Delegate of the Youth Advisory Commission

Youth commission members took turns discussing aspects of the process.

Ms. Goforth stated the process began with a meeting with their mentors from Arizona State University to identify a problem within the community. They identified a program

with a goal of having a more sustainable and successful recycling system in Avondale high schools.

Mr. Chavez explained that after the problem was identified, the members brought the concern back to their school. The size of recycling bins varied between schools and the recycling activity levels also varied.

Ms. Vitela stated each high school was determined to have different needs. Each youth delegates conducted surveys at their schools, which revealed that many students were not educated as to what items were recyclable. Individual recycling plans were developed for each high school. This included the creation of a call to action sticker, which provided information on which items are recyclable.

Ms. Camara explained they collaborated with students, staff, and leaders on each campus. They realized that each school had their own unique problems; however, they all shared a common goal and plan of action.

Ms. Goforth explained support was provided by the City's Public Works Department in terms of marketing materials, which were distributed throughout the schools. Effective strategies were developed to fit the individual schools.

Mr. Chavez expressed his gratitude to the Public Works Department for their support.

The Commission members staffed information tables at various events, including awareness days and Stay Woke. They also developed a recycling program, which was used throughout the year and continues. Recycled paper boxes were used as bins in every classroom, they obtained the assistance of the student government, and sustainable locations were identified. At La Joya High School, students participated in a trash bag challenge.

Ms. Twigg explained the final step in the process was for Avondale's youth commission members to provide presentations, along with all the other participating cities. Avondale received second place in the friendly competition and received a \$250 award, which will be used to further recycling efforts. The participating senior classmen will pass the torch and train underclassmen. Ms. Twigg recognized the Public Works Department for funding their project as well as Community Relations for their artwork.

Participants shared takeaways from their experience and a short video was played.

Mayor Weise tasked the participants with exploring an expansion of the program citywide to all residents. As a result of the City of Phoenix cutting back their recycling program, the City of Avondale will be required to consider if the city will still consider a citywide recycling program in the future. He added that City Council can attend upcoming meetings where these points are being discussed.

b. RESOLUTION 3592-1119 - HONORING LIEUTENANT JAMES REDLINE ON THE OCCASION OF HIS RETIREMENT

City Council considered a request to ceremonially adopt Resolution 3592-1119 honoring Lieutenant James Redline for twenty years of dedicated service to the City of Avondale.

Chief Nannenga introduced James Redline and gave an overview of his career and service with the City. Mayor Weise read Resolution 3592-1119 into the record. Lieutenant James Redline provided a few words of thanks.

Council Member Malone moved to ceremonially adopt Resolution 3592-1119 honoring Lieutenant James Redline for twenty years of dedicated service to the City of Avondale; Council Member Nielson seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

c. RESOLUTION 3593-1119 - HONORING FRANCES JONES ON THE OCCASION OF HER RETIREMENT

City Council considered a request to ceremonially adopt Resolution 3593-1119 honoring Frances Jones for thirty-five years of dedicated service to the City of Avondale.

Chief Nannenga introduced Frances Jones and gave an overview of her career and service with the City. Mayor Weise read Resolution 3593-1119 into the record. Ms. Jones provided a few words of thanks.

Vice Mayor Dennis moved to ceremonially adopt Resolution 3593-1119 honoring Frances Jones for thirty-five years of dedicated service to the City of Avondale; Council Member Pineda seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

d. NEW EMPLOYEE INTRODUCTION

Jodie Novak, Assistant Director of Development and Engineering, introduced the new Planning Manager, Brian Craig.

4 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

Mayor Weise asked if any Councilmember wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Vice Mayor Dennis, seconded by Council Member Nielson, to approve the Consent Agenda.

Upon vote, the motion carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

a. MINUTES

City Council approved the October 7, 2019, October 28, 2019, and November 4, 2019 City Council Meeting Minutes.

b. WVIC-GRIFFITH COMMERCE PARK RE-PLAT (APPLICATION PL-19-0189)

City Council approved a request by Michael Hreha of Larson Engineering for approval of a Re-Plat of Lots 4 and 5 in Griffith Commerce Park; WVIC-Griffith Commerce Park Re-Plat. The proposed Re-Plat will combine two (2) lots, dedicate a twenty-foot wide trail easement, and abandon the eastern 54' X 40' cross-access driveway easement. The combining of lots is required to accommodate development of the site with a new place of worship with a multi-purpose building, a freestanding retail building, and a freestanding restaurant building.

c. RESOLUTION 3594-1119 – ADOPTING NEW OFFICIAL INVESTMENT POLICY

City Council adopted Resolution 3594-1119, adopting a new official investment policy and repealing the existing investment policy previously adopted by City Council on February 20, 1996 and authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

d. RESOLUTION 3595-1119 - APPROVAL OF 2019-2020 HOME FUNDING INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY

City Council adopted resolution 3595-1119 authorizing the Fourth Amendment to the 2016-2017 Intergovernmental Agreement with Maricopa County to allow the City to receive an allocation of Federal funding under the HOME Investment Partnership Program in the amount of \$188,390 for the 2019-2020 fiscal year and authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

e. EMPLOYMENT AGREEMENT WITH CHARLES A. MONTOYA

City Council approved the Amended Employment Agreement with Charles A. Montoya and authorized the Mayor and City Clerk to execute the necessary documents.

5 REGULAR AGENDA

a. PUBLIC HEARING AND ORDINANCE 1710-1119 – APPLICATION OF HISTORIC AVONDALE INFILL OVERLAY (HAIO) ZONE FOR SOUTHWEST LENDING CLOSET – APPLICATION PL-19-0094

Vice Mayor Dennis declared a Conflict of Interest with Southwest Lending Closet and stated she would not be voting on the item.

Ken Galica, Senior Division Lead Planner, requested City Council hold a public hearing and consider a request by Ms. Ann DeVlaeminck, Southwest Lending Closet, to adopt Ordinance 1710-1119, to approve the application of the Historic Avondale Infill Overlay (HAIO) zone on approximately 0.94 gross acres of property located at the southwest corner of Central Avenue and Madden Drive, 218 North Central Avenue. The subject property is zoned C-2 (Community Commercial). Approval of the request will modify development standards on the subject site, allowing for an expansion of the existing specialty service use occurring on the property. Development standards subject to modification through this request include, but are not limited to, reduced building setbacks adjacent to Madden Drive, reduced landscape improvements including elimination of required landscape setbacks along adjacent streets, and reduced parking space dimensions.

Presentation by Mr. Galica included the following:

- The property is approximately .94 gross acres and is located at the southwest corner of Central Avenue and Madden Drive.
- The existing uses to the north/south are commercial and to the east/west are single family residential.
- The zoning mimics existing uses with the single-family areas zoned R-16 and commercial areas zoned C-2.
- The property was annexed in 1995 and has been zoned C-2 since that time.
- Prior uses include a fast food restaurant and a funeral home, and the current use is the Southwest Lending Closet.

- This entity lends medical equipment to people in need on a temporary basis.
- The purpose of the HAIO is understanding that development in these older areas of the City have restrictions or limitations that are not imposed on other properties elsewhere in the City.
- The Southwest Lending Closet is looking to expand, essentially doubling the size of its existing facility.
- With this request, several C-2 zoning standards will be reduced or eliminated.
- The zero-foot building setback from Madden Drive will allow the building to encroach closer to the street than C-2 would typically allow.
- There would be zero-foot landscape setbacks from all streets whereas the code for new development requires 25 feet landscape buffer.
- Parking requirement modifications are not planned, but the proposal would allow existing conditions to continue which means elimination of the requirement for a landscape island in the parking lot.
- Staff feels that the proposed design is consistent with the purpose of the HAIO district.
- Existing improvements to the site are not in zoning conformance as the C-2 requirements would make the property essentially an undevelopable piece of property.
- The proposed redesign and expansion will be an improvement to the HAIO in terms of aesthetics and pedestrian connectivity.

All required notifications have been completed which includes a sign on-site, legal advertisements in the Arizona Republic and mailings to all property owners within 1,000 feet. A neighborhood meeting was held with the applicant in July with only four attendees and all attendees were in support of the proposed expansion. The aVOICE digital platform received six views and no comments. Staff recommends approval of the request to apply the HAIO infill overlay to the site, subject to the two conditions contained in the staff report.

Mayor Weise opened the public hearing and did not receive any requests to speak. Mayor Weise closed the public hearing and opened the floor for comments from Council.

Council Member Pineda stated that this is a great investment to City in terms of appearance and branding. He is happy to see the investment taking place along Central Avenue.

Mayor Weise stated he would argue that a facility like the Southwest Lending Closet could not go in a new commercial location as it would get lost. He stated this location is ideal for these types of companies.

Council Member Conde moved to accept the findings and adopt Ordinance 1710-1119, approving Application PL-19-0094 Southwest Lending Closet, a request to apply the Historic Avondale Infill Overlay (HAIO) to approximately 0.94 gross acres of property located at the southwest corner of Central Avenue and Madden Drive, subject to two (2) conditions of approval as listed in the Staff report; Council Member Malone seconded the motion.

Upon vote, the motion was carried unanimously 6 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	<i>Absent for the vote due to declared Conflict of Interest</i>
Mayor Weise	Aye

b. PRELIMINARY PLAT – RIVER RUN – APPLICATION PL-19-0066

Ken Galica, Division Lead Planner, requested City Council consider request by Mr. Shaine T. Alleman, Tiffany & Bosco, P.A., to approve a Preliminary Plat for River Run, a 103-lot single-family residential subdivision on approximately 14.52 acres located west of the southwest corner of Thomas Road and 119th Avenue.

Presentation by Mr. Galica included the following:

- The site location is at Thomas Road and 119th Avenue.
- The existing uses are single family residential on two sides.
 - Garden Park Subdivision to the east.
 - Donatela II to the south.
 - Agua Fria River is to the west.
 - Thomas Road is to the north.
- Background
 - Parcel is approximately 14.5 acres in total.
 - Property was annexed in June of 2018.
 - Property was given a minor General Plan amendment to change the designation on the property to medium high density to allow for an alternative single-family product, such as townhomes and condominiums.
 - Council approved the River Run planned area development in June of 2018.

River Run is a gated community that can be accessed off of 119th Avenue with two access points. A third access point will be for emergency access only. It will include 103 lots at 2,400 square feet. Internal streets will be located within HOA-owned tracts that will be maintained and owned by the HOA. There will be 5.33 acres of usable open space, over double the standard requirement of 15 percent which included is a community pool, tot lot, basketball court and trail system. The proposed preliminary plat is in strict conformance with the PAD that was reviewed by Council last year. It is also in conformance with the zoning ordinance, subdivision regulations and single-family residential design manual. The design of the community will be unique, different than anything that has been approved in the north Avondale area. The developer is to construct all required improvements, including 119th Avenue. The Planning Commission

recommended approval on September 19, 2019. Staff recommends approval subject to the four conditions contained in the staff reports.

Vice Mayor Dennis asked if the trail on the west side of the property will be maintained by the HOA or by the City. Mr. Galica stated this detail will be addressed during the final plat. If precedence is a guide, previously this type of responsibility has been the responsibility of the HOA. Vice Mayor Dennis explained that typically, when an HOA takes over the property from the declarant, the declarant provides the HOA with a reserve study. This provides clarity as to the assets and liabilities that the HOA will be responsible for in terms of collecting reserves and maintaining the property.

Council Member Malone asked whether 119th will ever be a through street going all the way to McDowell Road. Mr. Galica stated that concept was looked at when West Point High School was constructed which the determination was to try to limit the traffic on 119th. Additionally, the power lines would make widening and connecting the street difficult. Although there are no plans to expand at this time, there is potential that this could occur in the future. In response to a question from Council Member Malone, Mr. Galica confirmed that there will be enough space for access points if there is Thomas Road bridge in the future.

Council Member Nielson noted that there will be no access to the trail from River Run and that access would have to come from Thomas Road or below. Mr. Galica stated that the trail will be located outside of the gates with pedestrian gates along the open space spines to allow resident access. In response to a question from Council Member Nielson, Mr. Galica confirmed that the Donatela II HOA maintains the trail at its location.

Council Member Kilgore moved to accept the findings and approve Application PL-19-0066, a Preliminary Plat for the 103-lot River Run single-family residential subdivision, subject to four (4) conditions as listed in the staff report plus a fifth condition for a reserve study provided to the HOA at the time property is transferred from the developer to the HOA; Council Member Malone seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

6 ADJOURNMENT

There being no further business before the Council, Council Member Pineda moved to adjourn the Regular Meeting; Council Member Malone seconded the motion.

Upon vote, the motion was carried unanimously 7 to 0.

Council Member Conde	Aye
Council Member Kilgore	Aye
Council Member Malone	Aye
Council Member Nielson	Aye
Council Member Pineda	Aye
Vice Mayor Dennis	Aye
Mayor Weise	Aye

Meeting adjourned at 8:14 p.m.

Kenn Weise, Mayor

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Session and Regular Meeting of the Council of the City of Avondale held on the 18th day of November 2019. I further certify that the meeting was duly called and held and that the quorum was present.

Marcella Carrillo, City Clerk

CITY COUNCIL REPORT

SUBJECT: Telecommunications license and right-of-way use agreement between the City of Avondale and Zayo, LLC.

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Jeff Scheetz, Chief Information Officer, (623) 333-5011

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to approve a new Wired Telecommunications License and Right of Way Use Agreement with Zayo, LLC to allow the placement of fiber telecommunication infrastructure in the City right of way, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

BACKGROUND:

Zayo, LLC provides telecommunications services use for high-speed or large corporations. With recent West Valley expansion, Zayo desires to install and construct fiber telecommunication infrastructure within the City's right-of-way to provide telecommunications services to businesses within the region. The currently planned project requires Zayo to place infrastructure within Avondale along with other West Valley Cities.

DISCUSSION:

This telecommunications license and right-of-way use agreement will:

Allow Zayo to occupy the City ROW with conduit and fiber, as well as lease fiber and telecommunication services to businesses in the West Valley.

Under this agreement, the City may receive and use in-kind dark fiber from Zayo for City purposes.

As-Built drawings of any conduit located within the ROW will be provided to the City electronically in a format compatible with our GIS system.

Zayo shall be responsible for maintenance and repair of all fiber installed. The agreement includes performance bond and security fund requirements that must be met by Zayo to guarantee that they observe, fulfill and perform all terms of the Agreement. Standard Insurance requirements are outlined as well.

BUDGET IMPACT:

The City will charge an application fee of \$750, plan review and permit fees in accordance with the City Fee Schedule, and will assess an annual right-of-way use fee, or receive in-kind dark fiber, once fiber is leased to third parties.

RECOMMENDATION:

Staff recommends that the City Council approve a new Telecommunications License and Right-of-Way Use Agreement with Zayo, LLC to allow the placement of fiber telecommunication infrastructure in the City right-of-way, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**WIRED TELECOMMUNICATIONS LICENSE
AND RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND ZAYO, LLC**

This Wired Telecommunications License and Right-of-Way Use Agreement (this “Agreement”) is effective as of _____, 2020 (the “Effective Date”), by and between the City of Avondale, an Arizona municipal corporation (the “City”) and Zayo Group, LLC, a Delaware limited liability company (“Zayo”).

RECITALS

A. Zayo obtained from the Arizona Corporation Commission a certificate of convenience and necessity by Decision No. 72561, dated August 24, 2011 (the “CC&N”).

B. Zayo desires the ability to be able to install its Facilities (defined below) within the City’s rights-of-way and/or operate, maintain and repair such Facilities within a portion of the City’s rights-of-way, subject to the requirements of this Agreement.

C. Zayo seeks an agreement and permits to occupy the rights-of-way with telecommunications infrastructure as permitted under state and federal law and in accordance with the lawful requirements of the City.

D. The City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of such Facilities within the City’s boundaries pursuant to the Avondale City Charter, Avondale City Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to A.R.S. §§ 9-581, 9-582, and 9-583), by the City’s police powers, its authority over public rights-of-way, and its other governmental powers and authority.

E. The City desires to receive fair value for the use of its right of way assets to the extent permitted by state and federal law and to meet the prohibition against gifting public assets to a private party.

F. The City desires to reserve rights to construct and use and allow others to construct and use all manner of additional improvements in the rights-of-way.

G. Zayo agrees to provide and maintain accurate maps showing the location of all Facilities owned or used by Zayo on public rights-of-way within the corporate limits of the City, and to comply with reasonable mapping requirements as City may establish from time to time.

H. Zayo will secure the appropriate licenses, encroachment and other permits required by the City Code for the placement of its Facilities placed in the City’s boundaries.

I. Zayo has agreed to comply with public property use requirements that City has established and may reasonably establish from time to time in accordance with State and

Federal laws.

J. There may be portions of the ROW (the “Third Party Areas”) upon which the Zayo Facilities may not be built without permission (the “Third Party Permission”) from one or more third parties (the “Third Parties”). The Third Party Areas include canal crossings or other areas that have limited ROW dedications or that have regulatory use restrictions imposed by a Third Party.

K. The City retains the right to adopt, from time to time, in addition to the provisions contained in this Agreement, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to protect and promote the property, health, safety and welfare of the City’s inhabitants.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Zayo hereby agree as follows:

1. Definitions.

ACC means the Arizona Corporation Commission.

A.R.S. means Arizona Revised Statutes.

Backbone means a high-speed network that interconnects smaller, independent networks and is the through-portion of a transmission network (not the spurs that branch off).

Call means the operations required to set up or establish, maintain, and terminate or release a connection through a telephone network in support of a communication between two or more stations. A call comprises a sequence of events that begins when an end user at an originating station initiates a call request to a switch that may work in conjunction with other switches to establish a connection to an end user at a destination station and concludes when one party (user) terminates the connection.

Claim(s) means and includes losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney’s fees incurred through all appeals.

Commercial Mobile Radio Services means two-way voice commercial mobile radio service as defined by the FCC in 47 U.S.C. § 157.

Common Carrier means a private company offering interstate or foreign communication by wire or radio or the interstate or foreign transmission of energy to the general public on a non-discriminatory basis.

Conduit means a pipe of either metal, ceramic or plastic that protects buried cables.

Conduit System means any combination of Ducts, Conduits, manholes and handholes joined to form an integrated whole.

Contractor means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods relating to this Agreement. Contractor shall include any subcontractor hired and/or used by Zayo Contractors for the performance of services or provision of goods relating to this Agreement.

Dark Fiber means fiber optic strands that are not connected to transmission equipment.

Duct means a single enclosed tube, pipe or channel for enclosing and carrying cables, wires, innerduct and other facilities.

Equipment means any tangible asset used to install, repair, or maintain Facilities in any ROW.

Facilities means the plant, equipment, and property used in the provision of communication and telecommunication services and not owned by the City, including but not limited to poles, wires, pipe, conduits, pedestals, antenna, and other appurtenances placed in, on, or under Public Highways.

FCC means the Federal Communications Commission.

Fiber Optic Network is a communication system consisting of an optical transmitter to convert an electrical signal into an optical signal to send into the optical fiber, a cable containing bundles of multiple optical fibers that is routed through underground conduits and buildings, multiple kinds of amplifiers, and an optical receiver to recover the signal as an electrical signal.

Information Service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.

Inner-Duct means a pathway created by subdividing a Duct into smaller channels.

Intrastate Call means a call in a conventional circuit-switched network that originates and terminates in a single state.

Interstate Call means a call in a conventional circuit-switched network that originates in one state and terminates in a different state (or country).

Interstate Telecommunications Services Provider means a Telecommunications Corporation that places underground or above ground Facilities in the Public Highway for interstate telecommunications services.

Interstate Traffic means a communication or transmission that originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia.

Manhole means an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating and maintaining cable and fiber in a Conduit.

Multichannel Video System includes:

- A. A “cable system,” as the term is defined in Title VI of the Federal Communications Act of 1934, providing service within the City.
- B. An “Open Video System,” as the term is defined in Title VI of the Federal Communications Act of 1934, 47 U.S.C. § 573 and implementing regulations (47 CFR § 76.1500), providing service within the City.
- C. Any other system providing Multichannel Video Programming Services within the City, where the service is transmitted in whole or in part via wires or lines that are in or cross any ROW within the City. The preceding sentence shall apply whether the provider owns, leases or otherwise obtains the right to use the wires or lines, including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for that purpose.
- D. Any other system providing Multichannel Video Programming Services within the City where a license or similar permission or approval from the City is required under applicable law.

For purposes of this Agreement and the license granted herein, “Multichannel Video Programming Services” means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station or by a direct to home satellite service. Multichannel Video Programming Services specifically includes, but is not limited to, “cable service” as the term is used in Title VI of the Federal Communications Act of 1934.

Parties shall collectively mean the City of Avondale, and Zayo.

Provider means a Telecommunications Corporation that constructs, installs, operates or maintains telecommunications Facilities in the City Public Highways.

Public Emergency means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Avondale or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

Public Highway means all the roads, streets and alleys and all other dedicated public rights-of-way and public utility easements of the City.

Public Service Corporation means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers. However, a message transmitting company is only a public service corporation if it is a common carrier.

Public Utility Easement means an easement or other real property right that is granted dedicated, reserved or otherwise conveyed for the use of utility facilities, regardless of the language used in creating such right, and regardless of the inclusion of other authorized uses.

Right-of-way ("ROW") means an area of land, which by deed, conveyance, agreement, easement, dedication, usage or process of law, is reserved or dedicated to the City for public purposes, including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage.

Service Lateral means an underground facility that is used to transmit, distribute, or furnish communications from a larger route to a smaller route.

Telecommunications means the leasing of dark fiber for transmission purposes, the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. **However, the term does not include commercial mobile radio services, pay phone services, cable services, .**

Telecommunications Corporation means any Public Service Corporation to the extent that it provides telecommunications services in this state.

Telecommunications Services means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

2. Permission to Use Right-of-Way.

2.1 Grant of License. Subject to the provisions of this Agreement, the Avondale City Code, the Avondale Charter, and Arizona and federal law, City hereby grants to Zayo permission through a telecommunication license to use the designated Use Area portions of the right-of-way ("ROW") subject to and conditioned upon Zayo's full, timely, complete and faithful performance of all obligations to be performed or required hereunder by Zayo, and Zayo hereby accepts the terms and conditions of this Agreement.

2.1.1 Use Areas Defined. The Use Areas are the portion of the public utility easements and ROW within the City's corporate boundaries as shown on Exhibit A, attached hereto and incorporated herein by reference. The ROW is limited to the public street and alley

rights-of-way and public utility easements that are owned by City from time to time comprising City's public utility easement network. The land comprising the ROW will decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, de-annexations, and other events that affect the amount of land included in City's public utility ROW network inventory. This Agreement shall not allow Zayo to use ROW that is abandoned, condemned, removed from the City's corporate boundaries, or is otherwise no longer part of the City's public utility easement network.

2.1.2 Non-Use Areas. Zayo shall not use or occupy any portion of the Use Areas other than as permitted pursuant to this Agreement. The Facilities shall be confined to the Use Areas. The Use Areas do not include any Third Party areas. Zayo agrees that its use of the Third Party Areas is dependent upon Third Party Permission, which permission is outside of the control of the City.

2.2 Conditions of Grant; Permitted Uses. Zayo's use and occupation of the ROW shall in all respects conform to all and each of the following provisions:

2.2.1 Permitted Uses. Zayo shall use the portions of the ROW solely for the uses allowed under this Agreement and shall conduct no other activity at or from those designated portions of the ROW where it has permission to be. The permitted uses are limited to the following:

A. Constructing, maintaining, repairing and operating the Facilities as described in this Agreement.

B. Such additional related uses for which City may give consent from time to time. Such additional uses may only be conducted following City's giving to Zayo written notice of such consent. City may terminate or impose conditions and limitations on such consent from time to time in City's sole and absolute discretion.

2.3 Prohibited Uses. All uses of the ROW other than as specifically described in Section 2.2.1 above are prohibited. Zayo may not allow third parties to use the Facilities for any use that Zayo itself does not have the authority under this Agreement. The license granted by this Agreement does not allow Zayo to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission that may be subject to a cable television or video services system license or franchise. The license does not allow a Multichannel Video System and/or the providing of Multichannel Video Programming Services; the Parties agree that a separate agreement would be needed in order to have such a system or to provide such services.

2.4 Facilities Limited. The authority to install and construct any Conduit System and/or Fiber Optic Networks on City property granted herein authorizes Zayo only to install such Fiber as is necessary to construct and operate the infrastructure described in this Agreement in order to provide the authorized Services and does not authorize Zayo to install or construct any Facilities not expressly provided for in this Agreement.

2.5 Empty Conduit. To the extent that Zayo occupies the ROW with solely empty

conduit and/or leased Dark Fiber and/or uses the City's ROW to provide services other than the telecommunication services as defined by A.R.S. § 9-581, such use and/or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits and laws.

2.6 Compliance with Applicable Law. Zayo shall comply with all applicable laws as amended from time to time, including but not limited to, the Avondale City Code and City Charter, and Arizona and federal law, in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Zayo to comply with any law or regulation of the FCC or the ACC to engage in the business activities anticipated by this Agreement, Zayo shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement; provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the Telecommunications Services Zayo may provide under this Agreement without a written modification to this Agreement. Such law or regulation by the FCC or ACC must be final and not subject to any further review by a court of competent jurisdiction .

3. Non-Exclusive Rights/Priority Rights.

3.1 Non – Exclusive Grant. This grant is not exclusive and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation, or construed to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

3.2 Subject to City's Use or Occupancy. Any and all rights granted to Zayo shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or persons, and to manage City's own facilities. Any and all rights to occupy the ROW granted to Zayo shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create or vest a perpetual real property interest in land to Zayo, including any fee or leasehold interest, easement, or any franchise rights.

3.3 Subject to Others' Use or Occupancy. Any right or privilege claimed pursuant to this Agreement by Zayo for any use of any public ROW shall be subordinate to: (A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (B) any prior lawful occupancy or use thereof by any other person; and (C) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

3.4 City's Modification Rights. Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its Facilities and/or the ROW, and for that purpose to require Zayo, at no expense to the City, to remove, relocate or abandon in place Zayo's Facilities in order to accommodate the reasonable activities of the City. The City shall not be liable for lost revenues sustained by Zayo, however caused, because of damage, modification, alteration, or destruction of its Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues

are conducted in accordance with applicable laws and regulations and do not result due to the City's gross negligence or willful misconduct.

3.5 Condition of Use Areas. The Use Areas are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

3.6 Rights Reserved to City. There is hereby reserved to City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful code ordinance, resolution, regulation, standard or requirement of any kind imposed by the City; Zayo by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City. The reserved rights include the right to use and allow other Competing Users (defined in Subsection 3.6.1 below) to conduct Competing Activities (defined in Subsection 3.6.2 below) at any location upon the Use Areas.

3.6.1 Competing Users. Water/waste/storm pipes, pavement, fiber, telephony, electric lines, cable and other facilities may all be located within the same segment of ROW with portions of the Facilities. Zayo accepts the risk that the City and others (the "Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the ROW unavailable for Zayo's use. The Competing Users include without limitation, the City, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the Use Areas.

3.6.2 Competing Activities. Zayo accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (the "Competing Activities"). The Competing Activities include, without limitation, any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land:

A. All manner of streets, alleys, signs, sidewalks, trails, ways, traffic control devices, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.

B. All manner of pipes, fiber, wires, cables, vaults, cabinets, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, anchors, access points and guys of every description, and all manner of other utility facilities and their appurtenances.

C. All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances.

D. All other uses of the ROW that the City may permit from time to time.

3.6.3 City's Rights Cumulative. All of the City's reserved rights under various provisions of this Agreement shall be cumulative to each other.

3.6.4 Use Priorities. This Agreement does not grant to Zayo or establish for Zayo any exclusive rights or priority in favor of Zayo to use the Use Areas. Zayo's use of the Use Areas shall be subordinate to all Competing Activities. Zayo shall not obstruct, impede, disrupt or interfere with or prevent any Competing User from using the Use Areas.

3.6.5 Regulation. The City shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Zayo to cooperate and participate in implementing such resolutions. Without limitation, the City may take any or all of the following into account in regulating use of the Use Areas:

A. All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.

B. All other factors the City may consider relevant, whether or not mentioned in this Agreement.

C. Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.

3.6.6 Disruption by Competing Users. The City and its agents, contractors or employees shall not be liable to Zayo, its customers or third parties for any service disruption or for any other harm caused them or the Facilities due to Competing Users or Competing Activities.

3.6.7 Emergency Disruption by City. The City may remove, alter, tear out, relocate or damage portions of the Facilities in the case of fire, disaster, or other emergencies if the City Manager or designee deems such action to be reasonably necessary under the circumstances. In such event, the City and its agents, contractors or employees shall not be liable to Zayo or its customers or third parties for any harm so caused to them or the Facilities. When practical, the City shall consult with Zayo in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Facilities. In any event, the City shall inform Zayo after such actions. Zayo's work to repair or restore the Facilities shall be Relocation Work as set forth in Section 11 below.

3.6.8 Public Safety. If the Facilities or any other Zayo equipment, improvements or activities within the Use Areas present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or without the Use Areas, or to the City's ability to safely and conveniently operate the ROW or perform the City's utility, public safety and other public health, safety and welfare functions, then Zayo shall immediately remedy the hazard, comply with the City's requests to secure the Use Areas, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment. Zayo's work crews shall report the Use Areas within two hours of any request by the City under

this subsection.

4. Notice of Other Users.

4.1 Third Party Contracts. Zayo may enter into contracts with unrelated third parties (“Users”) in the ordinary course of Zayo’s business for use of the Zayo Facilities within the portions of the ROW subject to this Agreement. Such contracts (“User Contracts”) shall be subject to all requirements and provisions of this Agreement and the following:

4.1.1 User Contract Required. No person shall transmit voice, video or data over the Fiber Optic Networks or otherwise use the Conduit System(s) except under a User Contract with Zayo; the identity of such Users must be disclosed to the City upon request but such information will be considered Confidential and Proprietary under Section 30.3.2. All User Contracts shall prohibit such Users from performing any construction, maintenance, repair or other work of any description in the ROW related to the Fiber Optic Networks or Conduit System(s), unless such Users have an agreement with the City.

4.1.2 User Work in ROW. Such Users shall not perform any construction, maintenance, repair or other work of any kind in the ROW related to the Fiber Optic Networks or Conduit System(s) unless: (A) the User Contract provides for the User to construct, install, operate or maintain any portion of the Fiber Optic Networks or Conduit System(s) within the route in the ROW; and (B) the User has entered into an Agreement with the City for use of the City’s ROW.

4.2 Zayo Responsible for Third Party Users. Zayo shall cause to comply with this Agreement all persons using the ROW through or under Zayo or this Agreement. Zayo is responsible for any violations of this Agreement by persons using the ROW through or under Zayo or this Agreement.

4.3 Dark Fiber Leases. Should Zayo lease Dark Fiber or Conduit to a User within the ROW, Zayo shall inform the City within 45 business days of the location and length of the Dark Fiber or Conduit route that is being leased through an indefeasible right of use agreement or similar contractual arrangement. Provided that Zayo is paying a per foot ROW use fee or has provided the City in-kind services for the leased line no additional ROW fee shall be charged. If no ROW fee is being paid by Zayo and no-in kind services are being provided to the City, then the leased line shall be subject to the ROW Fee Identification of the Dark Fiber lessee will be kept confidential to the extent allowed by law. If there is a public records request for such information, City will contact Zayo to allow it an opportunity to seek judicial relief to prevent the disclosure of the lessee’s identity.

5. Intentionally Left Blank.

6. Regulatory Conditions Relating to Right-of-Way Usage. For purposes of this Agreement, whenever work is done in the ROW relating to any of the Facilities, Zayo agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its Contractors and that the obligations of Sections 6 and 7 are imposed on both Zayo and any of its Contractors, who

will be considered Zayo's agents and for whom Zayo will be responsible. Zayo will ensure that Zayo and its agents comply with Public ROW use requirements as follows:

6.1 Registration. Zayo agrees to register with the City by completing an application or renewal application form and paying the applicable application fee.

6.2 Notice of Changes. Zayo shall file a proposed amendment to the registration before it makes any change that would render the registration information incomplete or inaccurate. A change of Zayo's name or address must be filed at least 10 days prior to the date the change becomes effective; a change in the telephone number must be filed 10 days before the change becomes effective.

6.3 Facilities Construction. Zayo is completely responsible for ensuring that its Facilities are constructed, installed, operated and/or maintained in accordance with the Avondale City Code and established practices with respect to such public ROW and easements. The proper permits must be applied for prior to commencing any work, and the terms and conditions of such permits must be strictly followed.

6.4 Plan Approval. Zayo's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed.

6.5 Interference Minimized. The Facilities to be constructed, installed, operated, maintained, upgraded and removed hereunder, shall be so located or relocated as to interfere as little as possible with traffic or other authorized uses within said public ROW and easements, including Competing Activities. Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by the City.

6.6 City's Reserved Powers. Zayo and its agents shall be subject to the City's exercise of such police, regulatory and other powers as it now has or may later obtain, and Zayo may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Facilities located within or on public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer and enforce the provisions of this Agreement.

6.7 Signs. All signage is prohibited except in compliance with the following requirements:

6.7.1 Signs Required. Zayo shall install and thereafter maintain all signs and markings that the Facilities and Zayo's activities may make necessary for safe use of the Use Areas by the public, the City, Zayo and other persons who may be at the Use Areas at any time for any reason.

6.7.2 Signs Covered. This Section 6.7 shall apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

6.8 Lighting. Lighting is prohibited except as this Agreement may specifically allow for construction activities.

6.9 Noise. Except during approved construction, noise at the Use Areas is subject to the following limitations:

6.9.1 No Amplified Sound. Except for vehicle backup alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited.

6.9.2 Sound Control Devices. All equipment must be equipped with appropriate mufflers and other sound control devices.

6.10 Governmental and Neighborhood Relations. Zayo shall conduct its activities in coordination with the City as necessary to maintain good relations with all third parties, governmental and other entities having jurisdiction over the Use Areas, all other occupants of the Use Areas, and the occupants of surrounding real property. Zayo shall immediately notify the City in writing of any actual or threatened dispute, violation or other disagreement with other utilities or users relating to the Use Areas. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Use Areas): (i) State of Arizona (ii) Maricopa County (iii) Bureau of Reclamation (iv) Central Arizona Water Conservation District, (v) Salt River Project. Notwithstanding Zayo's obligations under this Section 6.10, Zayo is not an agent for the City.

6.11 Zayo's Agent. Zayo shall at all times retain on call available to the City by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Facilities and who shall be authorized to represent and act for Zayo in matters pertaining to all emergencies and the daily operation of the ROW and all other matters affecting this Agreement. Zayo shall also provide notice to the City of the name, street address, electronic mail address, and regular and after-hours telephone numbers of a person to handle Zayo's affairs and emergencies related to the ROW. Any change shall be given in writing in the manner stated for notices under this Agreement.

6.12 Coordination Meetings. Zayo shall meet with the City and other ROW users from time to time as requested by the City to coordinate and plan construction on the ROW and all matters affected by this Agreement.

6.13 Regulatory Approval Process. The building permit processes, ROW management and similar regulatory requirements that apply to Zayo's Facilities are completely separate from the requirements of this Agreement. Zayo's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Zayo's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Zayo must make all submittals and communications regarding the requirements of this Agreement through the City's contract administrator for this Agreement, and not through planning, building safety or other staff. Zayo must obtain all approvals in accordance with all present and future City codes, policies and procedures.

6.14 Relationship of Plans Approval to Regulatory Processes. Zayo's submission of plans under this Agreement, the City's approval of plans for purposes of this Agreement, and

the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. Building permits, zoning clearances, or any other governmental reviews or actions do not constitute approval of any plans for purposes of this Agreement.

7. Plan Approval, Permits, and Inspection.

7.1 Required Approvals. No Facilities shall be installed, constructed, located on, or attached to any property within the corporate limits of the City until Zayo has applied for and received approval for permits from the City. Zayo shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving Zayo's Facilities subject to this Agreement. Additionally, Zayo and its Contractor(s) shall comply with all other provisions of the Avondale City Code, including but not limited to Chapter 21 regarding streets and sidewalks, and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Zayo's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW.

7.2 Permits; Licenses. Zayo shall submit the applicable Permit Application(s) together with the details, plans and specifications for City review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed pursuant to the rights granted under this Agreement. Zayo and/or its Contractor(s) shall abide by all stipulations of all licenses and permits issued. If Zayo desires to change the location of any portion of the Conduit System(s) and/or Fiber Optic Network(s), including any related Facilities or equipment, from that set forth in the initial Permit Application, Zayo shall apply for and obtain approval for an amendment to the permit prior to installation or construction.

7.3 Multiple Permit Policy. The City may issue reasonable policy guidelines to all licensees/users to establish procedures for determining how to control issuance of engineering permits to multiple licensees/users for the same one mile segments of their Facilities. Zayo agrees to cooperate with the City in establishing such policy and comply with the procedures established by the City to coordinate the issuance of multiple engineering permits in the same one mile segments.

7.4 Approval; Denial. City will approve or deny such applications based on the availability of space at the location sought by Zayo, safety and other considerations in accordance with the City Code, applicable ROW construction regulations and other applicable law. Zayo and/or its Contractor(s) agree to comply with the terms of any City-issued licenses and permits.

7.5 Construction Standards. Any new Conduit or other Facilities placed in the ROW will be constructed using industry standard horizontal directional drilling and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber

optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Zayo and/or its Contractor(s) will install any new Conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG Specifications"), the City's supplements to the MAG Specifications, and the City of Avondale General Engineering Requirements.

7.6 System Component Changes. If Zayo desires to change the components of any of the Fiber Optic Network and such would require Zayo to obtain a permit, written approval of such change must be obtained from the City.

7.7 Specifications. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet City standards as set forth in the City of Avondale General Engineering Requirements and the MAG Specifications and the City of Avondale Supplements thereto, and to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

7.8 New System Installation. Any new Conduit system(s) and/or Fiber Optic Network(s) shall be installed as agreed upon by Zayo and the City. If portions of this project will take place on the major arterial streets in City, Zayo and City will work to minimize the inconvenience to the citizens of City and others who use those major arterial streets impacted by the project by developing segments of the project to be completed in sequence.

7.9 Minimal Interference with City Uses. Any Conduit systems and/or Fiber Optic Network(s) to be constructed, installed, operated and maintained under this Agreement shall be located or relocated so as to interfere as little as possible with traffic, existing utilities or other authorized uses over, under or through said streets and public ways. Zayo shall not install, operate, or allow the use of equipment, methodology or technology that may or would unreasonably interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying receiving or transmitting equipment). If such unreasonable interference should occur, Zayo shall immediately discontinue using the equipment, methodology or technology that causes the interference until Zayo takes corrective measures to alter the Fiber Optic Network(s) to eliminate such interference. Any such corrective measures shall be made at no cost to City. Zayo shall be responsible to ensure compliance with this Agreement by all persons using the ROW through or under Zayo or this Agreement.

7.10 Co-location. Zayo's installation of the Facilities shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along with Zayo's route as set forth in this Agreement. All installations of cable and/or fiber shall be in Conduit or Inner-duct as reasonably approved by the City Engineer or authorized designee; provided, however, nothing herein shall require Zayo to incur any additional expense to accommodate common installations.

7.11 Facility Location Street Opening. Although the exact placement and location of

any additional Facilities shall be determined by City through the permit process, Zayo has expressed its intent and City has expressed its desire to have any Facilities installed outside of the paved street areas whenever such location is feasible and reasonable. Further, if it is the intent and desire of Zayo for the Conduit System to be placed by horizontal directional drilling under such streets when feasible and reasonable; bore profiles based on vacuum pothole information shall be part of the engineered plans submitted to the City. Arterial streets shall not be bored unless approved by the City Engineer or authorized designee.

7.11.1 Street Opening Surcharge. In the event that a street opening in new pavement or resurfaced pavement cannot be avoided, Zayo agrees to pay a reasonable surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven years old.

7.11.2 Closure Requests. Whenever Zayo or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets, or public places, the opening or alteration shall be completed and restored with due diligence within seven business days or such time as allowed by the City Engineer. Zayo shall, upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Zayo or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

7.12 Zayo Representative. Zayo shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

7.13 Neighbor Notification. Prior to the start of any construction work, Zayo shall provide written notice to the businesses and/or residences adjacent to the work being done. If an emergency requires activity without such written notice, Zayo shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, Zayo shall promptly furnish to City documentation of such permission from such other affected property owner.

7.14 Traffic Control.

7.14.1 Regulatory Requirements. All traffic shall be regulated in accordance with: MAG Specifications; the City of Phoenix Barricade Manual, latest edition; the Manual on Uniform Traffic Control Devices; and any special provisions included herein or as part of a permit issued according to this Agreement.

7.14.2 Traffic Representatives. At the time of the pre-construction conference, Zayo shall designate an American Traffic Safety Services Association certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to ensure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, the City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

7.14.3 Traffic Control Plan. Zayo shall have the full responsibility and liability for traffic control for work performed by Zayo or its Contractors. Zayo shall submit a Traffic Control Plan to the City's Traffic Engineer for approval at least one week prior to beginning work under this Agreement. It shall be noted that traffic under this Agreement shall include all motor vehicles, bicyclists, and pedestrians. Zayo shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of construction; the City may cause Zayo to cease construction until the Traffic Control Plan is provided.

7.14.4 Plan Alternatives. During construction it may be necessary to alter traffic control as approved by the City's Traffic Engineer. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the City of Phoenix Barricade Manual, latest edition. The most restrictive manual shall apply. Zayo shall pay any and all applicable barricade fees.

7.14.5 Plan Costs. City will make no payment for traffic control. The cost for any fees shall be Zayo's responsibility.

7.14.6 Damage to City Traffic Control Devices. In the event Zayo or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience and that is pre-approved by the City. Any damage caused by Zayo or its Contractor(s) or subcontractors that is repaired by the City will be billed to Zayo at two times the cost.

7.14.7 Neighbor Notifications. Zayo shall notify all adjacent or affected residents or businesses at least 48 hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

7.14.8 Pedestrian Access. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by the City's Traffic Engineer.

7.14.9 Speed Limits. Speed limits shall be strictly enforced.

7.15 Clean Up. Zayo and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and shall maintain the work and public ROW in a safe, neat and clean condition.

7.16 Safety. Zayo and Zayo's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the infrastructure is being placed, including safety of all persons (including employees) and property during performance of the work. This requirement

shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Zayo's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Zayo from compliance with these provisions.

7.17 Blue Stake. Zayo and its Contractor(s) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Zayo's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.

8. Hazardous Substances.

8.1 Applicable Law. Zayo's and its Contractor(s)' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* or the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.* or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances").

8.2 Toxic Substance Restrictions. Zayo and/or its Contractor(s) shall not produce, dispose of, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

8.2.1 Vehicle Use. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery.

8.2.2 Batteries. Electric backup batteries.

8.3 Disposal. Zayo and/or its Contractor(s) shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by City.

8.4 Use Restriction. Zayo and/or its Contractor(s) shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

8.5 City Held Harmless. In addition to and without limitation of any other indemnities or obligations, Zayo shall pay, indemnify, defend and hold City harmless against

any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW used that is attributable to or directly caused by Zayo, its Contractor(s) or anyone using the ROW under this Agreement.

8.6 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Zayo shall cause the Use Areas to be visually inspected for any signs of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Zayo shall cause the contractor or other person performing such work to give to Zayo notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials, and will indemnify, defend and hold the City harmless against any disturbance in such materials in the course of the contractor's or other person's work. Zayo shall cause any storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Zayo upon the ROW to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Zayo shall promptly deliver to the City copies of all reports or other information regarding Toxic Substances.

8.7 Notice to City. Zayo and/or its Contractor(s) shall immediately notify City of any Toxic Substance at any time discovered or existing upon the ROW, whether or not such existence is a result of a violation of this Section 8. Zayo is not responsible for Toxic Substances that may exist at the ROW as long as Zayo's Contractors and/or any other persons using the ROW under this Agreement did not do any of the following: (A) participate in the Toxic Material coming to the ROW; (B) fail to immediately report the Toxic Material to City; (C) participate in spreading or otherwise disturbing the Toxic Material; (D) exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

8.8 Acknowledgment of Potential Toxic Substances. Zayo understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Zayo acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic-Substances containing-materials.

9. On-Call Assistance. Zayo shall be available to staff employees of any City department having jurisdiction over Zayo's activities 24 hours per day, 7 days per week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Network. The City may contact by telephone the network operations center operator at the following phone number 855-482-7225 regarding such problems or complaints and may use that number in order to reach Zayo at any time for any emergency matter. Zayo shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Zayo shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

10. Mapping Requirement.

10.1 As-Built Drawings. Zayo shall maintain As-Built Drawings of its Facilities located within the ROW and shall furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified

by the City) and in hard copy form on an annual basis or upon reasonable request by the City. Zayo shall create and maintain maps of any of its Conduit System and/or Fiber Optic Network routes, new routes, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City. Zayo will also provide surface-location marking of any of Zayo's Facilities that are located underground within any public ROW within 10 business days of installation. The information provided by Zayo under this section will be accurate to the best of Zayo's knowledge. Zayo shall make every reasonable effort to provide accurate and useful information, and the City acknowledges that the information will be provided on an "as-is" and "as-available" basis. Zayo shall be permitted to remove any information from the drawings provided hereunder that is not required for the City's purposes or is otherwise confidential to Zayo.

10.2 Failure to Provide Updates. If complete updates are not provided in a compatible format, Zayo shall pay the actual, reasonable costs, plus 15% administrative mark-up, the City incurs to update the City's electronic mapping format due to the location or relocation of Zayo's Facilities.

10.3 Incorrect Format Records. In the event Zayo fails to supply records in the City specified format and there is a cost to the City in converting Zayo provided files, Zayo will be responsible for the conversion costs and will pay such costs within 30 days of the date of the bill from the City invoicing the amount due.

10.4 Confidentiality. The files and drawings provided by Zayo to the City shall be considered confidential and subject to the restrictions in Section 30 below and disclosed as a public record only to the extent required by A.R.S. § 39-126.01.

11. Relocation.

11.1 Relocation Costs. Zayo shall relocate at no expense to the City, any Facilities or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose for any City project whenever directed to do so by City. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by the Zayo, and subject to multiple licensee relocations, as described in this Section 11.1, the City shall allocate the portion of such funds earmarked for relocating Facilities to reimburse Zayo for the actual cost to relocate its Facilities. If more than one licensee is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the licensees eligible for such reimbursement. However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Facilities owned, operated and/or maintained by the Zayo, and (i) subject to multiple licensee relocations, as described in this Section 11.1; and (ii) provided that the funding includes a specific allocation for the relocation of utilities in addition to roadway improvements, the City shall allocate the portion of such funds earmarked for relocating Facilities to reimburse Zayo for the actual cost to relocate its Facilities. If more than one licensee is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the licensees eligible for such reimbursement. Zayo shall not hold the City liable for failure to request or file a claim for any

funds for the relocation of the Zayo's Facilities. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. Zayo shall comply with any and all requirements of the Avondale City Code. Within 90 days after service of notice by the City, Zayo shall remove the designated portions of the Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the 90-day period, Zayo shall take reasonable steps to remove the Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City. City agrees to cooperate with Zayo to identify alternate locations where available within the ROW.

11.2 Relocation Permits. Zayo agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating or reconstructing of any portion of its Conduit System(s) or Fiber Optic Network(s) on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Zayo is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. Zayo will maintain any annual permits required by the City for such maintenance and emergency repairs. Zayo will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

11.3 City Self- Help. If the City needs to perform any part of the necessary relocation or removal work that has not been done by Zayo within the time required by the City, it shall be entitled to seek payment for such relocation costs by drawing upon the letter of credit or security fund required by this Agreement pursuant to Section 24 below.

11.4 Zayo Consent. Except as otherwise provided herein, City shall not, without the prior, written approval of Zayo, intentionally alter, remove, relocate or otherwise interfere with any portion of Zayo's Facilities. Any written approval required shall be promptly reviewed and processed by Zayo and shall not be unreasonably withheld.

12. Damage to Public Property.

12.1 Duty to Restore Damage. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Zayo's Facilities is required or permitted under this Agreement, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Zayo, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, to as good a condition as before, in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. If Zayo does not repair the damage or disturbance as just described, then City shall have the option, upon 10 days prior, written notice to Zayo, to perform or cause to be performed such reasonable and necessary work on behalf of Zayo and to charge Zayo for the proposed costs to be incurred or the actual costs incurred by the City at City's standard rates, plus a 15% administrative mark-up.

12.2 Emergency Restoration. Notwithstanding the notice provision above, in the event

of a Public Emergency, the City shall have the right to immediately perform, without prior, written notice to Zayo, such reasonable and necessary work on behalf of Zayo to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted; such work shall be completed in a manner reasonably satisfactory to the City Engineer. The City shall provide written notice to Zayo of the repairs as soon as practicable after the work has begun. Zayo agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs, relocation and/or removal costs from Zayo and may draw upon a bond and/or letter of credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by Zayo as required by Section 12.3 below.

12.3 Pavement Restoration Costs. For any pavement cuts by Zayo, Zayo agrees to restore the pavement and to reimburse the City for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 21 of the Avondale City Code and the fees established by the City pursuant thereto. Zayo agrees to pay amount owed within 30 days from the date of issuance of an invoice from City. Failure to do so shall entitle City to draw upon the letter of credit or security fund and/or performance bond.

12.4 Payment Deadline. Upon the receipt of a demand for payment by City, Zayo shall, within 30 days, reimburse City for any undisputed costs.

13. Public Emergency Disruption by City. City shall have the right, because of a Public Emergency, to take reasonable action, including severing, disrupting, removing, tearing out, digging-up or otherwise damaging and/or destroying Zayo's Facilities without any prior notice to Zayo, if the action is deemed necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director, or designees. In such event, the City and its agents, contractors or employees shall not be liable to Zayo, its Contractors or its customers or third parties for any harm so caused to them or the Facilities, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with Zayo in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform Zayo of any actions taken. Zayo shall be responsible for repair at its sole expense of any of its Facilities damaged pursuant to any such action taken by City.

14. Public Safety/Hazard Disruption. If any of Zayo's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then Zayo shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment. In the event of a response to a hazard, the City and its agents, contractors or employees shall not be liable to Zayo or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in responding to such hazard, unless such damages are caused by City's gross negligence or willful misconduct. When practical and if possible, City will consult with Zayo in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property

involved or the Facilities involved.

15. Contractors.

15.1 City Approval. The specific independent Contractors and/or subcontractors identified and used by Zayo for the construction activities to construct or expand Zayo's Facilities and service area will need to be approved by the City Engineer or designee prior to issuance of each construction permit, such approval shall not be unreasonably withheld, delayed, conditioned or denied. Any Contractors performing construction work within the ROW or public easements shall comply with all applicable licensing requirements for general contractors in Arizona.

15.2 Zayo Representation Regarding Independent Contractors. Zayo represents and warrants all independent Contractors maintain coverages the same as all the requirements stated herein for Zayo.

16. Legal Workers. If, and to the extent A.R.S. § 41-4401 is applicable to this Agreement, Zayo shall comply with laws regarding workers as follows:

16.1 Warranty of Compliance. Zayo warrants to City that Zayo and all of its Contractors will comply with all federal immigration laws and regulations that relate to their employees and that there is compliance with the E-Verify Program under A.R.S. § 23-214(A).

16.2 Breach of Warranty. A breach of the foregoing warranty by Zayo shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

16.3 Inspection of Records. City retains the legal right to inspect the papers of any employee of Zayo Contractor who works pursuant to this Agreement to ensure that they are complying with the warrant given above.

16.4 Zayo Warranty of Violations. Zayo shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

17. Validity of Agreement. Zayo hereby acknowledges that, as a condition of acceptance of this Agreement, Zayo was required to be represented throughout the negotiations of the Agreement by its own attorneys and Zayo had the opportunity to consult with its own attorneys about its rights and obligations regarding the Agreement. Zayo has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, Zayo acknowledges and accepts the right and authority of City to execute this Agreement and to enforce the terms herein.

18. Term of Agreement. The initial term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until 12:00 a.m. on the date that is the fifth annual anniversary of the Effective Date (the "Initial Term"), unless sooner terminated as set forth in this Agreement.

19. Modification, Renewal, Extension.

19.1 Renewal Process. If Zayo has complied with the Agreement's terms and conditions at the end of the Initial Term, this Agreement shall be renewed for an additional five years (the "Extension Term"), unless either party provides written notice of non-extension to the other party at least 90 days prior to the expiration of the Initial Term. The Initial Term and the Extension Term are referred to collectively as the "Term". Such Extension Term would expire at 12:00 a.m. on the date that is the tenth anniversary of the Effective Date.

19.2 Renewal Fee. Zayo shall pay to City the applicable fee at the time of the submission of the application.

19.3 Agreement Changes. City shall have the right to renegotiate any of the terms from the Agreement that may be required by applicable federal, state or local law or regulations. Zayo understands that the City may adopt future code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in their entirety the current fees and other costs imposed upon Zayo under this Agreement. Zayo acknowledges the right of the City to adopt and implement such lawful code amendments and/or fee schedules.

19.4 Holdover Term. If Zayo's Facilities remain in the ROW, and Zayo continues to use such Facilities beyond the expiration of this Agreement and continues to pay the annual fees, Zayo shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed 60 days beyond the expiration of the Term or until the date of the first City Council meeting scheduled immediately after the expiration of the Term, and no permits will be issued to Zayo by the City until a new Agreement has been approved by the City Council.

19.5 Expiration of Holdover Term. Failure by Zayo to have a valid Agreement to use the ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to Zayo and the liquidated damages amount set forth in Section 32 shall apply. If, however, Zayo has timely filed its application and is in active negotiations with the City prior to the expiration of the Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to Zayo prior to the expiration of the Agreement.

20. Payments.

20.1 No Rights Waived. By entering into this Agreement, neither party waives any current or future rights reserved under the Telecommunications Act of 1996, including but not limited to, those rights set forth in Sections 253(c), reserving the City's right to manage the public ROW and to require fair, non-discriminatory and reasonable compensation from Zayo for use of the public ROW.

20.2 Payments to City. Zayo shall be solely responsible for payments to City as follows:

20.2.1 Application Fee. Zayo shall pay City an application fee of \$750.00 or the current application fee whichever is greater for the administrative costs involved

in the issuance of a telecommunications license, which shall be due at the time of the submittal of the application.

20.2.2 Fee for Recoupment of City Costs. Subject to state and federal law and Section 19.3, the Parties agree that the City is entitled to recoup actual costs for processing and granting permits to place Zayo Facilities in the ROW. The City may assess a per linear foot of trench fee for actual costs for placement of Zayo Facilities in the ROW, which may vary depending on actual cost, but shall be no less than \$.89 per lineal foot. Actual cost includes all costs incurred by the City, including processing a permit, or permits, and inspecting work during and after construction, but does not include such costs as large-scale valuations not directly connected to the permit request, consultant engagements, or other non-customary direct permit costs. Fees shall be paid within thirty (30) days of permit approval.

20.2.3 In-Kind Payment. At the time of a Zayo permit application, and subject to the determination of the City, the Parties agree that Zayo may install conduit and fiber for the City's use in consideration for treatment of the value of such conduit and fiber as an in-kind payment in lieu of part or all of the fees set forth in Section 20.2.2 ("In-Kind Payment"). In-Kind Payment may consist of an indefeasible right of use in conduit or dark fiber or both ("In-Kind Facilities"), as requested by the City and shall not exceed an amount greater than the fees under Section 20.2.2. The value of In-Kind Payment shall be determined by Zayo's then-current market fees in the area for conduit or dark fiber and shall be applied as payment for the fees under Section 20.2.2 for the duration of the Term. If the value of such conduit and fiber equals or exceeds the amount of fees under Section 20.2.2 then such fees shall be deemed to be paid in full. The City reserves the right to audit any valuation of In-Kind Payment to determine accuracy, but shall not delay issuance of permits during such audit.

20.2.4 In-Kind Facilities. The In-Kind Facilities shall be outline in **Exhibit B**, "In Kind Facilities." Exhibit B may be modified by the Parties pursuant to future requests for access to the ROW.

20.3 Damage Fees. Zayo shall pay any reasonable costs associated with any damage caused to the ROW or public property. Such Damage Fees shall be due to the City not later than 30 days after the City's written notice to Zayo of such amounts.

20.4 True-up of City Fees. Excepting In-Kind Payments, in which case Zayo shall not owe any further fees for occupancy of the ROW, if the City's actual costs under Section 20.2.2 exceed the per lineal foot fee assessed, City may remit an invoice for such actual costs to Zayo and Zayo shall pay such costs within 30 days.

20.5 Late Fees. Payment is deemed paid only when the City actually receives a good cash payment. Should any payment not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of 1% of the amount due, or \$100, whichever is greater. Furthermore, any Fee Payment that is not timely paid shall accrue simple interest at the rate of one and 1.5% per month from the date the amount first came due until paid. Zayo expressly agrees that the foregoing represent fair and reasonable estimates by the City and Zayo of the City's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delayed payment. The City shall have the right to allocate payments received from Zayo among Zayo's obligations.

20.6 City Obligations/Rights to Municipal Fiber.

20.6.1 Lease of Fiber. The City shall not sell or lease In-Kind Facilities to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to third parties. The City may use the In-Kind Facilities for the City's own internal use and to transmit data to and receive data from a political subdivision of the state pursuant to an intergovernmental agreement.

20.6.2 Connection to Fiber. The City shall be permitted to (i) connect dark fiber to the In-Kind Facilities only at mutually-agreed-upon access points in the ROW, and (ii) use the In-Kind Facilities only for the use and benefit of the City and all of City's affiliated entities. Zayo shall connect dark fiber City facilities to the In-Kind Facilities at the agreed-upon ROW access points at no cost to the City; provided, however, if the City requests, Zayo will construct and build the connection from the ROW access point into any City facility in exchange for City's payment of the sum of Zayo's actual, verified construction costs, plus an administrative charge equal to 15% of the construction costs.

20.7 ZAYO Obligations:

20.7.1 Maintain Fibers. Zayo shall maintain and repair the In-Kind Facilities so as to ensure continuing conformity of the In-Kind Facilities with their respective operating specifications. Zayo shall also provide the following special maintenance on the In-Kind Facilities at no cost to the City: maintenance, repair, restoration, removal, relocating, conditioning and activation of the In-Kind Facilities and any other work that may be performed to accommodate the existing or future infrastructure, so long as work does not involve maintenance of City-owned or City-controlled facilities beyond the In-Kind Facilities.

20.7.2 Repair Fibers. Zayo shall respond and make good faith efforts to repair within 12 hours of notification from the City any interruption of service or failure of the In-Kind Facilities to operate. Provided Zayo acts in good faith to make repairs under this subsection, failure to repair within such 12 hour time period shall not be a breach of this Agreement.

20.7.3 Access Points. Zayo shall provide the City with access to the In-Kind Facilities at splice points specified by the City and agreed upon by Zayo.

21. Taxes. Zayo shall pay any applicable City, county and state transaction privilege and use tax. Such taxes are in addition to any non-tax amounts owed by Zayo pursuant to Section 20. Zayo consents to the disclosure of any and all information reported on Zayo's transaction privilege tax returns by authorizing and allowing the City's tax collector to release such information to the City Manager or authorized designee.

22. Performance Bond.

22.1 Bond Requirements. Prior to receiving any permit to construct, install, maintain or perform any work on public property that requires a permit from the City pursuant to applicable City codes, Zayo shall cause to be filed and maintain until either completion of the construction or termination of this Agreement as determined by Zayo, a faithful performance bond in favor of

City in the sum of \$100,000 or the amount of the construction costs (whichever is greater) to guarantee that Zayo shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum in the bond, up to the whole thereof, may be forfeited to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Zayo, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Zayo agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund and/or letter of credit.

22.2 Bond Release. If Zayo has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

23 Security Fund.

23.1 Deposit Required. Upon application for continued use of the ROW, but no later than five business days before this Agreement is submitted to the City Council for approval, Zayo shall provide either a cash deposit or domestic irrevocable standby letter of credit to the City, in a form acceptable to the City Attorney, in the initial amount of \$50,000 as a security fund. Said cash deposit or letter of credit shall be maintained with the City for the term of this Agreement as security for the faithful performance by Zayo of all the provisions of this Agreement, and compliance with all lawful orders, permits and directions of any department or office of the City having jurisdiction over its acts or defaults under this Agreement and any permit issued pursuant thereto, and the payments by Zayo of any fees, claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities. Upon material default that remains uncured (after written notice) for greater than 30 days, the City shall have the full power of withdrawal of funds from the cash deposit put into the security fund account or letter of credit, except that all interest accrued on any cash deposit shall be payable to Zayo on demand. No withdrawals shall be made from the security fund account without the prior, written approval of the City Manager and 60 days prior, written notice of intent to withdraw to Zayo.

23.2 Withdrawal. If Zayo fails, within 10 business days of a notice of intent to draw on either the security fund account or on the letter of credit, to either dispute the notice in writing, or pay City any taxes or fees due and unpaid, or fails to repay to City, within such 10 business days of such notice, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of Zayo in connection with this Agreement, or fails, within 30 days of such notice of failure by City to dispute the notice in writing, or comply with any provision of this Agreement that the City reasonably determines can be remedied by an expenditure of funds from the cash deposit in the security fund account or letter of credit, City may immediately withdraw the amount thereof, with interest from the security fund account. Upon such withdrawal, City shall notify Zayo of the amounts and date thereof.

23.3 Restoration of Deposit Amounts. Within 20 days after notice to Zayo that any amount has been withdrawn by City from the security fund account or letter of credit, Zayo shall deposit a sum of money sufficient to restore such security fund account to the original

amount or present to the City an additional irrevocable letter of credit in said amount so that the total amount of funds available to the City is \$50,000.

23.4 Erroneous Withdrawal. Any funds that City erroneously or wrongfully withdraws shall be returned to Zayo, with interest of 1.0% per month, with such interest beginning 30 business days after such a determination.

23.5 Rights Reserved. The rights reserved to City, with respect to the security fund account and/or letter of credit, are in addition to all other rights of City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund account or letter of credit shall affect any other right City may have.

24 Insurance.

24.1 General.

24.1.1 Insurer Qualifications. Without limiting any obligations or liabilities of Zayo, Zayo shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to A.R.S. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms reasonably satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

24.1.2 No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Zayo. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so, provided that such review be subject to the following restrictions: (1) the City shall execute a nondisclosure agreement in a form reasonably acceptable to Zayo prior to reviewing any policy or endorsements; and (2) any review shall be completed at a time and location reasonably selected by Zayo, which location shall be in the office of Zayo's attorney. Notwithstanding the foregoing, Zayo may redact the following information from disclosed policies and/or endorsements in that it is proprietary and is not relevant to the risk assessment to be made on behalf of the City: (1) premium amounts including surcharges, taxes and assessments; (2) references to other additional insureds or persons or entities waiving subrogation; (3) any entity specific endorsements relating to other additional insureds; (4) any information identifying a Zayo financial obligation to its insurer or its insurance broker; or (5) any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Zayo from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

24.1.3 Additional Insured. All insurance coverage except Workers' Compensation and Employers liability insurance and Professional Liability insurance, if applicable, and Builder's Risk insurance shall include, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

24.1.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all responsibilities or obligations required under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

24.1.5 Primary Insurance. Zayo's insurance shall be primary insurance with respect to Zayo's obligations under this Agreement and in the protection of the City as an Additional Insured.

24.1.6 Waiver. All policies, except for Professional Liability, including Workers' Compensation and Employers liability insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its representatives, officials, officers and employees for any claims arising out of the work or services of Zayo. Zayo shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

24.1.7 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Zayo shall be solely responsible for any such deductible or self-insured retention amount.

24.1.8 Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Zayo shall execute written agreements with its subcontractors containing the indemnification provisions set forth in Section 26 and insurance requirements set forth herein protecting the City and Zayo. Zayo shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements. 24.1.9 Evidence of Insurance. Prior to commencing any work or services under this Agreement, Zayo will provide the City with suitable evidence of insurance in the form of certificates of insurance. The City also reserves the right to review, upon request, a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Zayo's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect, provided that such review of any declaration page shall be subject to the following restrictions: (1) the City shall execute a nondisclosure agreement in a form reasonably acceptable to Zayo prior to reviewing any declaration page; and (2) any review shall be completed at a time and location reasonably selected by Zayo, which location shall be in the office of Zayo's attorney. Notwithstanding the foregoing, Zayo may redact information from the declaration page in that it is proprietary and is not relevant to the risk assessment to be made on behalf of the City:

- (1) premium amounts including surcharges, taxes and assessments;
- (2) references to other additional insureds or persons or entities waiving subrogation;
- (3) any entity specific endorsements relating to other additional insureds;
- (4) any information identifying a Zayo financial obligation to its insurer or its insurance broker; or
- (5) or any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. The City shall reasonably rely upon the certificates of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the responsibilities or obligations and the City's acceptance of the Zayo's work in the ROW and as evidenced by annual certificates

of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Zayo's responsibility to forward renewal certificates to the City within 30 days of the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance shall specifically include the following provisions:

A. The City, its representatives, officers, directors, officials and employees are Additional Insureds as follows:

(i) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or substantial equivalent.

(ii) Auto Liability – Under ISO Form CA 20 48 or substantial equivalent.

(iii) Excess Liability – Follow Form to underlying insurance as applicable.

B. Zayo's insurance shall be primary insurance as respects Zayo's performance of the Agreement.

C. All policies, except for Professional Liability, including Workers' Compensation and Employers liability insurance, waive rights of recovery (subrogation) against the City, its representatives, officers, officials and employees for any claims arising out of work performed by Zayo under this Agreement.

D. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

24.2 Required Insurance Coverage.

24.2.1 Commercial General Liability. Zayo shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 General Aggregate Limit, together with a \$10,000,000 umbrella policy. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or substantial equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its representatives, officers, officials and employees shall be included as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or

substantial blanket equivalent, and if form CG 20 10 03 97 is used, it shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance. The commercial general liability policy maintained by Zayo shall contain a provision that the City, although an additional insured, shall nevertheless be entitled to recover under said policies for loss occasioned to it, its servants or employees, by reason of the negligence of Zayo.24.2.2 Vehicle Liability. Zayo shall maintain Business Automobile Liability insurance with a combined single limit of \$5,000,000.00 each occurrence covering all of Zayo’s owned, hired and non-owned vehicles assigned to or used in the performance of the Zayo’s responsibilities or obligations under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its representatives, officers, directors, officials and employees shall be included as an Additional Insured code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof.

24.2.3 Professional Liability. If this Agreement is the subject of any professional services or work, or if the Zayo engages in any professional services or work adjunct or residual to performing the work under this Agreement, Zayo shall maintain (or, if applicable, cause its contractors or subcontractors to maintain) Professional Liability insurance covering negligent errors and omissions arising out of any professional services or obligations performed by Zayo, or anyone employed by the Zayo, with a limit of \$5,000,000.00 each claim and aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for two years past completion and acceptance of the work or services, and the Zayo shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

24.2.4 Workers’ Compensation Insurance. Zayo shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Zayo’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000.00 for each accident, \$500,000.00 disease for each employee and \$1,000,000.00 disease policy limit.

24.3 Cancellation and Expiration Notice. Upon receipt of notice from its insurer, the Zayo shall provide the City notice of cancellation of any insurance policy required under this Agreement.

24.4 Alternative to Required Forms. The requirements for the use of specific ISO or ACORD insurance forms and/or compliance with their specific provisions set forth in this Section 25 shall be deemed satisfied in the event Zayo (A) provides such certificates and endorsements on published ISO or ACORD forms or their substantial equivalents, and (B) maintains a net worth in excess of \$55,000,000.00 during the term of this Agreement, with evidence of such net worth provided in a form acceptable to the City Manager.

25. Indemnity.

25.1 Generally. Zayo acknowledges that it has liability for any and all of its Facilities installed in the public ROW and for its use of the ROW and for its exercise of its rights under this

Agreement directly or through its Contractor(s), except to the extent of intentional acts or gross negligence on the part of the City. To the fullest extent permitted by law, Zayo, shall defend, indemnify and hold harmless the City, or its officials, boards, commissions, agents or employees, individually and collectively, for, from and against any and all Claims (as defined in Section 1) arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, omissions of Zayo, its employees, agents, or any tier of Contractors or any other person for whose acts, errors, mistakes, or omissions Zayo may be legally liable and from any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Zayo, its agent, employees or representatives to fulfill Zayo's obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this paragraph shall survive termination of this Agreement. This indemnification applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

25.2 Defense Costs. Zayo further agrees to indemnify and hold harmless the City, its officers and its employees from and against all costs, damages, and expenses incurred by the City, its officers and its employees in the defense of any litigation brought by third parties challenging the right of the City to enter into this Agreement with Zayo under City or other applicable law.

25.3 Tender of Defense. In the event that any notice of claim is served or litigation is commenced, City shall tender the defense of the litigation to Zayo, who shall immediately defend the litigation. Zayo shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Zayo (and, where such terms directly obligate or affect City, acceptable to City). Zayo agrees to keep the Avondale City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to Zayo or its insurance carrier.

25.4 Notice. The Parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all relevant accident reports, incident reports, statements or other documents relevant to or which may lead to relevant materials or information, in the possession of the other party, its employees, agents, subcontractors, and/or others, promptly upon request.

25.4.1 Relevant Information. Both Parties agree to make their employees, agents, and Contractors available to the other party to gather any relevant information relating to an incident in which claims, demands, or lawsuits arise from.

26. Construction of Interpretation. It is the purpose of this Section 26 to provide maximum indemnification to City under the terms and conditions expressed and, in the event of a dispute, this Section 26 shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Zayo against any and all Claims. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose only from City's sole gross negligence or intentional acts. Only in this event may Zayo then commence an action against City for damages related to that portion judicially determined to be City's fault.

26.1 Survival. The provisions of this Section 27 shall be and remain a binding right

and obligation of the City and Zayo. It is the intent of Zayo and the City upon the Effective Date of this Agreement that this Section 26 serves as any such declaration and shall be a binding obligation of and inure to the benefit of Zayo and the City and their respective successors and assigns, if any. Any failure by Zayo to indemnify the City as required under this Section 26 shall be considered a material breach of this Agreement. Notwithstanding anything to the contrary herein, Zayo shall not be obligated to indemnify the City on any provision of this Agreement that is later determined to be invalid.

26.2 Insurance No Limit. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section 25.

26.3 Reformation. As a condition to the City's executing this Agreement, Zayo specifically agrees that, to the extent any provision of this Section 26 is not fully enforceable against Zayo for any reason whatsoever, this Section 26 shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

27. Limitation of Liability.

27.1 Limited to Gross Negligence. The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Zayo or to its affiliates or customers for any interference with or disruption in the operations of Zayo's Fiber Optic Networks or the provision of services, or for any damages arising out of or materially related to Zayo's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

27.2 No Liability for Agreement Enforcement. Zayo also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.

27.3 Zayo Assumption of Risk. Zayo shall assume the risk of, and hereby relinquishes any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority under Arizona law to issue this license.

28. Transferability of License and Agreement.

28.1 Personal to Zayo. This license is personal to Zayo.

28.2 Transfer to Related Entity. Notwithstanding the foregoing, Zayo may transfer or assign this Agreement to any affiliate entity under common corporate control, or to the surviving entity in the event of a merger or acquisition of Zayo without City's prior consent. Zayo shall, however, give notice to the City of any such transfer or assignment.

28.3 Transfer to Unrelated Entity. Any transfer or assignment for reasons other than provided for in Section 28.2 above shall require the City's prior, written consent, which shall not be unreasonably withheld, conditioned, or delayed; Zayo agrees that it will provide sufficient documentation about the proposed transfer or assignment to enable the City to properly evaluate the proposed transfer in a timely manner.

28.4 Transfer Conditions. In making a determination as to whether to approve a transfer or assignment, the City may consider the following:

28.4.1 Required Application Information. The same information required on an original application for the license.

28.4.2 Zayo Compliance. Whether Zayo is in compliance with its license and Avondale City Code and if not, the proposed transferee's commitment to cure such noncompliance.

28.4.3 Contract Impairment. Whether the proposed transfer or assignment would result in an evasion of other applicable provisions of law or impair lawful contracts.

28.4.4 Effect on City's Interests. The effect of the transfer or assignment on the City's interests.

28.5 Acceptance by Assignee. No application for a transfer of a license shall be granted unless the proposed transferee or assignee agrees in writing that it will abide by and accept all terms of this Agreement and the Avondale City Code, and that it will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of Zayo under this Agreement for all purposes, including renewal.

28.6 Approval not Waiver. Approval of the City of a transfer or assignment of this Agreement does not constitute a waiver or release of any of the rights of the City, whether arising before or after the date of the transfer or assignment.

28.7 Transfer Remedies. When consent is required, any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. City may, in its sole discretion and in addition to all other lawful remedies available to City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from Zayo and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive City's consent.

28.8 Transfer Fee. Zayo shall pay to City in advance the sum of \$2,000 as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not City grants such request.

29. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this

Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Zayo's construction of improvements, Zayo's negligence, Zayo's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Zayo), or otherwise as a result of the existence of this Agreement.

30. Zayo's Records.

30.1 Recordkeeping. During the entire term of this Agreement, Zayo shall keep records and provide information to City regarding the following:

30.1.1 Facility Status. The status of the construction, repair, location or relocation of Zayo's Facilities.

30.1.2 Fiber Optic Networks. Information relating to any Fiber Optic Networks on portions of the route that are not exempt from a fee imposed for occupation of the ROW.

30.1.3 Obligations of Agreement. Information relating to this Agreement and/or to City's or Zayo's rights or obligations under this Agreement.

30.2 Record Form. Zayo shall make available to City the requested reports or records in the formats in which they are customarily prepared by Zayo. Zayo reserves the right to object to any request made under this Section 30 as unnecessary, unreasonable or inappropriate under the circumstances and to seek appropriate confidentiality protections for any information to be produced to City.

30.3 Inspection. If necessary for the City to determine Zayo's compliance with the terms of this Agreement or other applicable law, Zayo shall provide relevant documentation as requested by the City and respond to questions in a format and time period to be decided by the Parties based on the nature of the request. Such records shall be available to City at Zayo's offices in Maricopa County, Arizona or delivered electronically as may be appropriate. Zayo shall also require its employees, agents, and accountants to give their cooperation and assistance in connection with City's access to such records.

30.3.1 Service Documentation. Such documentation can include information on the type of services Zayo is offering its customers (but not necessarily information disclosing any particular service being provided to a specific customer) and/or the financial information used in calculating any payments or taxes due to the City under this Agreement. If Zayo determines that in order to respond to City's request for documentation, it must reasonably provide Proprietary Information, Zayo shall so mark such documentation as "Confidential" and state the reason it believes the information is proprietary.

30.3.2 Proprietary Documentation. Proprietary Information disclosed by Zayo to the City or its constituent departments shall be regarded as Proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Zayo of such request and allow Zayo a reasonable opportunity to defend its information from disclosure.

30.3.3 Public Domain Documentation. Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

30.3.4 Disclosure Required by Law. Notwithstanding any provision in this Agreement, Zayo acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 *et seq.*).

30.4 Reports. Upon request and subject to any necessary confidentiality requirements, Zayo shall provide to City copies of any communications and reports submitted by Zayo to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

31. Penalties for Violation of Terms.

31.1 Cumulative Remedies. City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Zayo complies with the terms of this Agreement or the applicable law. Such remedies are cumulative and may be pursued in the alternative.

31.2 No Special Damages. Neither Party will be liable under this Agreement for lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages, even if the Party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy. This limitation will not apply to any breach of obligations related to confidentiality.

32. Liquidated Damages for Violations.

32.1 No Reduction of Indemnity or Insurance. Zayo's obligation to pay liquidated damages does not in any way detract from Zayo's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Zayo's obligation to pay liquidated damages.

32.2 Liquidated Damages Calculated. Zayo understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of the Avondale City Code will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the security fund for the following concerns:

32.2.1 ROW Restoration. Each failure to properly restore the public ROW or to correct related violations of specifications, code ordinance or standards within 15 business days of having been notified by the City to correct such defects – \$500 per day. Such amount is in addition to any cost the City may incur to restore the ROW or correct the violation.

32.2.2 Records Availability. Each failure to make Zayo's books and records available as required by this Agreement and such failure continues for 15 business days after receipt of notice of failure to provide from the City – \$250 per day.

32.2.3 Unauthorized Transfer. Any unauthorized partial or total transfer of this Agreement –\$4,000 per transfer.

32.2.4 Material Action. Each material instance of any action or non-action by Zayo contrary to the terms of this Agreement that is not cured after 30 days' notice – \$500 per day.

32.2.5 Insurance Certificate. Failure to provide a valid Certificate of Insurance as required by Section 25.1.9 that is not cured after five days' notice –\$50 per day.

32.3 Assessment. If the City concludes that Zayo may be liable for liquidated damages, the City shall issue to Zayo a Notice of Intention to Assess Liquidated Damages and allow Zayo an opportunity to cure in the time period specified in Sections 32.2.1 through 32.2.5. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. Zayo shall pay the liquidated damage amount within 10 business days of receipt or the City shall deduct the amount from the security fund. If, however, the liquidated damages exceed \$5,000, then the following shall apply:

32.3.1 Extended Payment Period. Zayo shall have 30 days of receipt of such notice to pay the liquidated damage amount or give City notice contesting the assertion of noncompliance.

32.3.2 Contest of Assessment. In the event that Zayo contests the City's assertion of violation or fails to respond to the City's notice of intent to assess liquidated damages, City shall schedule a hearing before a neutral hearing officer to determine whether the liquidated damages were properly assessed. The City shall provide Zayo with at least 10 business days' notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Zayo will be given the opportunity to be heard and present evidence. If the result of the hearing is that Zayo is responsible for the liquidated damage amount, then the amount determined at the hearing will be due 10 days after the hearing decision is announced. The hearing officer's determination shall be final and conclusive.

33. Revocation/Termination.

33.1 Early Termination. The license granted hereunder may be revoked and/or the Agreement terminated prior to its date of expiration by the City for the following reasons:

33.1.1 Material Failure. Zayo fails to comply with the material terms and conditions of this Agreement or applicable law, including but not limited to failing to maintain any insurance, security fund, letter of credit, and/or a performance bond.

33.1.2 Failure to Pay. Zayo fails to make payments in the amounts and at

the time specified in this Agreement after a final determination that the payments were owed.

33.1.3 Cessation of Business. Zayo ceases doing business in the City.

33.1.4 Map Failures. Zayo fails to provide current, accurate as-built plans and maps showing the location of all Facilities installed or constructed in the City.

33.1.5 Bankruptcy. Zayo is or becomes insolvent or is a party to a voluntary or involuntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of the City, threaten the financial viability of Zayo as a going concern, or if there is any similar action that affects Zayo's capability to perform its obligations under this Agreement.

33.1.6 Lack of License. Zayo fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.

33.1.7 Court Order. A court has issued an injunction that in any way prevents or restrains Zayo's use of any portion of the ROW and remaining in force for a period of at least 30 consecutive days.

33.2 Cure Period. Before terminating the Agreement under Sections 33.1.1, 33.1.2, 33.1.4, or 33.1.6, the City Manager or a designee, shall give prior written notice to Zayo of the defect in performance and give Zayo 60 days within which to cure the defect in performance.

33.3 Cure Period Waived for Misconduct. The City need not provide a 60 day cure period prior to termination if the City finds that the defect in performance under the Agreement is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where Zayo has already had notice and opportunity to cure.

33.4 Manager Authority. The City Manager has the authority to terminate Agreement, subject to Zayo's right to notice and cure where provided.

33.5 Hearing Prior to Revocation of License. If requested by Zayo not later than 10 days prior to end of the applicable cure period, the City will hold a hearing prior to termination of this Agreement. Such hearing will be held in the same manner as set forth in Subsection 32.3.2 above.

33.6 Termination by Mutual Agreement. This Agreement may be terminated prior to its date of expiration by Zayo by providing the City with 90 days written notice and only upon making arrangements satisfactory with the City Manager to remove all Zayo's Facilities from public property and the ROW, unless the City Manager agrees in writing to allow Zayo to abandon part or all of its Facilities in place. If the City Engineer agrees to allow Zayo to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Zayo shall cooperate to execute any documents necessary to accomplish such transfer within 30 days of such allowance of abandonment.

33.7 Equipment Removal. Notwithstanding anything in Section 33.6 above, upon termination of this Agreement, Zayo shall remove all of its optical repeaters, DWDM and CWDM multiplexers, antennae, fiber optic cables, wires, and related equipment within 90 days.

34. Non-use/Abandonment of the Facilities.

34.1 Removal on Abandonment. An “Abandoned Facility” will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service. If Zayo ceases to provide services or abandons use of any of its Facilities, upon cancellation or termination of the Agreement, Zayo shall notify the City and may, subject to the City’s approval, permanently abandon the Facilities in place. In such event, the City, at its option, may acquire ownership of the Facilities. In lieu of permanent abandonment, the City may require Zayo, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the City.

34.2 City Property. Upon permanent abandonment, if the City does not require removal, Zayo shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities, which are not removed as required by the City within 90 days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. Zayo will notify the Arizona Blue Stake Center to record the Facilities that have been abandoned.

34.3 Title to Property. Title to any and all personal property installed by Zayo upon the ROW that is not removed during the period set forth in Section 34.2 shall automatically vest in City.

34.4 On-going Use. Nothing in Section 34.1 shall be deemed to require Zayo to remove Facilities that the Zayo uses for the provision of services other than Telecommunications Services or Interstate Telecommunications Services, so long as such use of Facilities for the provisions of the ongoing other services is authorized by the City pursuant to this Agreement.

35. Cancellation for Conflict of Interest. Pursuant to A. R.S. § 38-511, City may cancel this Agreement within three years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement is, at any time while the Agreement or an extension of the Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when Zayo receives written notice of the cancellation, unless the notice specifies a later time.

36. Gratuities. City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a gratuity was offered or made by Zayo or a representative of Zayo to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including making any determination or decision about Agreement performance. City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by Zayo.

37. Condemnation.

37.1 Generally. The following shall govern any condemnation of any part of or interest in the area used and/or occupied by Zayo and any conveyance to City or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

37.1.1 Termination for Condemnation. This Agreement shall terminate as to the portion taken on the date that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession.

37.1.2 Power to Condemn. Zayo acknowledges that City and others from time to time may use the power to condemn the area used by Zayo or any interest therein or rights thereto.

A. City reserves the right of condemnation or eminent domain over the area used and/or occupied by Zayo. City does not warrant that it will not condemn the area(s) used and/or occupied by Zayo during the term of this Agreement, but City does not presently have intentions to condemn such area(s).

B. City also reserves the right through its powers of eminent domain to acquire all or any portion of the Facilities owned by Zayo in accordance with the applicable conditions set forth in the Arizona Revised Statutes. However, under no circumstances shall any valuation be made for any right or privilege granted by this Agreement should the City acquire the property of Zayo.

38. Notice.

Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale
 11465 West Civic Center Dr.
 Avondale, Arizona 85323
 Attn: City Manager

With copy to:
City of Avondale
City Attorney's Office
11465 West Civic Center Dr.
Avondale, AZ 85323
Attn: City Attorney

If to Zayo: Zayo Group, LLC

General Counsel
1805 29th St., Suite 2050
Boulder, CO 80301

With a copy to: Zayo Group, LLC
Attn. Underlying Rights
1805 29th , Suite 2050
Boulder, CO 80301

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

39. Governing Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located within Maricopa County, Arizona.

40. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

41. No Warranty.

41.1 As to License. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.

41.2 As to ROW. Zayo acknowledges and agrees that City does not warrant the condition or safety of its row or the premises surrounding the same, and Zayo hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of any City ROW.

42. Non-Waiver. Neither Party shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

43. Remedies Not Exclusive. The remedies set forth in this Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

44. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Zayo, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Zayo and is beyond its reasonable control.

45. Dispute Resolution. In the event of a dispute between the Parties to this Agreement regarding a provision of this Agreement, a Party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the Parties will meet in good faith to attempt to resolve the dispute. If the Parties fail to resolve the dispute, then the Parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing Parties, the disputing Parties shall mutually agree upon the services of one mediator whose fees and expenses shall be borne equally by the disputing Parties. If the dispute is not resolved within a reasonable time, the disputing Parties shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

46. Exhibits. All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as if fully set forth herein

47. Survival of Liability. All obligations of Zayo and City hereunder and all warranties and indemnities of Zayo hereunder shall survive termination of this Agreement.

48. Complete Agreement. This Agreement, including any Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral.

49. Modification or Amendment. This Agreement cannot be modified or amended except in writing signed by both Parties.

50. Israel. Zayo certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in A.R.S. § 35-393, of Israel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

"City"

CITY OF AVONDALE,
an Arizona municipal corporation

Charles Montoya, City Manager

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2020, before me personally appeared _____, the
City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity
was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and
acknowledged that he signed the above document, on behalf of the City of Avondale.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Zayo”

ZAYO, LLC,
a Delaware limited liability company

By:_____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF KANSAS)

COUNTY OF JOHNSON) ss.
)

On _____, 2020, before me personally appeared _____, the _____ of ZAYO, LLC, a Delaware limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of Zayo, LLC.

Notary Public

(Affix notary seal here)

EXHIBIT A
TO
WIRED TELECOMMUNICATIONS LICENSE AND
RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND ZAYO, LLC

[Map of Use Areas]

The map contained within this exhibit is considered confidential and proprietary by Zayo. The map will be kept on file in the City's Development Services and Engineering Department and will be released publicly only pursuant to Section 30 of this Agreement.

CITY COUNCIL REPORT

SUBJECT: Fiscal Year 2018-2019 Year End Budget Amendment**MEETING DATE:** 1/6/2020

TO: Mayor and Council**FROM:** Lindsey Duncan, Finance & Budget Director, (623) 333-2011**THROUGH:** Charles A. Montoya, City Manager, (623) 333-1016**PURPOSE:**

City Council will consider a request to approve a budget amendment for Fiscal Year 2018-2019 (FY2019), utilizing savings in the Finance and Budget Department's budget to cover budget overages caused by an accounting adjustment.

BACKGROUND:

Due to an accounting adjustment on December 12, 2019, certain departments exceeded their budget appropriation. To cover the budget overages, budget authority must be transferred from either contingency or from other departments within the City that had budget savings. The adopted Financial Policies of the City state that the transfer of budget authority between functional groups require City Council authorization.

DISCUSSION:

An accounting adjustment for the health benefits liability occurred on December 12, 2019. This adjustment is required to adequately display the impact of the City paid health benefits on the financial statements. The adjustment was not anticipated in the adopted budget. Most departments had sufficient savings in their budget appropriation to absorb the impact of the accounting adjustment and overall the City has sufficient budget appropriation to cover the accounting adjustment. Some individual departments do not have adequate capacity to cover this unanticipated accounting adjustment, so capacity will need to be transferred to those areas from other areas in the City which had budget savings. The Finance & Budget Department's General Fund appropriation had \$423,671 in budget savings in FY2019, sufficient to cover the overages in other areas in the City.

The table below details the proposed budget transfer.

Fund	Department	Amount
General Fund	City Administration	\$ 1,633
General Fund	Fire & Medical	\$ 31,637
Public Safety Sales Tax	City Court	\$ 3,840
Public Safety Sales Tax	Fire & Medical	\$ 24,945
Public Safety Sales Tax	Police	\$ 70,541
		\$ 132,596

BUDGET IMPACT:

This request will lower the budget capacity available in Finance & Budget Department's General Fund appropriation. No additional expenses will post to the FY2019 budget. As the expenses that necessitate this budget contingency have already posted, there are no additional costs associated with this item.

RECOMMENDATION:

It is recommended that City Council approve the transfer of \$132,596 in budget appropriation from the Finance & Budget Department's General Fund appropriation to cover areas that exceeded their previously approved budget appropriation.

CITY COUNCIL REPORT

SUBJECT: Resolution 1002-0120 - Economic Development Agreement with MGN1 LLC

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Tracy Stevens, Deputy City Manager (623) 333-1014

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Resolution 1002-0120, approving an Economic Development Agreement with MGN1 LLC not to exceed \$300,000 towards the reimbursement of public improvements for the construction of a business service hotel and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

MGN1 LLC is proposing a project consisting of a business service hotel similar to that of an Avid hotel or Aloft. Staff has been working with this developer to find a location in Avondale to build this type of product. This project helps bring to fruition the vision that Council has for The BLVD and acts as an initial investment catalyst for The BLVD.

DISCUSSION:

During staff's discussions with MGN1 LLC, a delta in funding for the project was identified of \$500,000. Staff is proposing an Economic Development Agreement between MGN1 LLC and the City for reimbursement of public improvements, building permit and plan fees in an amount not to exceed \$300,000 to bridge this gap and help move this project forward. The overall project is projected to provide over \$2,000,000 in direct revenues over 10 years.

BUDGET IMPACT:

Staff is proposing a reimbursement up to \$300,000 for public improvements, building permit and plan fees, that would not have been collected absent this project.

Account: Economic Opportunities Fund: 101-6700-6180

RECOMMENDATION:

Staff recommends approval of this Economic Development Agreement between the City of Avondale and MGN1 LLC not to exceed \$300,000 towards the reimbursement of offsite public improvements, building permit and plan fees for the construction of a business service hotel.

RESOLUTION NO. 1002-0120

RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH MGN1, LLC FOR THE PROPERTY GENERALLY LOCATED AT 801 NORTH AVONDALE BOULEVARD, AVONDALE, ARIZONA.

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with persons having an interest in real property located in the City; and

WHEREAS, it is in the best interest of the City to enter into a Development Agreement for construction of a business service hotel, and ancillary uses, on property located at 801 North Avondale Boulevard, Avondale, Arizona; and

WHEREAS, the Development Agreement is consistent with the portions of the City's general plan and any specific area plan applicable to the property on the date this Agreement is executed.

NOW, THEREFORE, LET IT BE RESOLVED, by the Council of the City of Avondale, as follows:

SECTION 1. That Development Agreement will raise more revenue to the City than the amount of the public infrastructure reimbursement expended within the duration of the Agreement and in the absence of the reimbursement the development or similar development would not locate in the City in the same time, place, or manner.

SECTION 2. That the Development Agreement with MGN1, LLC and all attachments and exhibits are hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. That Mayor Kenneth N. Weise is authorized to execute the Development Agreement after it has been executed by all other parties.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

SECTION 5. That the City Clerk is hereby directed to record the Development Agreement with the Maricopa County Recorder within ten (10) days of execution by all parties.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, January 6, 2020.

CITY OF AVONDALE, an Arizona
municipal corporation

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1002-0120

[Development Agreement and
attachments]

See following pages.

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 6th day of January, 2020 (the "Effective Date"), between MGN1 LLC, a Louisiana limited liability company ("MGN1 ") and the City of Avondale, an Arizona municipal corporation ("City"), collectively referred to as the Parties.

RECITALS

This Agreement is predicated upon the following facts:

A. Arizona Revised Statutes ("A.R.S.") 9-500.05, authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. A.R.S. §9-500.11 authorizes the City to appropriate and spend public monies for and in connection with economic development activities.

B. MGN1 is a real estate investment limited liability company and is planning to develop a project consisting of a hotel and other ancillary uses that will complement the City's Boulevard corridor (the "Project").

C. The City finds that the benefits to the City of the Project outlined in this agreement are anticipated to be of a greater economic benefit to the City than the amount of the total Incentive Payments (as defined herein) during the term of this Agreement, and in the absence of such incentives, the Developer or similar persons would not locate in the City of Avondale. The City has undertaken an economic impact analysis that shows significant economic benefits to the City pursuant to the terms of this Agreement, and this analysis serves as a basis for determining the amount of Incentives. Proposed improvements for the MGN1 Property will provide amenities and public benefits to the City, including retaining existing jobs, creating new jobs, economic development in Avondale, tax revenues, water; sewer and drainage enhancements, and other infrastructure, tax, and economic development benefits to the City. Development of the MGN1 Property pursuant to this Agreement, therefore, is determined to be in the best interest of the City and the health, safety and welfare of the City's residents.

D. The Parties hereto acknowledge and agree that this Agreement is consistent with the portions of the City's General Plan and any Specific Area Plan applicable to the MGN1 Property.

AGREEMENTS

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by reference.

2. Exhibits. The following documents are referred to in this Agreement and are attached to and made a part of this Agreement by reference:

<u>Exhibit Designation</u>	<u>Description</u>
A.	Real Property description and map
B.	Applicable Rules
C.	Reimbursement Eligibility Requirements
D.	Guaranty

3. Definitions.

3.1. Agreement means this Economic Development Agreement between MGN1 and City.

3.2. Ancillary Uses means those related commercial uses to a Hotel development which may include but are not limited to Restaurants, individualized retail or service businesses

3.2. Applicable Rules is defined in Exhibit B.

3.3. Business Service Hotel means a hotel establishment that caters to a specific demographic of travelers, such as the individual business traveler, group travel and individual travelers, and offers modern designs, superior guest rooms and public spaces and quality service. Examples of Business Service Hotels include Avid and Aloft.

3.4. City is defined in the preamble to this Agreement.

3.5. Completed or Completion means, when referring to any improvement included in the Development Plan, that a certificate of completion following the certificate of occupancy has been issued by the City for the building of such improvement, subject to completion of reasonable and customary punch list items.

3.6. Costs of Developer Public Improvements means all soft costs, such as engineering, design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor's fees paid or incurred to construct Developer Public Improvements. The cost of acquiring the land dedicated for such Public Improvements, obligations payable with respect to such land under water and sewer payback agreements (to the extent Developer is relieved of such obligations pursuant to this Agreement), and financing costs will not be included in the Costs of Developer Public Improvements.

3.7. Developer means MGN1 and any person or entity to which the rights of MGN1 have been transferred or assigned in whole or in applicable part.

3.8. Developer Public Improvements means all Public Improvements serving the MGN1 Property that are constructed by Developer and accepted by the City during the term of this Agreement. In exchange for the construction of the public improvements, city

will reimburse all planning, building permit, impact fees and related fees incurred in construction of the Project as approved for reimbursement by the City in accordance with the procedure and criteria set forth in Exhibit C attached hereto and incorporated herein. The reimbursement of such Developer Public Improvements not to exceed Three Hundred Thousand Dollars (\$300,000.00). Reimbursement shall be made within thirty (30) days following issuance of a certificate of occupancy for the project

3.9 Effective Date is defined in the preamble to this Agreement.

3.10 MGN1 Property is defined in Recital D.

3.11 Incentive Payments means Reimbursements pursuant to Paragraph 9 of this Agreement.

3.12 Incentives Reduction Factor is defined in Paragraph 9.4.

3.13 Jobs means any type of employment position with IHG Hotels group or any other group to which this Agreement has been assigned, including full-time, part time and contract employees.

3.14 Minimum Requirement means the Minimum Development requirement

3.15 Payroll means the total number of Jobs multiplied by the average salary and bonus compensation of such employees, and excluding benefits.

3.16 Public Improvements means (1) all public streets within or adjacent to the MGN1 Property and the associated public sidewalks, landscaping tracts, streetscape, lighting, and (2) sewer, potable water delivery systems, storm drainage, retention areas, and utilities within or adjacent to public streets and rights-of-way within or adjacent to the MGN1 Property in connection with the development of any portion of the MGN1 Property.

3.17 Reimbursements is defined in Paragraph 9.1.

3.18 Reimbursement Eligibility Requirements means those requirements set forth in Exhibit C.

3.19 Restaurant means a contemporary casual restaurant, having table service and serving beer, wine and alcohol.

3.20 Square Feet means gross square feet.

4. Recordation. This Agreement shall become effective immediately upon the execution hereof by MGN1 and the City. This signed Agreement will be recorded in the Office of the Maricopa County Recorder within ten days following the Confirmation Date.

5. Assignment. The rights of MGN1 under this Agreement, and the rights of any successor to

which MGN1 might assign any of its rights hereunder, may be transferred or assigned, in whole or in part, by written instrument, to any current or future owner or lessee of all or any portion of the MGN1 Property and may also be collaterally assigned to any lender providing financing secured by any portion of the MGN1 Property. Upon the occurrence of any such assignment and notification of the City thereof, the assignee shall be deemed to have assumed, and shall be liable for the payment and performance of, all obligations hereunder arising or accruing under this Agreement after the date of such assignment with respect to the applicable portion of the MGN1 Property; provided, however, that no lender receiving a collateral assignment of any such rights shall be deemed to have assumed any such obligations or be liable for any breach thereof unless and until such lender receives full title to the applicable portion of the MGN1 Property as a result of foreclosure or deed in lieu thereof. The assignor shall be relieved of its obligations hereunder with respect to the applicable portion of the MGN1 Property only if the assignee provides to the City a Guaranty from a guarantor acceptable to the City in its sole discretion or a Letter of Credit in the full amount to secure the portion of the obligations attributable to the applicable portion of the MGN1 Property.

6. Binding Effect of Agreement. The burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their successors in interest and assigns pursuant to A.R.S. 9-500.05(D), as to those portions of the MGN1 Property in which a successor or assign has a fee title or leasehold interest.

7. Subordinate Development Agreements. The City and Developer hereby acknowledge that the development of the MGN1 Property may be accomplished by Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property. In the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

8. Development Plan. Certain development rights and obligations pertaining to the MGN1 Property are established the existing zoning thereof by the City. The development of the MGN1 Property is expected to occur in response to real estate and capital market conditions as follows:

8.1. Developer shall commence construction of the Project within one year of the close of escrow on the property to be acquired from city pursuant to the purchase agreement, and;

8.2. The Project shall be completed within Twenty-Four Months from the date of commencement of construction.

8.3. The Project shall consist of a Business Service Hotel and ancillary uses, the brands of which is satisfactory to the City.

8.4. The Business Service Hotel must remain open and operational for a period of six (6) years following the date of issuance of a certificate of completion. Developer shall execute the Guaranty as set forth in Exhibit D providing for this operational commitment.

8.5 Nothing in this Agreement shall be taken as a promise by the City to rezone the MGN1 Property or amend the zoning and development standards existing on the MGN1 Property.

9. Incentives.

9.1 Incentive Contributions. Notwithstanding any other provision of this Agreement to the contrary, the City will be contributing Three Hundred Thousand (\$300,000) Dollars reflecting the value to the City of Developer Public Improvements as provided for in this Agreement. No Incentive Payments shall be earned, due or payable at any time unless Developer meets sections 8.1; 8.2 and 8.4 of the development plan. At the time the city charges fees for items covered under paragraphs 8.1 and 8.2 of this Agreement, the Developer shall pay such fees. The City will establish a reimbursement account on behalf of developer up to a maximum of Three Hundred Thousand and no/100 Dollars (\$300,000). Upon issuance of a certificate of occupancy for the project and determination by the City that the project is complete, the City shall reimburse the fees. Any fees in excess of the Three Hundred Thousand Dollar (\$300,000.00) cap shall be the responsibility of Developer. Reimbursements may be made for any part of the Project

9.2 Incentives Cap. Based on the economic impact analysis the City has conducted, the total amount of money available for all Incentive Contributions is capped at Three Hundred Thousand Dollars (\$300,000) (the "Incentives Cap"). In the event that Developer fails to achieve any Milestone on or before the applicable Milestone Date as set forth in paragraph 8, the Incentives Cap will be reduced as specified in Paragraph 9.3.

9.3 Reduction of Incentives Payments and Incentives Cap for Failure to Meet Milestones. The Incentive Payments and the Incentives Cap are subject to reduction as provided in this Paragraph 9.3.

9.3.2 If Developer fails to obtain a certificate of occupancy within the deadline set forth in 8.2, the total value of the incentive shall be reduced by Two percent for each month the certificate of occupancy is delayed, up to a maximum of twenty-four percent. If Developer fails to obtain a certificate of occupancy from the City within thirty-six months following approval of close of escrow, the City is relieved from any obligation to pay any incentives.

9.5 Additional Requirements for Reimbursement. Developer will construct and bear the initial cost of all Developer Public Improvements. Upon completion of construction of any portion of such Developer Public Improvements in accordance with the Applicable Rules and the Reimbursement Eligibility Requirements, the City will accept such Developer Public Improvements. Upon acceptance of any Developer Public Improvements by the City, receipt of Developer's Application for Payment therefor complying with the requirements of Paragraph 9.6 and satisfaction of the minimum requirement for the applicable Phase, the Costs of Developer Public Improvements shall

be reimbursed by the City through Incentive Payments as provided in Paragraph 9. Payments pursuant to this Paragraph 9.5 are referred to herein as: "Reimbursements".

9.6 Applications for Payment. In order to receive Incentive Payments, Developer must submit a written application for payment ("Application for Payment") to the City as provided in Paragraph 14.1 or as otherwise directed by the City pursuant to Paragraph 14.1. The Application for Payment shall include with respect to any improvements, a reasonable description thereof and copy of the certificate of completion therefor issued by the City and (3) with respect to any Developer Public Improvements, (i) a reasonable description thereof, (ii) evidence of the City's acceptance thereof in accordance with Paragraph 9.5 and (iii) such other information and documentation as City may reasonably require pursuant to Paragraph 9.5. City shall promptly review any such Application for Payment and notify Developer within 30 days after receipt thereof whether such application has been approved or disapproved and, in the case of disapproval shall specify the reason (or all applicable reasons) therefor, including any additional information reasonably required by City.

10. Duty to Cooperate. The Parties agree that they will act in good faith and with reasonableness operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. The Parties agree to cooperate with one another and to take all actions reasonably necessary to implement this Agreement within a reasonable time after request by the other Party, including but not limited to the timely granting of approvals and processing of applications relating to the implementation of this Agreement.

11. Amendments or Cancellation of the Agreement. This Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the MGN1 Property, only with the mutual written consent of the City and Developer. Within ten (10) days after any such amendment or cancellation of this Agreement is fully executed by all Parties, the amendment or cancellation shall be recorded by the City in the Official Records of Maricopa County, Arizona.

12. Term. The term of this Agreement begins on the Effective Date and, if not sooner terminated or extended by the written Agreement of the Parties and approved by the Avondale City Council, shall remain in full force and effect until automatically terminated Six (6) years after the Date of completion, unless extended by subsequent agreement prior to such termination.

13. Relationship of the Parties. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

14. General Provisions.

14.1 Notices.

Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered

If to the City:

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn. Charles A. Montoya, City Manager

With a copy to:

City of Avondale
Office of the City Attorney
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Michael S. Wawro, Esq

If to MGN1 :

MGN1 LLC,
5201 North Claidorne Avenue
New Orleans, LA 70117
Attn. Maan Ghazool, Member

With a copy to:

14.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

14.4 Attorneys' Fees and Costs. 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.

14.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14.6 Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

14.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and shall not be changed or added to except in the manner provided in Paragraph 11. 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.

14.8 Severability. If any provision of this Agreement is declared void or unenforceable, the provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

14.9 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. The Parties agree that venue for any action of commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

14.10 Default Remedies. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a reasonable time after written notice thereof from the other Party shall constitute a default under this Agreement. The notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within a reasonable time, the non-defaulting Party shall be entitled to all remedies available at both law and in equity, including specific performance.

14.11 Authority. Developer represents and warrants that it is a limited liability company duly formed and validly existing under the laws of the State of Louisiana and is qualified to transact business as a foreign limited liability company in the State of Arizona and that the individual executing this Agreement on behalf of Developer is authorized and empowered to do so. The City represents and warrants that the individual(s) executing this Agreement on behalf of the City are authorized and empowered to do so.

14.12 Third Party Beneficiaries. There are no third party beneficiaries to the Agreement.

14.13 Cancellation. This Agreement is subject to the cancellation provisions of A.R.S. Section 38-511.

14.14 No Liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

14.15 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises.

14.16 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Developer or City.

14.17 Survival of Covenants Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the Closings, all conveyances contemplated by this Agreement, and the rescission, cancellation, expiration or termination of this Agreement for any reason.

14.18 No Additional Warranties. Each Party has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Agreement and the transactions contemplated herein. City has made no representation, warranty, guaranty or inducement of any kind in connection with this Agreement. Without limitation, City has made no representation, warranty, guaranty or statement of inducement regarding the value of any property, right or interest; Title to any property or interest therein; the tax consequences of any transaction or the availability; the unavailability (and the benefits or lack of benefits) of any alternative transaction structure; or the enforceability of any provision of this Agreement under current or future laws. The risk that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable in any respect shall with the party who is the intended beneficiary of any such provision.

14.19 Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond their control, and all dates and time periods provided for in this Agreement shall be extended by the duration of any delays resulting therefrom. These acts will include, but not be limited to, riots, acts of war, acts of terrorism, epidemics, labor disputes not arising out of the actions of the Parties, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

14.20 Contract Administrator. The Contract Administrator for this Agreement on behalf of the City shall be the Economic Development Director or designee.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MGN1 LLC, , a Louisiana limited liability company

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2019,
by _____, as _____ of MGN1 LLC, a Louisiana limited liability company, on behalf of the company.

Notary Public in and for the State of Louisiana

My Commission Expires:

CITY OF AVONDALE, an Arizona
municipal corporation

By: Kenneth Wiese, Mayor

SUBSCRIBED AND SWORN to before me this day of _____, 2020, by
Kenneth Wiese, the Mayor of the CITY OF AVONDALE, an Arizona municipal corporation, on
behalf of the City of Avondale.

Notary Public in and for the State of Arizona

My Commission Expires:

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael S. Wawro, City Attorney

EXHIBITS

Exhibit A - Real Property description and map

Exhibit B - Applicable Rules

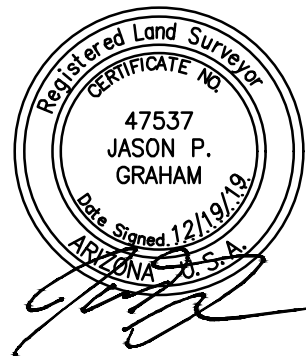
Exhibit C - Reimbursement Eligibility Requirements

Exhibit D - Guaranty

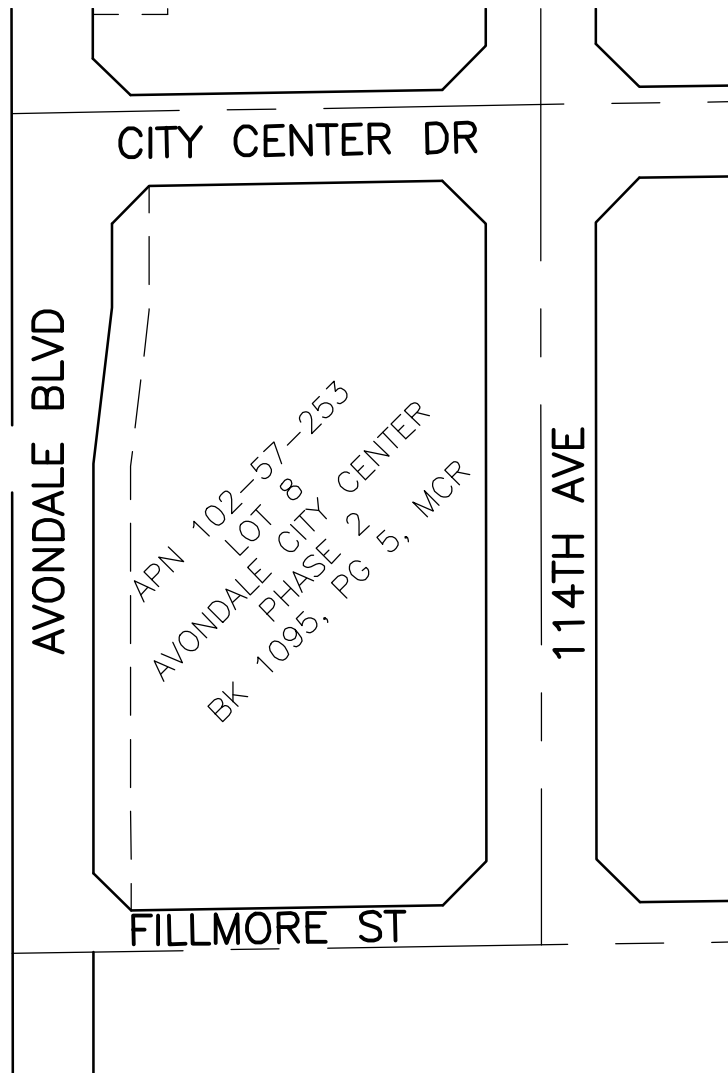
EXHIBIT "A"
LEGAL DESCRIPTION
FOR
APN 102-57-253

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHWEST QUARTER OF SECTION 6,
TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA
COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 8, AVONDALE CITY CENTER PHASE 2 RECORDED IN BOOK 1095, PAGE 5,
OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AND CONTAINING A COMPUTED AREA OF
178,545 SQUARE FEET OR 4.099 ACRES OF LAND, MORE OR LESS.



FILE:\PROJECTS\2018\1018119.04 Avondale Lot 8 ALTA\CAD\EXHIBITS\18119_04-EX A DESOR.dwg DATE: Dec, 19 2019 TIME: 02:58 pm



NTS

PARCEL AREA:
178,545 SF OR
4.099 ACRES

THIS IS NOT A PROPERTY
BOUNDARY SURVEY.

**Dibble
Engineering**

Dibble Engineering
Proj No 1018119.04

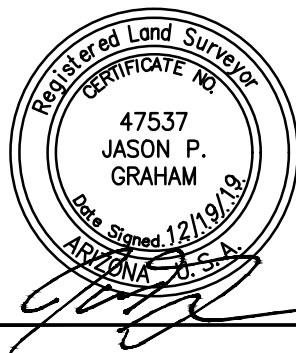


EXHIBIT "B"
LOT 8, AVONDALE CITY CENTER
PHASE 2, BK 1095 PG 5 MCR
A PART OF THE SW 1/4 OF SECTION 6,
T1N, R1E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: DEC 2019

DRN: CSD CHK: JPG

PAGE 2

EXHIBIT B – Economic Development Agreement
Applicable Rules

1. The development of the MGN1 Property shall be subject to all federal and state requirements, all ordinances, rules, regulations, permit requirements, insurance and other requirements and other official policies or requirements of the City in effect from time to time and applicable to the MGN1 Property and such additional rules as are allowed by this paragraph (all of which are collectively referred to as the "Applicable Rules").
2. The City agrees to expedite its regulatory processes with respect to all aspects of the development of the MGN1 Property, including but not limited to, zoning, use permits, variances, design review and building permits and inspection processes, to the same extent as is available to any other developer.
3. The City will not require Developer to dedicate or increase the size of any public rights of way or easements for streets, utilities or similar purposes, or to increase the cost of any other Public Improvement of any kind, beyond the size and cost consistent with standard requirements for all developers under similar circumstances without reimbursing for such increased cost.
4. The City shall not adopt any future Applicable Rules, that would in any case impair, prevent, diminish, delay or otherwise adversely impact the development or use of the MGN1 Property, including without limitation decreasing the density or increasing the cost of development, with the following exceptions, which are included in the Applicable Rules; (1) new or amended rules or procedures of general applicability that are necessary to comply with state and federal laws and regulations in effect at that time; (2) changes to taxes, development fees, filing fees, review fees, inspection fees that are imposed on or charged by the City to all similarly situated persons and entities; and (3) future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes, such as the International Building Code, which updates and amendments are generally applicable to similar construction in Avondale, further provided that such future updates shall not apply to any improvements for which a permit already has been issued, unless retroactive application is mandated by the State of Arizona or by Federal law.
5. The City will not during the term of this Agreement initiate any changes or modifications to the zoning of any portion of the Hayden Property, except at the request of Developer.

EXHIBIT C
Reimbursement Eligibility Requirements

1. All Public Improvements required or approved by the City in connection with the development of the MGN1 LLC Property shall constitute Developer Public Improvements, including without limitation, all Public Improvements required to be completed pursuant to applicable zoning or any rezoning or in order to obtain approvals of subdivisions, site plans, construction plans and specifications, building permits or other permits, EXCEPT THAT Developer Public Improvements shall not include any driveway that exclusively serves a single building and provides no other public benefit.

2. Developer Public Improvements shall be as set forth on the diagram attached to this Exhibit "D".

3. The plans and specifications for Developer Public Improvements must be reviewed and approved by the City Engineer before bidding the construction work for the improvements.

4. All work on Developer Public Improvements shall be publicly bid pursuant to the requirements of ARS Title 34 for public works projects. Such bids for Developer Public Improvements shall be obtained in conformity with procedures prescribed by the City and all bids for Developer Public Improvements must be reviewed and approved by City Engineer before commencement of construction.

5. Before commencing any construction on Developer Public Improvements, Developer or its contractor shall provide to the City with dual obligee payment and performance bonds in amounts equal to the full amount of the written construction contracts for such Developer Public Improvements.

6. All construction work on Developer Public Improvements must be completed in compliance with the Applicable Rules and in accordance with the plans approved by the City Engineer and must be completed in a workmanlike manner. The City has no obligations to reimburse Developer for Developer Public Improvements until such time as the work is accepted by the City; provided that the City's acceptance will not be unreasonably withheld, conditioned or delayed.

7. Developer shall submit to the City an assignment of its contractor warranties for Developer Public Improvements, which shall comply with the City's ordinance requirements, and in addition, the Developer shall warrant the Developer Public Improvements as required by the Applicable Rules.

8. All required dedications of Developer Public Improvements, free and clear of liens and encumbrances not acceptable to the City, must be complete and in a form acceptable to the City.

9. Upon completion of any Developer Public Improvements, Developer will provide to the City for review and approval a detailed statement of the Costs of the Developer Public

Improvements and a certification of the Cost of Developer Public Improvements that sets forth a description of each construction contract, any change orders issued related to each construction contract, total Cost of Developer Public Improvements, and a certification that the Cost of Developer Public Improvements is accurate. Upon request of the City, Developer shall provide to the City a copy of construction contracts and change orders described in the certification.

EXHIBIT D
FORM OF GUARANTY
GUARANTY

This Guaranty is made and delivered this _____ day of _____, 2019, (the "Guaranty") by MGN1 LLC, a Louisiana limited Liability Company ("Developer) whose address is 5201 North Claidorne Avenue, New Orleans, LA 701117, and the City of Avondale, an Arizona municipal corporation (the "City) whose address is 11465 West Civic Center Drive, Avondale, Arizona 85323.

WHEREAS, contemporaneously with the execution and delivery of this Guaranty, the City and Developer have entered into an Economic Development Agreement, dated January 6, 2020, (the Economic Development Agreement"); and

WHEREAS, City would not have entered into the Economic Development Agreement without Developer's execution of this Guaranty, and this Guaranty is a material inducement to City to enter into the Economic Development Agreement with Developer.

NOW THEREFORE, in consideration of the foregoing, Developer agrees with the City and guarantees as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Guaranty shall have the meaning ascribed to them in the Economic Development Agreement.
2. Guaranty. Developer unconditionally, irrevocably and absolutely guarantees to the City that upon the issuance of a certificate of occupancy for the Project in the Economic Development Agreement, that the Hotel which is the focus of the Project shall be continuously open and operating for six years following the issuance of the Certificate of Occupancy. If Developer breaches this Guaranty, Developer agrees to repay all Incentive Amounts credited to Developer up to the maximum of Three Hundred Thousand (\$300,000) Dollars to City, within thirty (30) days after receiving notice from the City of such breach. The City may without further notice or delay enforce all of its rights under this Guaranty. Developer also agrees to reimburse City for all expenses of collecting such sum or any part thereof or of otherwise enforcing this Guaranty, including reasonable attorney's fees and costs. All of the foregoing are referred to as the Guaranteed Obligations.
3. Waiver of Defenses. Developer's obligations under this Guarantee shall not be affected or impaired by any of the following events regardless of whether Developer has notice or consented thereto:
 - a. Any transfer of the property subject to the Economic Development Agreement by Developer or any other person;
 - b. Any assignment of the Economic Development Agreement in whole or in party by Developer;
 - c. The transfer of control of any membership interest in Developer;

- d. The acceptance by the City of performance in whole or in part by any other person or the waiver of any rights by the City of its right to enforce the Economic Development Agreement against their parties;
 - e. The voluntary or involuntary liquidation, dissolution, sale of any or all of the assets, receivership, conservatorship, insolvency, bankruptcy, assignment for benefit of creditor, or similar proceeding affecting the property which is the subject of the Economic Development Agreement.
4. Waiver of Notices. Developer hereby waives notice of acceptance of this Guaranty, any obligations or liabilities contracted or incurred by Developer hereunder, presentment, notice of dishonor, protest and notice of non-payment or non-performance and all other notice, except such notices as are expressly provided herein.
5. Choice of Law. This Guarantee shall:
- a. Be governed by the laws of the State of Arizona;
 - b. Not be modified or amended except by a written agreement executed by the parties;
 - c. Be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns. Developer consents that any action to enforce this Guarantee may be brought in the Superior Court of Maricopa County, Arizona. Developer may not assign this Guarantee or Developers rights and obligations hereunder without the prior written consent of the City.
6. Primary Liability. Developer's liability under this Guaranty shall be primary and City may proceed directly against Developer without initiating or exhausting any remedy under the Economic Development Agreement against Developer or any other person .
7. Authority. The undersigned individual acknowledges that they are a duly authorized agent of Developer with full power and authority to execute and deliver this Guaranty. This Guaranty has been executed and delivered by Developer and constitutes the valid, binding and legal obligation of Developer. Within ten (10) days after City's written request, Developer shall execute and deliver a written statement certifying any matter concerning this Guaranty or the Economic Development Agreement as the City may reasonably request.
8. Time. Time is of the essence with respect to each obligation of Developer hereunder.
9. Joint and Several Liability. If there is at any time more than one guarantor of the Guaranteed Obligations, or if Developer consists of more than one person or entity under this Guaranty, the liability of each such person shall be joint and several.
10. Notices. Notices shall be given to the persons and addresses specified in the Economic Development Agreement.

11. Additional Representations and Warranties of Developer. Developer hereby represents and warrants to City that neither Developer nor, to Developer's knowledge, any of Developer's directors, officers, shareholders, partners, members, guarantors, affiliates, agents or direct or indirect holders of any equity interest in Developer: (i) are named or identified as a terrorist, terrorist organization, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and \Obstruct Terrorism Act of 2001 (the "PATRIOT Act"), Executive Order No. 13224 (the "Order") or rules or regulations enacted by the United States Department of the Treasury ("Treasury") or its Office of Foreign Assets Control ("OFAC"); (ii) are subject to the prohibitions contained in the Order; (iii) are acting directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any person, group, entity or nation named or identified as a terrorist, terrorist organization, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation, including, without limitation, the PATRIOT Act, the Order or rules or regulations enacted by the Treasury or OFAC; (iv) are engaged in activities prohibited by the PATRIOT Act, the Order, or OFAC rules or regulations; (v) engage in activities that violate or have engaged in activities that violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Anti-Money Laundering Act"); (vi) have been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges.

IN WITNESS WHEREOF, Developer has caused this Guaranty to be executed and delivered as of the date first above written.

DEVELOPER:
MGN1 LLC, a Louisiana Limited Liability
Corporation

By: _____

Its: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me a Notary Public in and for said State and County, this _____ day of _____, 20____, by MGN1 LLC, a Louisiana Limited Liability Company in the State of Louisiana.

Notary Public

My Commission Expires:

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 6th day of January, 2020 (the "Effective Date"), between MGN1 LLC, a Louisiana limited liability company ("MGN1 ") and the City of Avondale, an Arizona municipal corporation ("City"), collectively referred to as the Parties.

RECITALS

This Agreement is predicated upon the following facts:

A. Arizona Revised Statutes ("A.R.S.") 9-500.05, authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. A.R.S. §9-500.11 authorizes the City to appropriate and spend public monies for and in connection with economic development activities.

B. MGN1 is a real estate investment limited liability company and is planning to develop a project consisting of a hotel and other ancillary uses that will complement the City's Boulevard corridor (the "Project").

C. The City finds that the benefits to the City of the Project outlined in this agreement are anticipated to be of a greater economic benefit to the City than the amount of the total Incentive Payments (as defined herein) during the term of this Agreement, and in the absence of such incentives, the Developer or similar persons would not locate in the City of Avondale. The City has undertaken an economic impact analysis that shows significant economic benefits to the City pursuant to the terms of this Agreement, and this analysis serves as a basis for determining the amount of Incentives. Proposed improvements for the MGN1 Property will provide amenities and public benefits to the City, including retaining existing jobs, creating new jobs, economic development in Avondale, tax revenues, water; sewer and drainage enhancements, and other infrastructure, tax, and economic development benefits to the City. Development of the MGN1 Property pursuant to this Agreement, therefore, is determined to be in the best interest of the City and the health, safety and welfare of the City's residents.

D. The Parties hereto acknowledge and agree that this Agreement is consistent with the portions of the City's General Plan and any Specific Area Plan applicable to the MGN1 Property.

AGREEMENTS

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by reference.

2. Exhibits. The following documents are referred to in this Agreement and are attached to and made a part of this Agreement by reference:

<u>Exhibit Designation</u>	<u>Description</u>
A.	Real Property description and map
B.	Applicable Rules
C.	Reimbursement Eligibility Requirements
D.	Guaranty

3. Definitions.

3.1. Agreement means this Economic Development Agreement between MGN1 and City.

3.2. Ancillary Uses means those related commercial uses to a Hotel development which may include but are not limited to Restaurants, individualized retail or service businesses

3.2. Applicable Rules is defined in Exhibit B.

3.3. Business Service Hotel means a hotel establishment that caters to a specific demographic of travelers, such as the individual business traveler, group travel and individual travelers, and offers modern designs, superior guest rooms and public spaces and quality service. Examples of Business Service Hotels include Avid and Aloft.

3.4. City is defined in the preamble to this Agreement.

3.5. Completed or Completion means, when referring to any improvement included in the Development Plan, that a certificate of completion following the certificate of occupancy has been issued by the City for the building of such improvement, subject to completion of reasonable and customary punch list items.

3.6. Costs of Developer Public Improvements means all soft costs, such as engineering, design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor's fees paid or incurred to construct Developer Public Improvements. The cost of acquiring the land dedicated for such Public Improvements, obligations payable with respect to such land under water and sewer payback agreements (to the extent Developer is relieved of such obligations pursuant to this Agreement), and financing costs will not be included in the Costs of Developer Public Improvements.

3.7. Developer means MGN1 and any person or entity to which the rights of MGN1 have been transferred or assigned in whole or in applicable part.

3.8. Developer Public Improvements means all Public Improvements serving the MGN1 Property that are constructed by Developer and accepted by the City during the term of this Agreement. In exchange for the construction of the public improvements, city

will reimburse all planning, building permit, impact fees and related fees incurred in construction of the Project as approved for reimbursement by the City in accordance with the procedure and criteria set forth in Exhibit C attached hereto and incorporated herein. The reimbursement of such Developer Public Improvements not to exceed Three Hundred Thousand Dollars (\$300,000.00). Reimbursement shall be made within thirty (30) days following issuance of a certificate of occupancy for the project

3.9 Effective Date is defined in the preamble to this Agreement.

3.10 MGN1 Property is defined in Recital D.

3.11 Incentive Payments means Reimbursements pursuant to Paragraph 9 of this Agreement.

3.12 Incentives Reduction Factor is defined in Paragraph 9.4.

3.13 Jobs means any type of employment position with IHG Hotels group or any other group to which this Agreement has been assigned, including full-time, part time and contract employees.

3.14 Minimum Requirement means the Minimum Development requirement

3.15 Payroll means the total number of Jobs multiplied by the average salary and bonus compensation of such employees, and excluding benefits.

3.16 Public Improvements means (1) all public streets within or adjacent to the MGN1 Property and the associated public sidewalks, landscaping tracts, streetscape, lighting, and (2) sewer, potable water delivery systems, storm drainage, retention areas, and utilities within or adjacent to public streets and rights-of-way within or adjacent to the MGN1 Property in connection with the development of any portion of the MGN1 Property.

3.17 Reimbursements is defined in Paragraph 9.1.

3.18 Reimbursement Eligibility Requirements means those requirements set forth in Exhibit C.

3.19 Restaurant means a contemporary casual restaurant, having table service and serving beer, wine and alcohol.

3.20 Square Feet means gross square feet.

4. Recordation. This Agreement shall become effective immediately upon the execution hereof by MGN1 and the City. This signed Agreement will be recorded in the Office of the Maricopa County Recorder within ten days following the Confirmation Date.

5. Assignment. The rights of MGN1 under this Agreement, and the rights of any successor to

which MGN1 might assign any of its rights hereunder, may be transferred or assigned, in whole or in part, by written instrument, to any current or future owner or lessee of all or any portion of the MGN1 Property and may also be collaterally assigned to any lender providing financing secured by any portion of the MGN1 Property. Upon the occurrence of any such assignment and notification of the City thereof, the assignee shall be deemed to have assumed, and shall be liable for the payment and performance of, all obligations hereunder arising or accruing under this Agreement after the date of such assignment with respect to the applicable portion of the MGN1 Property; provided, however, that no lender receiving a collateral assignment of any such rights shall be deemed to have assumed any such obligations or be liable for any breach thereof unless and until such lender receives full title to the applicable portion of the MGN1 Property as a result of foreclosure or deed in lieu thereof. The assignor shall be relieved of its obligations hereunder with respect to the applicable portion of the MGN1 Property only if the assignee provides to the City a Guaranty from a guarantor acceptable to the City in its sole discretion or a Letter of Credit in the full amount to secure the portion of the obligations attributable to the applicable portion of the MGN1 Property.

6. Binding Effect of Agreement. The burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their successors in interest and assigns pursuant to A.R.S. 9-500.05(D), as to those portions of the MGN1 Property in which a successor or assign has a fee title or leasehold interest.

7. Subordinate Development Agreements. The City and Developer hereby acknowledge that the development of the MGN1 Property may be accomplished by Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property. In the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

8. Development Plan. Certain development rights and obligations pertaining to the MGN1 Property are established the existing zoning thereof by the City. The development of the MGN1 Property is expected to occur in response to real estate and capital market conditions as follows:

8.1. Developer shall commence construction of the Project within one year of the close of escrow on the property to be acquired from city pursuant to the purchase agreement, and;

8.2. The Project shall be completed within Twenty-Four Months from the date of commencement of construction.

8.3. The Project shall consist of a Business Service Hotel and ancillary uses, the brands of which is satisfactory to the City.

8.4. The Business Service Hotel must remain open and operational for a period of six (6) years following the date of issuance of a certificate of completion. Developer shall execute the Guaranty as set forth in Exhibit D providing for this operational commitment.

8.5 Nothing in this Agreement shall be taken as a promise by the City to rezone the MGN1 Property or amend the zoning and development standards existing on the MGN1 Property.

9. Incentives.

9.1 Incentive Contributions. Notwithstanding any other provision of this Agreement to the contrary, the City will be contributing Three Hundred Thousand (\$300,000) Dollars reflecting the value to the City of Developer Public Improvements as provided for in this Agreement. No Incentive Payments shall be earned, due or payable at any time unless Developer meets sections 8.1; 8.2 and 8.4 of the development plan. At the time the city charges fees for items covered under paragraphs 8.1 and 8.2 of this Agreement, the Developer shall pay such fees. The City will establish a reimbursement account on behalf of developer up to a maximum of Three Hundred Thousand and no/100 Dollars (\$300,000). Upon issuance of a certificate of occupancy for the project and determination by the City that the project is complete, the City shall reimburse the fees. Any fees in excess of the Three Hundred Thousand Dollar (\$300,000.00) cap shall be the responsibility of Developer. Reimbursements may be made for any part of the Project

9.2 Incentives Cap. Based on the economic impact analysis the City has conducted, the total amount of money available for all Incentive Contributions is capped at Three Hundred Thousand Dollars (\$300,000) (the "Incentives Cap"). In the event that Developer fails to achieve any Milestone on or before the applicable Milestone Date as set forth in paragraph 8, the Incentives Cap will be reduced as specified in Paragraph 9.3.

9.3 Reduction of Incentives Payments and Incentives Cap for Failure to Meet Milestones. The Incentive Payments and the Incentives Cap are subject to reduction as provided in this Paragraph 9.3.

9.3.2 If Developer fails to obtain a certificate of occupancy within the deadline set forth in 8.2, the total value of the incentive shall be reduced by Two percent for each month the certificate of occupancy is delayed, up to a maximum of twenty-four percent. If Developer fails to obtain a certificate of occupancy from the City within thirty-six months following approval of close of escrow, the City is relieved from any obligation to pay any incentives.

9.5 Additional Requirements for Reimbursement. Developer will construct and bear the initial cost of all Developer Public Improvements. Upon completion of construction of any portion of such Developer Public Improvements in accordance with the Applicable Rules and the Reimbursement Eligibility Requirements, the City will accept such Developer Public Improvements. Upon acceptance of any Developer Public Improvements by the City, receipt of Developer's Application for Payment therefor complying with the requirements of Paragraph 9.6 and satisfaction of the minimum requirement for the applicable Phase, the Costs of Developer Public Improvements shall

be reimbursed by the City through Incentive Payments as provided in Paragraph 9. Payments pursuant to this Paragraph 9.5 are referred to herein as: "Reimbursements".

9.6 Applications for Payment. In order to receive Incentive Payments, Developer must submit a written application for payment ("Application for Payment") to the City as provided in Paragraph 14.1 or as otherwise directed by the City pursuant to Paragraph 14.1. The Application for Payment shall include with respect to any improvements, a reasonable description thereof and copy of the certificate of completion therefor issued by the City and (3) with respect to any Developer Public Improvements, (i) a reasonable description thereof, (ii) evidence of the City's acceptance thereof in accordance with Paragraph 9.5 and (iii) such other information and documentation as City may reasonably require pursuant to Paragraph 9.5. City shall promptly review any such Application for Payment and notify Developer within 30 days after receipt thereof whether such application has been approved or disapproved and, in the case of disapproval shall specify the reason (or all applicable reasons) therefor, including any additional information reasonably required by City.

10. Duty to Cooperate. The Parties agree that they will act in good faith and with reasonableness operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law. The Parties agree to cooperate with one another and to take all actions reasonably necessary to implement this Agreement within a reasonable time after request by the other Party, including but not limited to the timely granting of approvals and processing of applications relating to the implementation of this Agreement.

11. Amendments or Cancellation of the Agreement. This Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the MGN1 Property, only with the mutual written consent of the City and Developer. Within ten (10) days after any such amendment or cancellation of this Agreement is fully executed by all Parties, the amendment or cancellation shall be recorded by the City in the Official Records of Maricopa County, Arizona.

12. Term. The term of this Agreement begins on the Effective Date and, if not sooner terminated or extended by the written Agreement of the Parties and approved by the Avondale City Council, shall remain in full force and effect until automatically terminated Six (6) years after the Date of completion, unless extended by subsequent agreement prior to such termination.

13. Relationship of the Parties. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

14. General Provisions.

14.1 Notices.

Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered

personally, sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid, or via overnight delivery service to:

If to the City:

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn. Charles A. Montoya, City Manager

With a copy to:

City of Avondale
Office of the City Attorney
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Michael S. Wawro, Esq

If to MGN1 :

MGN1 LLC,
5201 North Claidorne Avenue
New Orleans, LA 70117
Attn. Maan Ghazool, Member

With a copy to:

MIG Gas Station Specialists LLC
24828 N. 56th DR.
Glendale AZ 85310
ATTN: Michael Green

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

14.2 Mailing Effective. Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above.

14.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

14.4 Attorneys' Fees and Costs. 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.

14.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14.6 Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

14.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and shall not be changed or added to except in the manner provided in Paragraph 11. 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.

14.8 Severability. If any provision of this Agreement is declared void or unenforceable, the provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

14.9 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. The Parties agree that venue for any action of commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

14.10 Default Remedies. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a reasonable time after written notice thereof from the other Party shall constitute a default under this Agreement. The notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within a reasonable time, the non-defaulting Party shall be entitled to all remedies available at both law and in equity, including specific performance.

14.11 Authority. Developer represents and warrants that it is a limited liability company duly formed and validly existing under the laws of the State of Louisiana and is qualified to transact business as a foreign limited liability company in the State of Arizona and that the individual executing this Agreement on behalf of Developer is authorized and empowered to do so. The City represents and warrants that the individual(s) executing this Agreement on behalf of the City are authorized and empowered to do so.

14.12 Third Party Beneficiaries. There are no third party beneficiaries to the Agreement.

14.13 Cancellation. This Agreement is subject to the cancellation provisions of A.R.S. Section 38-511.

14.14 No Liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

14.15 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises.

14.16 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Developer or City.

14.17 Survival of Covenants Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the Closings, all conveyances contemplated by this Agreement, and the rescission, cancellation, expiration or termination of this Agreement for any reason.

14.18 No Additional Warranties. Each Party has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Agreement and the transactions contemplated herein. City has made no representation, warranty, guaranty or inducement of any kind in connection with this Agreement. Without limitation, City has made no representation, warranty, guaranty or statement of inducement regarding the value of any property, right or interest; Title to any property or interest therein; the tax consequences of any transaction or the availability; the unavailability (and the benefits or lack of benefits) of any alternative transaction structure; or the enforceability of any provision of this Agreement under current or future laws. The risk that any provision of this Agreement shall be determined to be illegal, invalid or unenforceable in any respect shall with the party who is the intended beneficiary of any such provision.

14.19 Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond their control, and all dates and time periods provided for in this Agreement shall be extended by the duration of any delays resulting therefrom. These acts will include, but not be limited to, riots, acts of war, acts of terrorism, epidemics, labor disputes not arising out of the actions of the Parties, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

14.20 Contract Administrator. The Contract Administrator for this Agreement on behalf of the City shall be the Economic Development Director or designee.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MGN1 LLC, , a Louisiana limited liability company

By

Its:

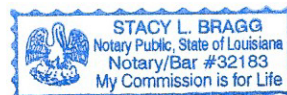
MEMBER

STATE OF Louisiana
) ss.
COUNTY OF Jefferson

This instrument was acknowledged before me on December 20, 2019, by MAH N GHAZOL, as Member of MGN1 LLC, a Louisiana limited liability company, on behalf of the company.

Notary Public in and for the State of Louisiana

My Commission Expires: At Death



CITY OF AVONDALE, an Arizona municipal corporation

By: Kenneth Wiese, Mayor

SUBSCRIBED AND SWORN to before me this day of _____, 2020, by Kenneth Wiese, the Mayor of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

My Commission Expires:

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael S. Wawro, City Attorney

EXHIBITS

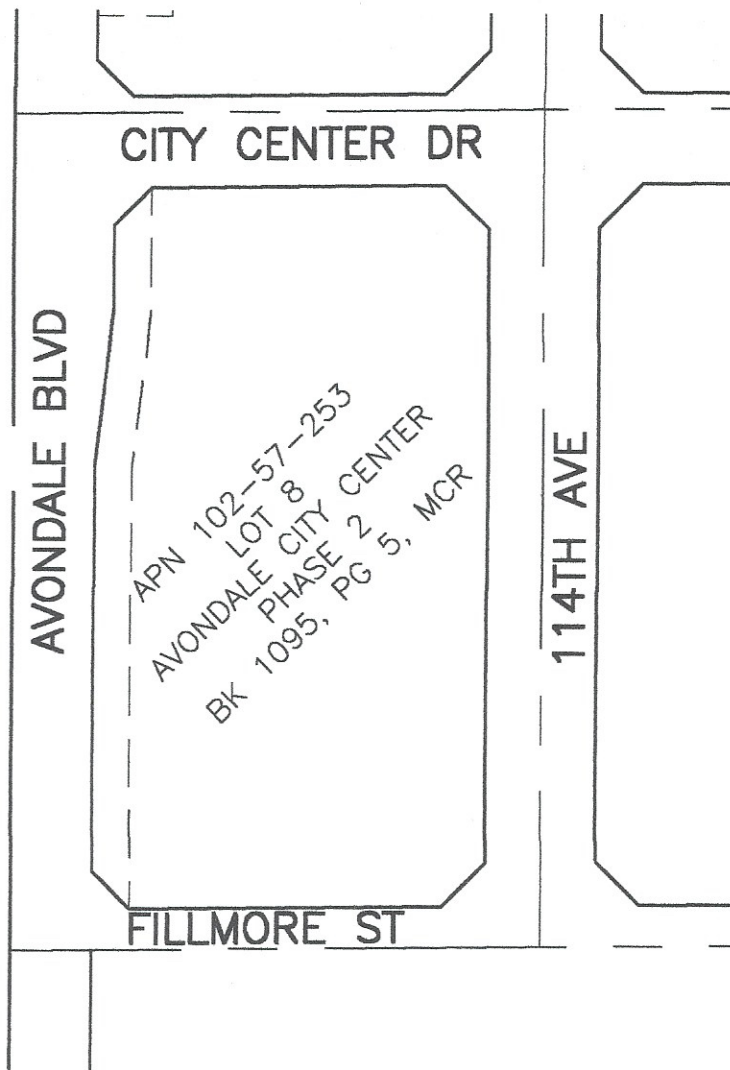
- Exhibit A - Real Property description and map
- Exhibit B - Applicable Rules
- Exhibit C - Reimbursement Eligibility Requirements
- Exhibit D - Guaranty

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
APN 102-57-253

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 8, AVONDALE CITY CENTER PHASE 2 RECORDED IN BOOK 1095, PAGE 5, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AND CONTAINING A COMPUTED AREA OF 178,545 SQUARE FEET OR 4.099 ACRES OF LAND, MORE OR LESS.





NTS

PARCEL AREA:
178,545 SF OR
4.099 ACRES

THIS IS NOT A PROPERTY
BOUNDARY SURVEY.

**Dibble
Engineering**

Dibble Engineering
Proj No 1018119.04

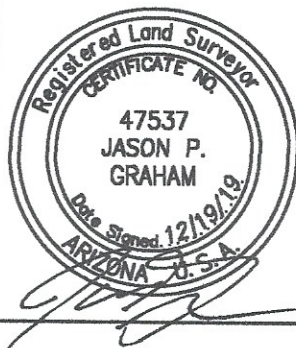


EXHIBIT "B"
LOT 8, AVONDALE CITY CENTER
PHASE 2, BK 1095 PG 5 MCR
A PART OF THE SW 1/4 OF SECTION 6,
T1N, R1E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: DEC 2019

DRN: CSD CHK: JPG

PAGE 2

EXHIBIT B – Economic Development Agreement
Applicable Rules

1. The development of the MGN1 Property shall be subject to all federal and state requirements, all ordinances, rules, regulations, permit requirements, insurance and other requirements and other official policies or requirements of the City in effect from time to time and applicable to the MGN1 Property and such additional rules as are allowed by this paragraph (all of which are collectively referred to as the "Applicable Rules").
2. The City agrees to expedite its regulatory processes with respect to all aspects of the development of the MGN1 Property, including but not limited to, zoning, use permits, variances, design review and building permits and inspection processes, to the same extent as is available to any other developer.
3. The City will not require Developer to dedicate or increase the size of any public rights of way or easements for streets, utilities or similar purposes, or to increase the cost of any other Public Improvement of any kind, beyond the size and cost consistent with standard requirements for all developers under similar circumstances without reimbursing for such increased cost.
4. The City shall not adopt any future Applicable Rules, that would in any case impair, prevent, diminish, delay or otherwise adversely impact the development or use of the MGN1 Property, including without limitation decreasing the density or increasing the cost of development, with the following exceptions, which are included in the Applicable Rules; (1) new or amended rules or procedures of general applicability that are necessary to comply with state and federal laws and regulations in effect at that time; (2) changes to taxes, development fees, filing fees, review fees, inspection fees that are imposed on or charged by the City to all similarly situated persons and entities; and (3) future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes, such as the International Building Code, which updates and amendments are generally applicable to similar construction in Avondale, further provided that such future updates shall not apply to any improvements for which a permit already has been issued, unless retroactive application is mandated by the State of Arizona or by Federal law.
5. The City will not during the term of this Agreement initiate any changes or modifications to the zoning of any portion of the Hayden Property, except at the request of Developer.

EXHIBIT C
Reimbursement Eligibility Requirements

1. All Public Improvements required or approved by the City in connection with the development of the MGN1 LLC Property shall constitute Developer Public Improvements, including without limitation, all Public Improvements required to be completed pursuant to applicable zoning or any rezoning or in order to obtain approvals of subdivisions, site plans, construction plans and specifications, building permits or other permits, EXCEPT THAT Developer Public Improvements shall not include any driveway that exclusively serves a single building and provides no other public benefit.
2. Developer Public Improvements shall be as set forth on the diagram attached to this Exhibit "D".
3. The plans and specifications for Developer Public Improvements must be reviewed and approved by the City Engineer before bidding the construction work for the improvements.
4. All work on Developer Public Improvements shall be publicly bid pursuant to the requirements of ARS Title 34 for public works projects. Such bids for Developer Public Improvements shall be obtained in conformity with procedures prescribed by the City and all bids for Developer Public Improvements must be reviewed and approved by City Engineer before commencement of construction.
5. Before commencing any construction on Developer Public Improvements, Developer or its contractor shall provide to the City with dual obligee payment and performance bonds in amounts equal to the full amount of the written construction contracts for such Developer Public Improvements.
6. All construction work on Developer Public Improvements must be completed in compliance with the Applicable Rules and in accordance with the plans approved by the City Engineer and must be completed in a workmanlike manner. The City has no obligations to reimburse Developer for Developer Public Improvements until such time as the work is accepted by the City; provided that the City's acceptance will not be unreasonably withheld, conditioned or delayed.
7. Developer shall submit to the City an assignment of its contractor warranties for Developer Public Improvements, which shall comply with the City's ordinance requirements, and in addition, the Developer shall warrant the Developer Public Improvements as required by the Applicable Rules.
8. All required dedications of Developer Public Improvements, free and clear of liens and encumbrances not acceptable to the City, must be complete and in a form acceptable to the City.
9. Upon completion of any Developer Public Improvements, Developer will provide to the City for review and approval a detailed statement of the Costs of the Developer Public

Improvements and a certification of the Cost of Developer Public Improvements that sets forth a description of each construction contract, any change orders issued related to each construction contract, total Cost of Developer Public Improvements, and a certification that the Cost of Developer Public Improvements is accurate. Upon request of the City, Developer shall provide to the City a copy of construction contracts and change orders described in the certification.

EXHIBIT D
FORM OF GUARANTY
GUARANTY

This Guaranty is made and delivered this 20 day of December, 2019, (the "Guaranty") by MGN1 LLC, a Louisiana limited Liability Company ("Developer") whose address is 5201 North Claidorne Avenue, New Orleans, LA 701117, and the City of Avondale, an Arizona municipal corporation (the "City") whose address is 11465 West Civic Center Drive, Avondale, Arizona 85323.

WHEREAS, contemporaneously with the execution and delivery of this Guaranty, the City and Developer have entered into an Economic Development Agreement, dated January 6, 2020, (the Economic Development Agreement"); and

WHEREAS, City would not have entered into the Economic Development Agreement without Developer's execution of this Guaranty, and this Guaranty is a material inducement to City to enter into the Economic Development Agreement with Developer.

NOW THEREFORE, in consideration of the foregoing, Developer agrees with the City and guarantees as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Guaranty shall have the meaning ascribed to them in the Economic Development Agreement.
2. Guaranty. Developer unconditionally, irrevocably and absolutely guarantees to the City that upon the issuance of a certificate of occupancy for the Project in the Economic Development Agreement, that the Hotel which is the focus of the Project shall be continuously open and operating for six years following the issuance of the Certificate of Occupancy. If Developer breaches this Guaranty, Developer agrees to repay all Incentive Amounts credited to Developer up to the maximum of Three Hundred Thousand (\$300,000) Dollars to City, within thirty (30) days after receiving notice from the City of such breach. The City may without further notice or delay enforce all of its rights under this Guaranty. Developer also agrees to reimburse City for all expenses of collecting such sum or any part thereof or of otherwise enforcing this Guaranty, including reasonable attorney's fees and costs. All of the foregoing are referred to as the Guaranteed Obligations.
3. Waiver of Defenses. Developer's obligations under this Guarantee shall not be affected or impaired by any of the following events regardless of whether Developer has notice or consented thereto:
 - a. Any transfer of the property subject to the Economic Development Agreement by Developer or any other person;
 - b. Any assignment of the Economic Development Agreement in whole or in party by Developer;
 - c. The transfer of control of any membership interest in Developer;

- d. The acceptance by the City of performance in whole or in part by any other person or the waiver of any rights by the City of its right to enforce the Economic Development Agreement against their parties;
 - e. The voluntary or involuntary liquidation, dissolution, sale of any or all of the assets, receivership, conservatorship, insolvency, bankruptcy, assignment for benefit of creditor, or similar proceeding affecting the property which is the subject of the Economic Development Agreement.
4. Waiver of Notices. Developer hereby waives notice of acceptance of this Guaranty, any obligations or liabilities contracted or incurred by Developer hereunder, presentment, notice of dishonor, protest and notice of non-payment or non-performance and all other notice, except such notices as are expressly provided herein.
5. Choice of Law. This Guarantee shall:
- a. Be governed by the laws of the State of Arizona;
 - b. Not be modified or amended except by a written agreement executed by the parties;
 - c. Be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, successors and permitted assigns. Developer consents that any action to enforce this Guarantee may be brought in the Superior Court of Maricopa County, Arizona. Developer may not assign this Guarantee or Developers rights and obligations hereunder without the prior written consent of the City.
6. Primary Liability. Developer's liability under this Guaranty shall be primary and City may proceed directly against Developer without initiating or exhausting any remedy under the Economic Development Agreement against Developer or any other person .
7. Authority. The undersigned individual acknowledges that they are a duly authorized agent of Developer with full power and authority to execute and deliver this Guaranty. This Guaranty has been executed and delivered by Developer and constitutes the valid, binding and legal obligation of Developer. Within ten (10) days after City's written request, Developer shall execute and deliver a written statement certifying any matter concerning this Guaranty or the Economic Development Agreement as the City may reasonably request.
8. Time. Time is of the essence with respect to each obligation of Developer hereunder.
9. Joint and Several Liability. If there is at any time more than one guarantor of the Guaranteed Obligations, or if Developer consists of more than one person or entity under this Guaranty, the liability of each such person shall be joint and several.
10. Notices. Notices shall be given to the persons and addresses specified in the Economic Development Agreement.

11. Additional Representations and Warranties of Developer. Developer hereby represents and warrants to City that neither Developer nor, to Developer's knowledge, any of Developer's directors, officers, shareholders, partners, members, guarantors, affiliates, agents or direct or indirect holders of any equity interest in Developer: (i) are named or identified as a terrorist, terrorist organization, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "PATRIOT Act"), Executive Order No. 13224 (the "Order") or rules or regulations enacted by the United States Department of the Treasury ("Treasury") or its Office of Foreign Assets Control ("OFAC"); (ii) are subject to the prohibitions contained in the Order; (iii) are acting directly or indirectly on behalf of, or instigating or facilitating this transaction directly or indirectly on behalf of, any person, group, entity or nation named or identified as a terrorist, terrorist organization, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation, including, without limitation, the PATRIOT Act, the Order or rules or regulations enacted by the Treasury or OFAC; (iv) are engaged in activities prohibited by the PATRIOT Act, the Order, or OFAC rules or regulations; (v) engage in activities that violate or have engaged in activities that violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Anti-Money Laundering Act"); (vi) have been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges.

IN WITNESS WHEREOF, Developer has caused this Guaranty to be executed and delivered as of the date first above written.

DEVELOPER:

MGN1 LLC, a Louisiana Limited Liability Corporation

[Redacted Signature]

By: MAAN GHAZOOL
Its: MEMBER

STATE OF Louisiana)

) SS:

COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me a Notary Public in and for said State and County, this 20th day of December, 20 19, by MGN1 LLC, a Louisiana Limited Liability Company in the State of Louisiana.

[Redacted Signature]

Notary Public



My Commission Expires:

At Death



CITY COUNCIL REPORT

SUBJECT: Resolution 1003-0120 - Supporting Trellis Grant Application to Maricopa County for HOME Community Housing Development Organization (CHDO) Funds

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Chris Lopez, Director of Neighborhood & Family Services, (623) 333-2711

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Resolution 1003-0120 associated with a grant application submitted by Trellis to Maricopa County for HOME CHDO funds, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale has been a member of the Maricopa HOME Consortium since May, 2005 when the City Council adopted Resolution 2485-05 which allowed the City to enter into an Intergovernmental Agreement with Maricopa County and other municipalities in the Valley. Membership in the Consortium entitles the City to a portion of the Consortium's annual allocation of HOME funds from the US Department of Housing and Urban Development (HUD).

Each year, prior to distribution of these funds to Consortium Members, HUD regulations require that the Consortium set aside at least 15% of total allocated HOME funds for use by Community Housing Development Organizations (CHDOs). CHDOS are specially-designated non-profit organizations recognized within the HOME Program that provide affordable housing as part of their core mission and adhere to a certain Board structure, among other requirements.

Reallocation of these set aside funds to CHDOs is a competitive process led by Maricopa County (as the Consortium's lead agency). The County issues an RFP in the Fall of each year to solicit affordable housing proposals from qualified non-profits. The Consortium Members review these applications and make funding recommendations in late Winter for inclusion in the following year's Annual Action Plan.

DISCUSSION:

For the upcoming FY 2020-2021, the Consortium will set aside approximately \$500,000 in HOME funds for eligible CHDOs, and to that end, issued an RFP to distribute these funds with a deadline for responses due by December 6, 2019. Trellis is a Phoenix non-profit that develops affordable housing, and currently partners with the City to operate the Avondale First-Time Homebuyer Program using a portion of the City's annual share of HOME Consortium funding. With this funding, there is potential to further the joint goals of providing affordable housing to low and moderate income first-time homebuyers with the construction of two homes.

To this end, Trellis submitted an application for \$290,000 in HOME CHDO funds to develop single-family homes on two vacant lots at the northwest corner of Elwood Street and El Mirage Road. This figure

represents the total gap in funding required to complete the development. Staff considers the project to be shovel ready, as Trellis currently has title to the properties, minor land divisions are in place, rezoning is complete, and all predevelopment activities finished. All that is missing is the requested gap funding for construction costs.

In order for Trellis to be eligible for funding, the City must do the following, as required by HUD regulations and the Maricopa HOME Consortium IGA:

- Agree to act as CHDO Contract Administrator, which obligates the City to complete project Environmental Reviews, review and approve CHDO reimbursement requests, monitor the CHDO's progress, monitor the CHDO for overall compliance with the CHDO contract and HUD regulations, provide reports to the County, among others as stipulated in the HOME Consortium IGA
- Certify that the activities proposed in Trellis's application are consistent with the goals of the City's HUD Consolidated Plan. The proposed project will construct two affordable single-family homes, which is consistent with the Consolidated Plan's #1 goal to, *preserve existing housing and create new affordable housing opportunities*.
- Consent to act as Beneficiary of any Deed of Trust or other lien instrument associated with HOME loan assistance provided through the project

Staff have reviewed these requirements, and have determined that they are consistent with HOME regulations, the City's HOME Consortium obligations, and will bring additional funding to increase the amount of high-quality affordable housing units in one of the City's Revitalization Areas.

BUDGET IMPACT:

There is no budgetary impact to the City associated with this request. All grant funds will be reimbursable directly to Trellis from Maricopa County based on the City's review and approval of documented expenses. Further, the 25% required HOME match will be provided by Trellis.

RECOMMENDATION:

Staff recommends approval of the Resolution supporting Trellis's HOME CHDO application, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

RESOLUTION 1003-0120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, SUPPORTING THE SUBMISSION OF AN APPLICATION FOR FEDERAL HOME FUNDS BY TRELLIS, A NON-PROFIT COMMUNITY HOUSING DEVELOPMENT ORGANIZATION; CERTIFYING COMPLIANCE WITH THE HOUSING AND URBAN DEVELOPMENT CONSOLIDATED PLAN; AND AUTHORIZING THE CITY TO SERVE AS THE ADMINISTRATOR OF THE FUNDED ACTIVITY.

WHEREAS, Trellis is an Arizona non-profit Community Housing Development Organization which has a history of community service in the City of Avondale (the “City”); and

WHEREAS, Trellis provides affordable housing for low and moderate income households; and

WHEREAS, Trellis has submitted an application to the Maricopa County HOME Consortium for federal HOME Investment Partnership Program (HOME) funding (the “Application”); and

WHEREAS, if funded, Trellis will provide affordable housing for low and moderate income households located within the jurisdictional boundaries of the City of Avondale, and the City will serve as the administrator of the contract between Trellis and the Maricopa County HOME Consortium; and

WHEREAS, the activity identified in the Application meets the priorities identified in the City’s Housing and Urban Development Consolidated Plan (the “Consolidated Plan”).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Council of the City of Avondale (the “City Council”) hereby supports the submission of the Application to the Maricopa County HOME Consortium for federal funding.

SECTION 3. The City Council hereby finds and determines that the intended use of the federal funds is in conformance with the City’s Consolidated Plan.

SECTION 4. The City Council hereby authorizes the City to serve as the administrator of the contract between Trellis and Maricopa County and to accept assignment of beneficial interests under the loan agreement, deed of trust, promissory note and restrictive covenants between Maricopa County and Trellis, if the activity is funded.

SECTION 5. The Mayor, the City Manager or authorized designee, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments and cause the execution and submission of all documents and any other necessary or desirable instruments in connection with the Application and the activity and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, January 6, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney



Maricopa HOME Consortium

Application for Funding
Community Housing Development Organization (CHDO)

Program Year 2020
Fiscal Year 2020-2021

Submittal Deadline:
December 6, 2019 – 5:00 p.m.

Maricopa County Human Services Department
Housing & Community Development Division
234 North Central, 3rd Floor
Phoenix, AZ 85004
Phone: (602) 372-1528
TTY 1-800-367-8939 or Arizona Relay Service 711
Available online at <https://www.maricopa.gov/3893/Notices-Documents>
Office Hours: Monday through Friday 8:00 a.m. – 5:00 p.m.

Maricopa HOME Consortium
Community Housing Development Organization (CHDO)

1. In narrative form, provide a complete but succinct description of the project for which the HOME CHDO funds are being requested. Include the following:
 - a. The CHDO's role as owner, developer, or sponsor.
 - b. Describe the property to be acquired, constructed and/or rehabilitated. If the specific site address is not known, identify to the fullest extent possible the location of the proposed project. Describe the site and any zoning issues that may need to be overcome.
 - c. Population to be served including proposed income level to be served
 - d. Number of units
 - e. Size (estimated square footage and bedrooms)
 - f. How the activity addresses a high priority goal of each City/Town from the Consolidated Plan Note that the service are cannot be the entire County.
 - g. Elaborate on total funding, including sources of additional funding.
2. For scattered site rentals, if a site has not been identified, describe the characteristics of the location being sought and document the availability of applicable sites and the timeline for obtaining site control.
3. For all rental activities, include a pro forma including information used to determine that rents or mortgages of the proposed units will be sufficient to pay off debt, and pay for operation and maintenance, while the units still remain affordable to the target population. Rental activities must show that they will remain feasible throughout the period of affordability by showing that all operating costs will be covered with either sufficient rental income or through the commitment of other resources. It is acknowledged that a new pro forma will likely be required pending final location selection. Final award amounts are contingent on complete underwriting analysis.
4. For homeownership activities, describe the down payment assistance model proposed, including term, rate, deferral period, and if there will be a shared equity formula or right of first refusal. Describe the proposed repayment plan.
5. Discuss CHDO project proceeds and how the funds will be used.
6. Identify the criteria used to determine that there is a clear market demand for this activity. This information should be as complete and as detailed as possible.

Budget Summary- double click on the table below to insert amounts.

7. Project Viability- If grant funds cannot be provided for the amount requested explain how/if a resulting shortfall will impact the activity. If other funding sources are available, list them and the amount. Explain whether the activity can be scaled back and the minimum amount needed to complete a viable project.
8. Include the following attached forms:
 - a. Market Study Certification Form- This form is used to obtain assurance from the City/Town in which the activity will be located, that all data contained in the Market Demand Study is correct to the extent that the local, State of Arizona, and federal recording agencies and demographic suppliers accurately record and publish the data. This form is due by January 16, 2020.
 - b. Schedule of Implementation
 - c. Match
 - d. Budget Summary- Double click on the table to insert budget amounts
 - e. Certification Of Authorized Officials -This form is used to certify that the CHDO has the authority to apply for the funding, execute a contract and complete the proposed activity, and that it has the capacity to apply for the HOME funds and comply with the federal regulations in the proposed service area.
 - f. Resolution-due by January 16, 2020
 - g. Certification of Consistency with the Consolidated Plan
 - h. Immigration Law and Regulations Certification

*Additional Sources: Include match in this column only if it is in the form of cash and will be used only for this project. Do not include non-cash match in this budget. Non-cash match should be reported in the Match Table.

1. Trellis is pleased to respond to the Maricopa Home Consortium Community Housing Development Organizations (CHDOs) Application Packet FY 2020 to request CHDO funding. Trellis as the developer, proposes to build single-family homes that make the best use of the 2 lots in Avondale; are consistent with the City of Avondale General Plan and all other applicable codes, regulations, and guidelines; and contribute to the continued redevelopment and community desires of a vibrant, well-established, neighborhood.

In June of 2006, Neighborhood Housing Services of Southwestern Maricopa County, NHS –SWMC now an affiliate corporation under Trellis, acquired a property located at the northwest corner of El Mirage Road and Elwood Street in the City of Avondale, Arizona.

In 2015 Trellis split the property into 3 south facing parcels each accessed from Elwood Street. Lots 1 & 2 are 80 feet wide and 85 feet deep (6,800 SF), and lot 3 is 85 feet deep and 88 feet wide (7,480 SF). Trellis proposes the development of two single family homes on lots 1 and 2.

Our proposal includes site specific due diligence to determine the highest and best use of the land, development of grading, drainage and utility designs, entitlement and regulatory approval processing, public procurement, construction administration and the sales of 2 homes. The project will create homeownership opportunities for two (2) first time home buyers at or below 80% of the area median income which is rated as a high priority in the Consolidated Plan.

Each lot will consist of a Trellis designed 1,500SF - 1,600SF, 3 to 4 Bedroom, 2 to 3 Bathroom home. Trellis designed homes are built with the latest advancement in building sciences and techniques. Through these innovated designs the homes are built to strict standards and achieve Net Zero Ready status (adhere to DOE standards), EnergyStar rating, Indoor Air Quality Plus-V3 with HERS Index scores between 50-65. They are accessible, conserve water, reduce utility demand and maintenance costs, and foster a healthy living environment.

The funding budget to complete the Elwood Street Development is \$699,932. Trellis has secured \$409,932 of the development dollars and is requesting \$290,000 of CHDO funding to complete the project. The match requirement is \$72,500 and Trellis will fund this requirement with the prior cash acquisition of the property and through WISH funds. Trellis has exceeded the required match funds and will comply with future match needs.

Trellis' proposal for the Avondale lots is consistent with the City's General Plan, specifically goals related to "a sense of community" and compatibility with the residential character of the neighborhood.

Trellis' business plan for this application is aligned with our current strategic plan to acquire, rehabilitate or build affordable housing; work with stakeholder partners to enhance community stabilization and revitalization; collaborate with health, housing and community development practitioners to build healthier homes and neighborhoods; and to implement green building, Weatherization and other healthy home designs

2. N/A

3. N/A

4. Trellis will set aside 10% of the HOME grant funds received to be used as DPA. These funds will be fully forgivable after 5 years. Also depending on the availability of funds from other DPA sources such as Wish or LIFT, our home counselors work with the clients to make sure they receive and utilize all other forms of DPA available to the buyer.

5. Project proceeds shall be retained and expended by the CHDO for Construction of additional properties under this agreement, or for other HOME eligible activities with prior approval from the Administrator. HOME-eligible activities per 24 CFR 92

6. See Market Study Report and Data

7. Trellis analyzed the project viability in the case grant funds were not awarded. When comparing the total build cost compared to the current market pricing of the homes in the area the cost to build the homes and serve a low-income buyer would be more than the amount that could be recaptured in the sale of the home. So not receiving funding would have a detrimental effect on the project moving forward. It would be impossible to build and deliver the homes without Trellis sustaining a considerable loss.

The project could be scaled back to a single home if needed. It would impact the build cost, as there would be a marginal increase to build a single home versus two (2) but it wouldn't be a great enough impact to keep from building the home. If scaled back Trellis would need \$153,453 in grant funds.

Schedule of Implementation

Add additional lines if needed

TASKS	START DATES	COMPLETION DATES
Application/market study	12/2019	1/2020
Execute third party agreement with County and City of Avondale for HOME funds	7/2020	10/2020
Development Plan Approval-City of Avondale	8/2020	12/2020
Environmental Assessment approval	10/2020	12/2020
Submit complete application for construction permits	8/2020	12/2020
RFP for construction activities	11/2020	1/2021
Homeownership counseling/buyer preparation	3/2021	7/2021
Construction of project	2/2021	8/2021
Sale of Unit (Pre-sale and during construction)	3/2021	8/2021
Certificate of Occupancy	8/2021	8/2021
Final Close-out /Project Completion Form	8/2021	12/2021

Match

Provide documentation of a firm commitment from each match provider listing the amount of match, form of match, and specific source. Applications with match commitments to be secured or specifically identified at a later date will not be accepted. Owner equity in the project is NOT an eligible form of match. Owner equity includes any loan on the project that is to be repaid. However, documented reduced interest rates may apply. Please refer to 24 CFR 92 for eligible forms of match.

AMOUNT	FORM OF MATCH	SPECIFIC SOURCE
\$36,668	Cash-Property Acquisition	Trellis
\$35,832	Cash	Wish Funds
TOTAL: \$72,500		

Good Afternoon,

Thank you for your patience while I worked through the numbers of our 2019 WISH Fund Reservation. I'm happy to let you know that we will be allocating **\$85,000 for Trellis** clients this year. I know it's not as much as we had hoped for, or asked for, however we can still make a big impact in the lives of first-time homebuyers. Hopefully, next year we will be provided more funds to make an even larger impact!

Please let me know if you have any questions or would like to discuss further.

Wishing you a wonderful rest of your day.

-Danielle

Danielle Vasquez

AVP, Community Reinvestment & Fair Lending Officer

Sunwest Bank | 2050 Main Street, Suite #300 Irvine, CA 92614

(714) 730-4421 | dvasquez@sunwestbank.com



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From: Pamela Gorder <PGorder@WesternAllianceBank.com>

Sent: Tuesday, April 09, 2019 9:00 AM

To: Pamela Gorder <PGorder@WesternAllianceBank.com>

Subject: 2019 WISH / IDEA Program

ALL –

Per the new FHLB changes, we will be offering the 4:1 match now. However, we were given an even smaller allocation this year. To make sure that we are serving the most clients that we can, we are going to cap our match at \$16,000. Therefore if the client contributes \$4000 they will get a match of \$16,000 for a total of \$20,000 toward their down payment.

Additionally, this year we will not be sending out specific allocations for each of you. All WISH and IDEA grants will be done on a first-come first-served basis. We will require that you send us files that are scheduled to close within 90 days. Our Conditional Approval will have a 60 day expiration. The client should be in escrow or close to opening escrow. We have had several organizations that have sat on their funds in the past and the funds went unused, which resulted in our smaller allocation from the FHLB. Therefore we feel that this will help insure that we use all of the funds and can get a higher allocation next year.

Please contact me with any questions.

Thanks,
Pamela



Pamela Gorder

VP, CRA MANAGER

WESTERN ALLIANCE BANK. MEMBER, FDIC.

T (602) 629-1720 | C (623) 866-8477 | WESTERNALLIANCEBANK.COM

1 E. WASHINGTON AVE. #500 | PHOENIX, ARIZONA 85004

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2019 WISH Program - Participating Financial Institutions

The following Bank members have been awarded funds in 2019 to make grants to eligible homebuyers.

Member	Award
AEA Federal Credit Union	\$200,000
Arizona Bank & Trust	\$650,000
Arizona Central Credit Union	\$280,000
Canyon State Credit Union	\$50,000
Cathay Bank	\$120,000
CIT Bank	\$40,000
Community Valley Bank	\$60,000
Desert Financial Federal Credit Union	\$130,000
East West Bank	\$135,000
Farmers & Merchants Bank of Central California	\$75,000
Farmers & Merchants Bank of Long Beach	\$60,000
First Choice Bank	\$45,000
First Foundation Bank	\$40,000
First Northern Bank of Dixon	\$40,000
First Republic Bank	\$300,000
Goldwater Bank	\$210,000
Luther Burbank Savings	\$115,000
Mechanics Bank	\$150,000
Meriwest Credit Union	\$60,000
Montecito Bank & Trust	\$40,000
MUFG Union Bank	\$1,100,000
Noble Federal Credit Union	\$65,000
Oak Valley Community Bank	\$90,000
Pacific Mercantile Bank	\$300,000
Pacific Premier Bank	\$150,000
Pacific Western Bank	\$180,000
Pima Federal Credit Union	\$60,000
Rabobank	\$60,000
Santa Cruz County Bank	\$40,000
Schools Financial Credit Union	\$40,000
State Bank of Arizona	\$45,000
Strata Federal Credit Union	\$40,000
Sunwest Bank	\$170,000
Tri Counties Bank	\$60,000
TruWest Credit Union	\$1,700,000
Western Alliance Bank	\$1,800,000
WestStar Credit Union	\$40,000
Xceed Financial Credit Union	\$120,000
Yolo Federal Credit Union	\$40,000
Total	\$8,900,000

Budget Summary- double click on the table below to insert amounts.

ACTIVITIES	HOME Funds PY 2020	Additional Sources*	TOTAL COST
ACQUISITION			
Land		\$ 36,668.00	\$ 36,668.00
Buildings		\$ -	\$ -
Closing Costs		\$ -	\$ -
Legal Fees		\$ -	\$ -
TOTAL	\$ -	\$ 36,668.00	\$ 36,668.00
SITE & DEMOLITION			\$ -
Site Work		\$ -	\$ -
Demolition		\$ -	\$ -
TOTAL	\$ -	\$ -	\$ -
REHABILITATION			\$ -
Construction Costs-Materials	\$ 290,000.00	\$ 55,309.00	\$ 345,309.00
Builder Overhead		\$ 70,500.00	\$ 70,500.00
Builder Profit		\$ 82,495.00	\$ 82,495.00
General Requirements		\$ 30,800.00	\$ 30,800.00
Consultant/Specialist		\$ -	\$ -
Permits & Fees		\$ 19,969.00	\$ 19,969.00
Construction Contingency		\$ 35,250.00	\$ 35,250.00
Sales Tax		\$ 18,941.00	\$ 18,941.00
Other-Infrastructure		\$ -	\$ -
TOTAL	\$ 290,000.00	\$ 313,264.00	\$ 603,264.00
ARCHITECTURAL FEES			\$ -
Design	\$ -	\$ 30,000.0	\$ 30,000.00
Supervision		\$ -	\$ -
Other		\$ 30,000.0	\$ 30,000.00
TOTAL	\$ -	\$ 60,000.0	\$ 60,000.00
CONSTRUCTION INTEREST & FEES & LEGAL FEES			\$ -
Construction Interest		\$ -	\$ -
Bond Premium		\$ -	\$ -
Title & recording		\$ -	\$ -
Insurance		\$ -	\$ -
Legal Fees		\$ -	\$ -
Other		\$ -	\$ -
TOTAL		\$ -	\$ -
ADMINISTRATION COSTS			\$ -
Program Income Administration		\$ -	
Administration		\$ -	
Volunteer Labor		\$ -	\$ -
TOTAL	\$0.00	\$0.00	\$ -
GRAND TOTAL	\$290,000.00	\$409,932.00	\$ 699,932.00

*Additional Sources: Include match in this column only if it is in the form of cash and will be used only for *this* project. Do not include non-cash match in this budget. Non-cash match should be reported in the Match Table.

Certification of Authorized Officials

This form has been provided as a sample format for obtaining a resolution of support from the City/Town in which the activity will be located. For activities to be located in the City/Town of Avondale, Chandler, Gilbert, Glendale, Peoria, Scottsdale, Surprise or Tempe, the resolution of support may require City/Town Council action. Therefore, early efforts must be undertaken to schedule and complete this action. Resolutions and Market Study Certifications are due to Maricopa County by 9:30 a.m. Thursday, January 16, 2020, or the application will be deemed incomplete

As the official designated by the governing body of the applicant, I hereby certify that if granted

a HOME CHDO allocation, Patricia Garcia Duarte
(Name of Applicant)

assumes the responsibilities specified in the HOME regulations and certifies that:

- A. It possesses the legal authority to apply for the funding allocation and to execute the proposed program.
- B. It has resolved any audit problem or performance problem for prior local, state, or federal housing and community development programs.
- C. The information, statements, and attachments contained in this application are, to the best of my knowledge and belief, true and correct.
- D. It will comply with all statements and regulations governing the HOME Program including the grant conditions contained in this application.
- E. Documentation has been submitted of the governing body's authorizing the representative of the Trellis
(agency) to negotiate for and contractually bind the agency. (Documentation of the requirement consists of a signed letter from the Chairperson of the governing body providing the name, title, address, and telephone number of each authorized individual.)
- F. It is prepared, and has the authority within its charter, by-laws or statutory authority to enter into a contractual agreement with Maricopa HOME Consortium for acceptance and use of HOME funding and makes this application and certification with full cognizance of its governing body.

Signed (Official)  Printed Name Patricia Garcia Duarte

Title: President & CEO Date: 12/6/2019

Attested (Officer)  Printed Name Joel McCabe

Title: VP & COO Date: 12/6/2019

IMMIGRATION LAW AND REGULATIONS CERTIFICATION

The President's Executive Order 13465 of June 6, 2008 and Arizona Revised Statutes (A.R.S.) Section 41-4401, require Maricopa County to ensure that each government entity, contractor and subcontractor it conducts business with complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214, Subsection. A. All governmental entities, vendors, contractors and subcontractors MUST certify use of the *E-Verify* system established by the Department of Homeland Security.

All applicants must certify compliance with items 1 and 2 below.

1. The government entity, organization or company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States Immigration laws. The government entity, organization or company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the County if such inspection is requested; and
2. By the date of the delivery of the product and/or performance of services, the government entity, organization or company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the Maricopa County.

I certify that the government entity, organization or company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name: Patricia Garcia Duarte

Date: 12/6/2019

Authorized Signature: 

Telephone Number: 602-228-4171

Printed Name: Patricia Garcia Duarte

Title: President & CEO

Certification of Consistency with the Consolidated Plan

A jurisdiction's certification that an application is consistent with its consolidated plan means the jurisdiction's plan shows need, the proposed activities are consistent with the jurisdiction's strategic plan, and the location of the proposed activities is consistent with the geographic areas specified in the plan.

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan. (Type or clearly print the following information)

Applicant Name: _____ Patricia Garcia Duarte _____

Project Name: _____ Elwood Street Development _____

Location of Project: _____ NWC Elwood & El Mirage _____

_____ Avondale, AZ _____

Name of Urban County City/Town:

_____ City of Avondale _____

Official of the Urban County City/Town:

Name: _____ Marsha Chavez _____

Title: _____ Housing & Development Manager _____

Signature: _____

Date: _____ 12/6/2019 _____

CITY COUNCIL REPORT

SUBJECT: Ordinance 2001-0120 - Roosevelt Irrigation District Agreement and Perpetual Easement for Water and Sewer Pipelines.

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Tracy Stevens, Deputy City Manager, (623) 333-1014.

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Ordinance 2001-0120 for an Agreement and dedication of a Perpetual Easement with the Roosevelt Irrigation District (RID) for the City of Avondale to operate, repair and maintain water and sewer lines and associated facilities across RID right-of-way and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The developer for Avondale Station (formerly Virtua99), located at 99th Avenue and Encanto Boulevard, had to construct public water and sewer pipelines in Encanto Boulevard to serve this development, which includes the proposed Springhill Suites hotel. The sewer line was constructed from the 103rd Avenue and Encanto Boulevard intersection and the water line was constructed from 101st Avenue and Encanto Boulevard. Both pipelines had to cross under an open irrigation channel in the RID right-of-way.

DISCUSSION:

The agreement will grant the City a perpetual easement to operate, repair and maintain these pipelines through the RID right-of-way and will provide public water and sewer to the Avondale Station development.

BUDGET IMPACT:

There is no budgetary impact to the City for this action.

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance 2001-0120 for an Agreement and dedication of a Perpetual Easement with the Roosevelt Irrigation District (RID) for the City of Avondale to operate, repair and maintain water and sewer lines and associated facilities across RID right-of-way and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

ORDINANCE NO. 2001-0120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, ACCEPTING THE DEDICATION OF REAL PROPERTY TO BE
USED AS A PERPETUAL EASEMENT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. A perpetual easement for the purpose of constructing, operating and maintaining and repairing City of Avondale (the “City”) improvements on real property in the form attached hereto as Exhibit 1 and incorporated herein by reference (the “Easement”), over $\pm$ 0.0413 acres of real property, generally located at 101st Ave and Encanto Boulevard, as more particularly described and depicted in Exhibit A to the Easement is hereby accepted by the City from the Roosevelt Irrigation District.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
January 6, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney

EXHIBIT 1
TO
ORDINANCE NO. 2001-0120

[Easement]

See following pages.

When recorded please return to:

Jake D. Curtis, Esq.
Burch & Cracchiolo, P.A.
702 East Osborn Road
Suite 200
Phoenix, Arizona 85014

**AGREEMENT AND PERPETUAL EASEMENT
TO CONSTRUCT, OPERATE AND MAINTAIN A (FACILITY'S DESCRIPTION)
ACROSS
THE ROOSEVELT IRRIGATION DISTRICT RIGHT OF WAY**

THIS AGREEMENT AND PERPETUAL EASEMENT TO CONSTRUCT, OPERATE AND MAINTAIN WATER AND SEWER PIPELINES ACROSS THE ROOSEVELT IRRIGATION DISTRICT RIGHT OF WAY is made between THE ROOSEVELT IRRIGATION DISTRICT, an Arizona municipal corporation (hereinafter the "District") and THE CITY OF AVONDALE, an Arizona municipal corporation (hereinafter "the City").

RECITALS:

- A. The City desires to allow a developer to construct public water and sewer pipelines within the District's Right-of-Way to provide water and sewer service to the Virtua 99 development.
- B. The District has agreed to grant to the City a perpetual easement under and around its Main Canal and Right of Way for the purpose of construction, operation and maintenance of the water and sewer lines.
- C. The City and the District desire to enter into this Agreement which authorizes the City access under and around and to use the District's property for the purpose of operating and maintaining these public water and sewer pipelines.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. The District hereby grants to the City an exclusive utility-easement upon that portion of District property which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter "District Right of Way"), the use of the space above and below the established grade line of the

RID Main Canal for the purpose of public water and sewer pipelines on, over, across, under, in and upon the area of District Land in Exhibit "A."

2. The District hereby grants the City a nonexclusive license for ingress and egress upon District property to construct, operate and maintain the water and sewer pipelines within the District Right of Way as is deemed necessary, provided however, that such construction, operation and maintenance shall not interfere with the District's operation, maintenance and repair of its facilities. Upon completion of the work, the City shall return the District's property to the same or better condition as it was in prior to the commencement of the work.
3. The City understands that prior to the commencement of the initial construction of the water and sewer pipelines within the District Right of Way, Virtua 99's contractor must obtain a District RIGHT-OF-WAY CROSSING PERMIT. It is further understood that the City must obtain a separate District RIGHT-OF-WAY CROSSING PERMIT for each future occurrence of operations and maintenance work on the City's water or sewer pipelines involving an excavation within, or a jack/bore operation across, the District Right of Way.
4. Plans and specifications for the initial construction of the City's water and sewer pipelines: Virtua 99 Water Plans and Virtua 99 Sewer Plans (the "Approved Plans") have been or will be submitted to the District for the District's review and approval, copies of which will be on file with the District and incorporated herein by this reference. Hilgart-Wilson hereby represents and warrants to the District that such Approved Plans will meet all guidelines and criteria for utility construction.
5. The initial construction of the water and sewer pipelines shall be in accordance with the Approved Plans, including the type and quality of materials used. No alteration, addition, modification or other amendment to the Approved Plans within the District's Right of Way shall be made, nor shall any deviation from the Approved Plans within the District's Right of Way be permitted without the District's prior approval. All construction within the District's Right of Way and under the District's Main Canal shall specifically be done so as to assure the District that water delivery will at no time be interrupted.
6. The District shall not be responsible for any costs and expenses of designing, constructing or maintaining the water and sewer pipelines. The City shall be responsible for ensuring that the initial construction is completed in a good and workmanlike manner, in accordance with the Approved Plans. Maintenance, operations and associated costs for the City's facilities covered by the agreement will be the responsibility of the City.
7. The City understands and agrees that in the event of an emergency, the District shall have the right to alter, relocate or remove any facilities installed for the benefit of the City. In such event, the District shall have no obligation to reinstate or reconstruct such facilities. To the extent possible, the District shall notify the City of any such emergency and the need to alter, relocate or remove any facilities. The

District shall further, to the extent possible, try to make repairs to District facilities in such a way as to not have to alter, relocate or remove any facilities installed for the benefit of the City.

8. The City shall keep the District's Right of Way free and clear of any or all liens, including, but not limited to, mechanics and materialmen's liens relating to the work contemplated hereby.
9. The City agrees to indemnify and hold harmless and release the District from any and all claims for damages or injury arising from or in any way incident to the design, engineering, construction, maintenance or repair of the water and sewer pipelines or the exercise of any other rights or obligations under this Agreement. The City's indemnification shall expressly include, but shall not be limited to, damages to the District or its members' properties resulting from failure of or damage to the District Right of Way.
10. Notwithstanding anything contained herein to the contrary, nothing contained in this Agreement shall be construed as a consent by the District to any expansion of the water or sewer pipelines beyond the stated size, quality and character as set forth in the Approved Plans. Any such modification to or enlargement of the improvements shall require a new Agreement and license to be executed by the parties.
11. The City acknowledges and warrants to the District that it will not assign this Agreement and will not cause or allow the water or sewer pipelines to be owned, operated or managed by any party or entity other than the City or its approved assigns. Any assignment document must state that the Assignee agrees to assume the obligations of the City hereunder.
12. The City understands the District's and all of its agents' right to construct, maintain, and operate canal facilities over and/or under the City's facilities within the District Right of Way.
13. Any party may enforce this Agreement by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys' fees, costs and expenses of enforcing its rights hereunder. This Agreement contains the entire agreement between the parties. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party. This Agreement shall be construed in accordance with the laws of the State of Arizona.
14. The acceptance date of this Agreement shall be the day which the last party executes the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Counsel Accepted:

ROOSEVELT IRRIGATION DISTRICT,
an Arizona municipal corporation

CITY OF AVONDALE,
an Arizona municipal corporation

Title: _____

Title: _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ACKNOWLEDGMENT BY DISTRICT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, the _____ of the Roosevelt Irrigation
District on behalf of said corporation.

Notary Public

Notary Seal:

ACKNOWLEDGMENT BY CITY OF AVONDALE

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, the _____ of the City of
Avondale, on behalf of said _____.

Notary Public

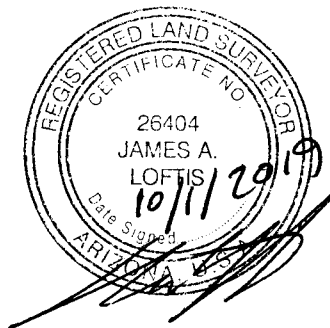
Notary Seal:

EXHIBIT "A"

LEGAL DESCRIPTION FOR PUBLIC WATER AND SEWER EASEMENT

That portion of the Southeast quarter of Section 32, Township 2 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

*COMMENCING at the East quarter corner of said Southeast quarter, from which the Center of Said Section 32 bears South 88 degrees 53 minutes 52 seconds West, 2460.77 feet; Thence South 88 degrees 53 minutes 52 seconds West along the North line of said Southeast quarter, 1230.35 feet to a point on the West line of Lot 1 of Minor Land Division of Lot 1 of 99th & Encanto according to Book 1437 Page 35, records of said County; Thence South 00 degrees 21 minutes 19 seconds West along said West line, 2.00 feet to the **TRUE POINT OF BEGINNING**; Thence continuing South 00 degrees 21 minutes 19 seconds West along said West line, 20.00 feet; Thence South 88 degrees 53 minutes 52 seconds West, 90.03 feet to a point on the West line of the Northeast quarter of said Southeast quarter; Thence North 00 degrees 21 minutes 19 seconds East along last said West line, 20.00 feet; Thence North 88 degrees 53 minutes 52 seconds East, 90.03 feet to the **POINT OF BEGINNING**.*



EVERETTALAN { GROUP }

6300 E. Cave Creek Road, Ste. 202 ☐ Cave Creek, Arizona 85331
Phone 480.990.0545 ☐ Fax 480.994.9097 ☐ www.EverettAlanGroup.com
Job No. 181113

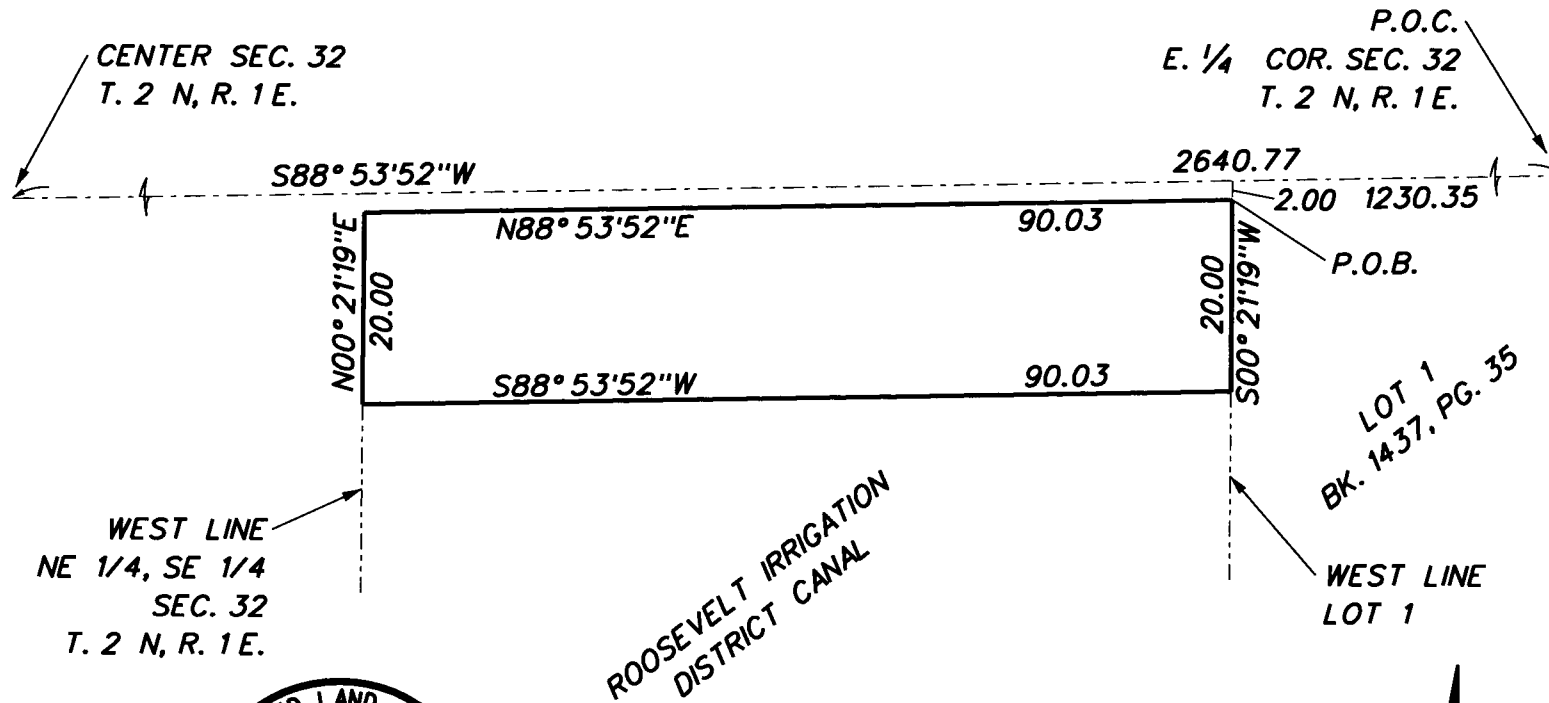
EXHIBIT "A"

PUBLIC WATER AND SEWER EASEMENT
PR. SE 1/4, SEC. 32
T. 2 N, R. 1 E., G. &
S. R. B. & M. M. C., AZ.

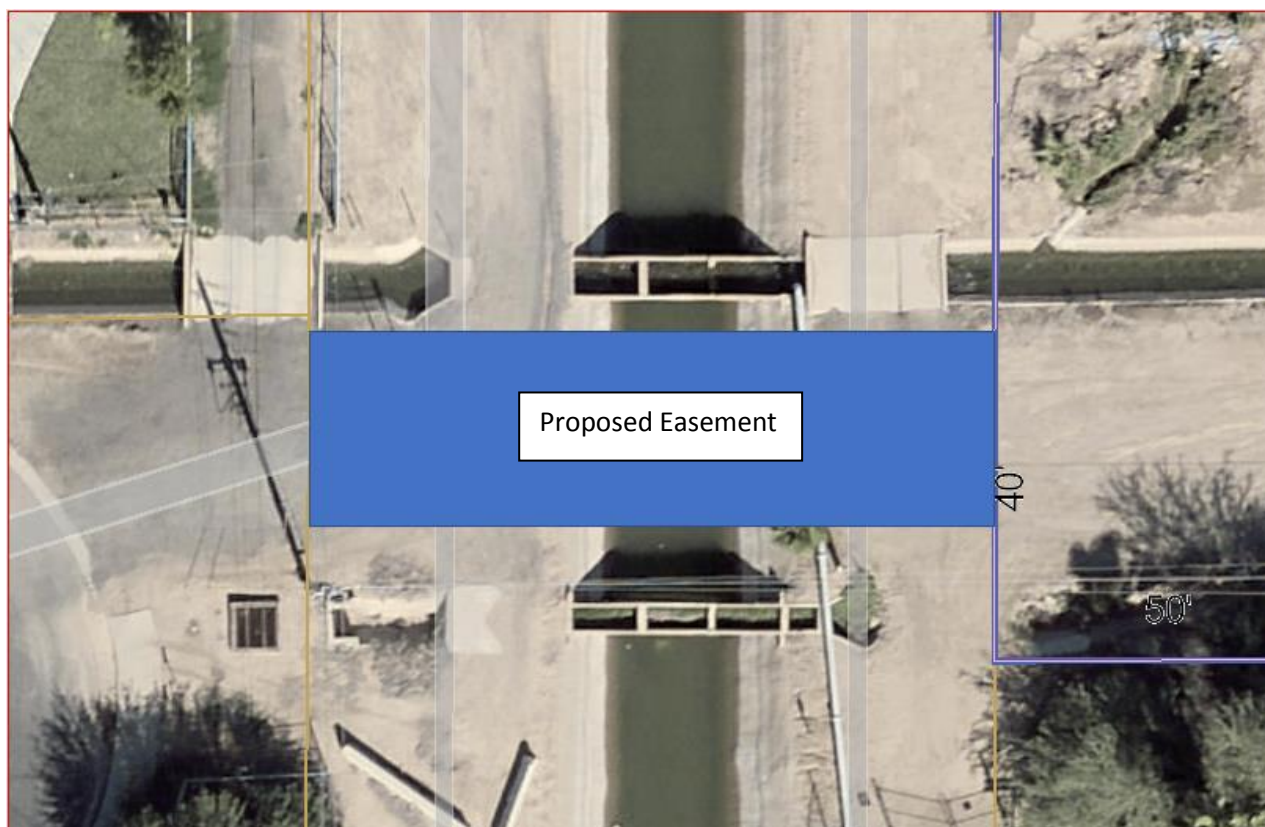
JOB NO.
181113

6300 East Cave Creek Road, Suite 202
Cave Creek, Arizona 85331
Phone 480.990.0545 Fax 480.994.9097
www.EverettAlanGroup.com

EVERETT ALAN
{ GROUP }



Easement to be granted to the City of Avondale by Roosevelt Irrigation District



CITY COUNCIL REPORT

SUBJECT: Ordinance 2002-0120 - Sale of real property located at 801 N Avondale Boulevard

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Tracy Stevens, Deputy City Manager, (623) 333-1014

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Ordinance 2002-0120 authorizing the sale of real property located at 801 N Avondale Boulevard and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

MGN1 LLC came to the City looking to develop a business oriented hotel in The BLVD. Mr. Gazhool with MGN1 LLC was attracted to the overall concept of The BLVD and chose a City owned parcel fronting Avondale Boulevard to purchase for this development. This type of hotel is a property geared towards the business traveler and will include 95 guest rooms in a four story hotel. Mr. Gazhool will plan for additional retail or restaurant options for the remaining property.

DISCUSSION:

Under the terms of the Purchase and sale agreement, staff recommends that the City sell the real property located at 801 N Avondale Boulevard for \$1,960,000. This property was appraised for \$1,960,000 on August 26th, 2019.

BUDGET IMPACT:

City will receive proceeds totaling \$1,960,000.

RECOMMENDATION:

Staff recommends that City Council adopt an ordinance authorizing the sale of real property located at 801 N Avondale Blvd for \$1,960,000.

ORNIDNACE NO. 2002-0120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, AUTHORIZING THE SALE OF REAL PROPERTY.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the "City") to sell real property when public convenience requires it and in accordance with the provisions of State law; and

WHEREAS, the City Council desires to authorize the sale of certain unused real property generally located at 801 North Avondale Boulevard, Avondale, Arizona.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The sale of approximately 4.03 acres of unused real property, generally located at 801 North Avondale Boulevard, Avondale, Arizona, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference, is hereby authorized.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, January 6, 2020.

[SIGNATURES ON FOLLOWING PAGES]

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney

EXHIBIT A
TO
ORNIDNACE NO. 2002-0120

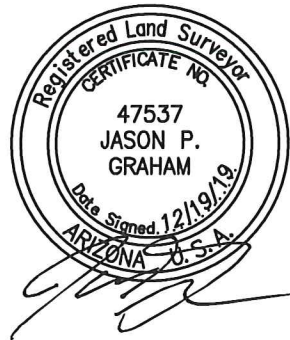
[Legal Description and Map]

See following pages.

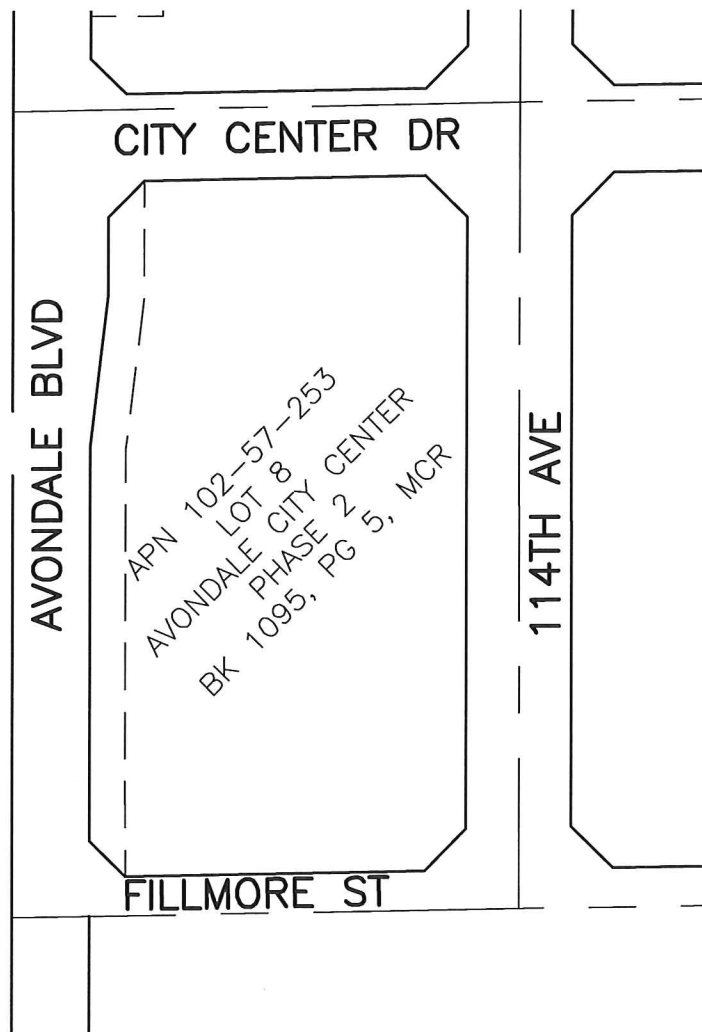
EXHIBIT "A"
LEGAL DESCRIPTION
FOR
APN 102-57-253

A PARCEL OF LAND SITUATED IN A PART OF THE SOUTHWEST QUARTER OF SECTION 6,
TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA
COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 8, AVONDALE CITY CENTER PHASE 2 RECORDED IN BOOK 1095, PAGE 5,
OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AND CONTAINING A COMPUTED AREA OF
178,545 SQUARE FEET OR 4.099 ACRES OF LAND, MORE OR LESS.



FILE:\PROJECTS\2018\1018119.04 Avondale Lot 8 ALTA\CAD\EXHIBITS\18119_04-EX A DESOR.dwg DATE:Dec, 19 2019 TIME: 02:58 pm



NTS

PARCEL AREA:
178,545 SF OR
4.099 ACRES

THIS IS NOT A PROPERTY
BOUNDARY SURVEY.

**Dibble
Engineering**

Dibble Engineering
Proj No 1018119.04

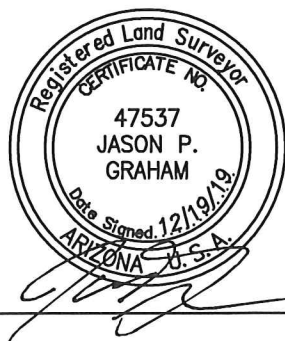


EXHIBIT "B"
LOT 8, AVONDALE CITY CENTER
PHASE 2, BK 1095 PG 5 MCR
A PART OF THE SW 1/4 OF SECTION 6,
T1N, R1E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: DEC 2019

DRN: CSD CHK: JPG

PAGE 2

**PURCHASE AND SALE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MGNI LLC
(APN 102-57-253)**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of January 6, 2020, between City of Avondale, an Arizona Municipal Corporation ("Seller") and MGNI LLC, a Louisiana Limited Liability Corporation (the "Buyer").

In consideration of the covenants, terms, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale of Property. Seller agrees to sell to Buyer, under threat of condemnation, and Buyer agrees to buy from Seller, in lieu of condemnation, on the terms and conditions contained herein, certain real property located in Maricopa County, Arizona, generally known as 801 North Avondale Boulevard, and legally described and depicted in Exhibit A, attached hereto and incorporated herein by reference, together with all Ancillary Property Rights as defined below, including the right to any easements or rights-of-way adjacent to the real property and abandoned after the Escrow Opening Date (collectively referred to as the "Property").

a. Ancillary Property Rights. The Property shall include all of Seller's right title and interest to (1) all buildings, structures and improvements located thereon (2) all of the rights, privileges, easements, reversions, and remainders pertaining to or used in connection with the Property; (3) all air and mineral rights relating to the Property (4) All strips, streets, alleys, easements, rights of way, public ways or other rights appurtenant, adjacent or connected to the Property.

2. Purchase Price. The total price to be paid for the Property (the "Purchase Price") is One Million Nine Hundred and Sixty Thousand Dollars (\$1,960,000.00), payable in cash or certified funds to be deposited with Escrow Agent on the Closing Date. Such Purchase Price shall be payable as follows: (a) an initial deposit of Seventy-Five Thousand (\$75,000.00) (the "Deposit") to be deposited into Escrow (as defined below) on or before the Escrow Opening Date (as defined below) and (b) the balance to be paid at Closing (as defined below). The Deposit shall remain fully refundable until the Feasibility Date (as defined in Section 9). If Buyer delivers a Feasibility Notice (as defined in Section 9), then the Deposit will thereafter be non-refundable except in the event of Seller's breach or as otherwise expressly provided in this Agreement

3. Open and Close of Escrow.

a. Escrow Agent and Instructions. Promptly after execution of this Agreement by the parties, an escrow (the "Escrow") shall be opened with Security Title Agency,

4722 North 24th Street, Suite 200, Phoenix, AZ 85016, Attn. Victoria M. Smith ("Escrow Agent") to facilitate the consummation of the sale of the Property pursuant to this Agreement. This Agreement constitutes escrow instructions to Escrow Agent; however, if required by Escrow Agent, Buyer and the Seller shall execute and deliver to the Escrow Agent printed form escrow instructions consistent with this Agreement. In the event of any conflict between the provisions of the printed form escrow instructions and this Agreement or any deed, instrument or document in connection with the transactions contemplated herein, the provisions of this Agreement or such deed, instrument or document shall control. No provision of the escrow instructions shall excuse any non-performance by either party. The assignment by Escrow Agent of an escrow number to this transaction and the opening of the Escrow by Escrow Agent shall constitute Escrow Agent's acceptance of the instructions to, and other obligations of, Escrow Agent as set forth in this Agreement and the Escrow Instructions.

b. Escrow Opening Date. Escrow Agent shall notify the parties in writing as to the date on which it received fully executed copies of this Agreement, which date is called the "Escrow Opening Date."

c. Earnest Money Deposit. In the event Buyer fails to deposit the Earnest Money Deposit with Escrow Agent in accordance with this Agreement, this Agreement shall automatically terminate, without the need for further notice or instruction.

d. Closing. The sale of the Property for the consideration set forth in this Agreement and consummation of the transactions contemplated by this Agreement (the "Closing" or "Close of Escrow") shall occur on or before 5:00 p.m., local time, Phoenix, Arizona, on or before the date that is no more than sixty (60) days after the Feasibility Date set forth in Paragraph 11 at the office of Escrow Agent or at such other time and location as the parties may agree, which date shall be referred to as the "Closing Date." In no event shall the Closing Date be later than April 30, 2020. The Closing Date shall be deemed on which Escrow Agent actually records the deed or other closing documents. Seller and Buyer hereby authorize Escrow Agent to execute, at Closing, an affidavit of real property value as required by Arizona law.

e. IRC Reports. Escrow Agent, as the party responsible for closing the transactions contemplated hereby within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), shall file all necessary information reports, returns and statements (collectively the "Reports") regarding the transactions as may be required by the Code, including, but not limited to, the reports required pursuant to Section 6045 of the Code. Escrow Agent further agrees to indemnify and hold Buyer, Seller and their respective attorneys harmless for, from and against any and all claims, costs, liabilities, penalties, or expenses resulting from Escrow Agent's failure to file the Reports that Escrow Agent is hereby required to file.

f. Prorations and Escrow Fees. Escrow fees shall be paid by the half by the Seller and half by the Buyer. Seller shall pay all general or special assessments against the Property, if any. Real property, personal property and ad valorem taxes and other state or local taxes and charges affecting the Property shall be prorated on the basis of the current year's rate and valuation, provided, that if the rate of, or valuation for, any such taxes, charges or

assessments has not been fixed before the Closing Date, then the adjustment thereof at the Closing shall be upon the basis of the rate for the preceding year applied to the latest assessed valuation, and the same shall be re-prorated outside of Escrow when the actual figures therefor are available. If such an adjustment is required, the party required to reimburse the other shall make payment within ten days after request for reimbursement. Escrow Agent shall have no obligation with respect to such post-closing adjustment. Except as otherwise provided in this Agreement, all other closing costs shall be paid one-half by Seller and one-half by Buyer. Seller shall not, without the prior written consent of Buyer, consent to the imposition of any assessment against the Property if such assessment would be required to be paid, in whole or in part, by Buyer. Seller shall give Buyer timely written notice of any proposed governmental action, which is not an action of Buyer, of which the Seller becomes aware.

g. Buyer Acknowledgment. Buyer hereby acknowledges and agrees that the Earnest Money Deposit held by Escrow Agent does not and shall not constitute property of the estate of Buyer within the meaning of Section 541 of title 11 of the United States Code, or substantially similar provisions of state law (the "Bankruptcy Code"), and Buyer's interest in such Earnest Money Deposit is limited to the right to have the Earnest Money Deposit returned if and when the conditions for the return of the Earnest Money Deposit to Buyer are satisfied as set forth herein. Buyer hereby acknowledges and agrees that: (a) the proper giving of notice by Seller to release the Earnest Money Deposit as provided hereunder and/or (b) the proper release of the Earnest Money Deposit to Seller as provided hereunder shall not be a violation of any provision of the Bankruptcy Code, including, without limitation, Section 362 of the Bankruptcy Code, or require the approval of any court with jurisdiction over any case in which Buyer or any affiliate of Buyer is a debtor. Buyer hereby waives any provision of the Bankruptcy Code necessary to invoke the foregoing, including, without limitation, Sections 105 and 362, and waives any right to defend against any motion for relief from the automatic stay that may be filed by Seller.

4. Section 1031 Exchange Cooperation.

a. Definitions.

"Exchange" shall mean an exchange of properties under Section 1031 of the United States Internal Revenue Code of 1986, as amended and related regulations.

"Exchange Property" shall mean the new property being acquired by Buyer with proceeds from other property sold by Buyer as part of an Exchange.

b. Seller shall execute all documents reasonably requested by Buyer to effect the Exchange, provided that no further obligation is placed upon Seller and such documents are in a form reasonably satisfactory to Seller and delivered not less than ten calendar days prior to the closing date.

5. Survey. Seller has, at its expense, caused to be completed and has already delivered to Buyer an ALTA survey of the Property prepared by Dibble Engineering, who is a registered land surveyor in the State of Arizona. The Survey shall be completed in accordance with the Arizona State Board of Technical Registration's Arizona Land

Boundary Survey Minimum Standards. The Survey shall be made available at least Sixty (60) days prior to the deadline for closing. (the "Survey").

6. No Financing Contingency. Buyer expressly agrees and acknowledges that Buyer's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Buyer's ability to obtain financing of any type or nature whatsoever, whether by way of debt financing or equity investment, or otherwise

7. Condition of Title.

a. Title Report. Promptly after opening of Escrow, Escrow Agent shall deliver to Buyer and to Seller a preliminary title report or commitment (including matters revealed by an inspection of the Property) dated no earlier than the Escrow Opening Date leading to the issuance of an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring Buyer's interest in the Property, together with readable copies of all instruments of record referred to therein (the "Title Report"). If Buyer delivers a Feasibility Notice pursuant to Section 9, then Buyer will be deemed to have approved the Title Report as amended and delivered to Buyer prior to the Feasibility Date.

b. Amended Title Report. With respect to any amendments to the Title Report delivered to Buyer on or after the Feasibility Date disclosing new matters affecting title to the Property, Buyer shall have until five (5) business days after receipt (and the Closing Date shall automatically be extended for such five (5) business-day period, if appropriate) within which to object in writing to Seller and Escrow Agent to any such new matters affecting title set forth therein. If Buyer objects to any new matters affecting title shown on the amended Title Report, Seller may elect, in its sole discretion, to attempt to cure some or all of Buyer's objections. If Seller does not cure all of those matters objected to by Buyer within five (5) business days after notice of Buyer's objection (and, if necessary, the Closing Date shall be appropriately extended until the expiration of the five (5) business day period hereinabove provided and Buyer's five (5) business day election period below; then Buyer may, in its sole and absolute discretion within five (5) business days, elect to (1) waive the matters objected to and close Escrow subject thereto, or (2) cancel this Agreement by notice to Seller and Escrow Agent, whereupon the Escrow and this Agreement shall automatically terminate and the Deposit shall be returned to the Buyer. If Buyer elects to cancel this Agreement, neither party shall thereafter have any further obligations or liability to the other under this Agreement except as herein expressly provided for otherwise. If Buyer does not give notice of its election within five (5) business days after expiration of Seller's cure period, then Buyer will be deemed to have elected to waive the matters objected to and close Escrow subject thereto. Seller covenants that between the Escrow Opening Date and the Closing Date it will not intentionally cause any material adverse matter to arise or be imposed upon the Property affecting title thereto as to which Seller does not cure or remove before Closing.

8. Permitted Exceptions. The Property shall be sold, assigned and conveyed by Seller to Buyer, and Buyer shall accept and assume same, subject only to the following matters (collectively, the "Permitted Exceptions"):

a. All presently existing and future liens for unpaid real estate taxes and water and sewer charges not due and payable as of the Closing Date, subject to adjustment as hereinafter provided.

b. All present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, "Laws and Regulations").

c. All covenants, restrictions and rights [of record] and all easements and agreements [of record] for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits or other like facilities, and appurtenances thereto, over, across and under the Property (collectively, "Rights"), provided as to any such exceptions that are not set forth in the Title Report, do not interfere with the present use of the Property, do not prohibit the maintenance and operation of the Property and do not impose any financial or other obligations on the Purchaser.

d. Any state of facts which would be shown on or by an accurate current survey of the Property, together with any additional state of facts that a subsequent accurate survey of the Property would show (collectively, "Facts").

e. All violations of building, fire, sanitary, environmental, housing and similar Laws and Regulations whether or not noted or issued at the date hereof or at the Closing Date (collectively, "Violations").

f. Variations between tax lot lines and lines of record title.

g. The standard conditions and exceptions to title contained in the form of title policy or "marked-up" title commitment issued to Purchaser by the Title Company.

h. The Non-Objectable Encumbrances and any liens, encumbrances or other title exceptions approved or waived by Purchaser as provided in this Agreement.

i. Any other matter which the Title Company may raise as an exception to title, provided the Title Company will insure against collection or enforcement of same out of the Property and/or that no prohibition of present use or maintenance of the Property will result therefrom, as may be applicable.

j. Any lien or encumbrance arising out of the acts or omissions of Purchaser.

9. Title Insurance. Buyer's obligation to close Escrow is conditioned upon the commitment of Escrow Agent, or its affiliated title insurer, to issue to Buyer, at or promptly following the Closing, an ALTA extended coverage owner's policy of title insurance insuring

title to the Property in Buyer in the amount of the Purchase Price, the policy to be subject only to the usual printed exceptions, conditions and stipulations in the form of policy and matters affecting title shown on the Title Report approved (or deemed approved) by Buyer in accordance with Section 6 hereof. Seller shall pay the cost of a standard coverage policy. Buyer shall pay the premium for an ALTA extended coverage owner's policy and any endorsements requested by Buyer. Seller and Buyer agree to comply with all reasonable requirements imposed by the title insurer as a condition to issuance of the policy (excluding matters affecting title which, by notice given to Escrow Agent and the other party within ten days after delivery of the Title Report, either Buyer or Seller reasonably determines should more properly be shown in the exceptions to title portion of the Title Report).

10. Conveyancing and Closing Documents.

a. By Seller. On the Closing Date, Seller shall deliver to Buyer:

(1) A special warranty deed, in the form attached hereto as Exhibit B, conveying to Buyer title to the Property.

(2) An affidavit affirming under penalty of perjury that the Seller is not a "foreign person" as such term is defined in Section 1445(f)(3) of the Code. In the event Seller does not furnish such affidavit, Buyer may withhold (or direct Escrow Agent to withhold) from the funds due to Seller at the Closing, an amount equal to the amount required to be so withheld pursuant to Section 1445(a) of the Code, and such withheld funds shall be deposited with the Internal Revenue Service as required by Section 1445(a) and the regulations promulgated thereunder. The amount withheld, if any, shall nevertheless be deemed to be part of the Purchase Price paid to Seller.

b. By Escrow Agent. On the Closing Date, Escrow Agent shall:

(1) Record or file, as appropriate, the closing instruments hereunder in the following order: (A) the Special Warranty Deed, (B) any additional closing instruments.

(2) Deliver the title insurance policy, as set forth in Section 7 of this Agreement, to the Buyer, which requirement shall be satisfied by providing an irrevocable title commitment to issue a title insurance policy on terms acceptable to Buyer. The original title policy will be delivered by Escrow Agent to Buyer promptly after the Closing, but in no event later than 30 days after the Closing.

(3) Provide each party with a complete set of closing documents as they become available to Escrow Agent.

c. Seller authorizes Escrow Agent to prepare an Affidavit of Value as required by Arizona Law and to record such affidavit upon completion of closing.

11. General Tests. Buyer, its agents and designees, shall have the right to enter upon the Property at all times prior to the Closing Date for the purposes of inspecting the Property and making and obtaining drainage, environmental, soil and engineering tests, and performing other

tests, studies or inspections desired by Buyer (the "Inspections"). However, the Seller shall be responsible for providing Buyer with a phase one environmental study on the subject property. Notwithstanding the foregoing, prior to conducting any invasive testing on the Property, Buyer will obtain the prior written consent of the Seller; provided however, that such consent of the Seller shall not be unreasonably withheld, conditioned or denied. Notwithstanding anything to the contrary herein the reports relating to such Inspections shall not be finalized without (a) delivery of a preliminary report to the Seller; and (b) Seller's prior written approval of such preliminary report, provided however, that such approval of the Seller's shall not be unreasonably withheld, conditioned or denied. Buyer shall deliver a copy of all final reports relating to the Inspections to Seller and shall certify such final report to Seller. When conducting Inspections, Buyer will use reasonable efforts to avoid interfering with the use of the Property by Seller. Buyer agrees to indemnify, defend and hold harmless Seller for, from and against all claims, liabilities and damages, including attorneys' fees, for personal injury, physical damage to property or mechanics' or materialmen's liens which may be asserted against Seller as a result of Buyer's entry onto the Property and inspection or testing thereof (such obligations will survive any Closing or termination of this Agreement). Buyer shall, after its entry and testing, restore the Property to substantially the same condition that existed prior to such entry and testing. If any Inspections disclose matters unsatisfactory to Buyer, Buyer may cancel this Agreement, on or before the date that is Sixty (60) days after the Escrow Opening Date (the "Feasibility Date") and the Deposit shall be returned to the Buyer. If Buyer does not give written notice (the "Feasibility Notice") to Seller and Escrow Agent on or before 5:00 pm (Arizona time) on the Feasibility Date, stating that the Inspections contingency provided by this Section 9 has not been satisfied, then it shall be deemed by that Buyer has inspected the property and all conditions have been satisfied.

12. No Alterations to Property. Except for its normal business operations and except as set forth below in this Section 12, Seller shall make no modifications or alterations to the Property between the Escrow Opening Date and the Closing Date, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that there has been any alteration of the property, including those resulting from natural conditions, Seller shall return the property to the condition it existed upon the date of opening of Escrow. As of the Closing Date, there will be no outstanding contracts made by Seller for any improvements to the Property which have not been fully paid, and Seller shall cause to be discharged or bonded in accordance with law any mechanics' or materialmen's liens arising from any labor or material furnished prior to the Closing Date.

13. Representations of Seller. Seller represents and warrants to, and covenants with Buyer that:

a. Authority to Sell. Seller has full authority to sell the Property pursuant to the terms of this Agreement. The Property is not subject to any unrecorded mortgages, liens, financing statements or encumbrances

b. Claims. There are no pending or threatened claims or litigation affecting the Property. If Seller becomes aware of any of the foregoing after the Escrow Opening Date (whether arising before or after the Escrow Opening Date), but prior to the Closing Date, Seller shall give prompt written notice thereof to Buyer prior to the Closing Date.

c. Violations of Law; Defaults. To Seller's actual knowledge, there is no violation of any laws, ordinances, rules or regulations with respect to the Property, no default exists under any covenant, condition, restriction or easement applicable to the Property and Seller has not received written notice from any governmental or other agency of any uncured violation of any laws or ordinances with respect to the Property. If Seller becomes aware of any of the foregoing after the Escrow Opening Date (whether arising before or after the Escrow Opening Date), but prior to the Closing Date, Seller shall give prompt notice thereof to Buyer prior to the Closing Date.

d. Seller's Authority to Execute. Seller is duly authorized to execute this Agreement.

e. No Special Assessment. Except as set forth in the Title Report, Seller has received no written notice that there are any special assessment actions being contemplated by any governmental authority.

f. Hazardous Substance. To Seller's actual knowledge and except as set forth in that certain Phase I and Phase II Environmental Site Assessment prepared for Buyer by Geotechnical and Environmental Consultants, Inc., dated September 4, 2009 (the "Environmental Report"), no portion of the Property is being used or has been used at any previous time for the treatment, storage, disposal, or processing of hazardous wastes, hazardous substances, toxic substances or hazardous materials, infectious or medical waste, radioactive waste or sewer sludges (collectively the "Hazardous Substances"), as such terms are defined in the Resource Conservation and Recovery Act, as amended in quantities that exceed any state or federal remediation levels; the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Toxic Substances Control Act, as amended; the Clean Air Act, as amended; the Clean Water Act, as amended; the Safe Drinking Water Act, as amended; and similar state, county and local laws, ordinances and regulations, except for pesticides and other chemicals that may have been used in the ordinary course of farming operations. Seller has not received written notice of any ongoing requirements or orders of any department of environmental resources or similar government agency for environmental cleanup with respect to the Property.

g. Underground Storage Tanks. To Seller's actual knowledge and except as set forth in the Phase I Report, the Property does not contain and has never contained any underground storage tanks containing petroleum products or wastes or other hazardous substances regulated by 40 C.F.R. § 280 and/or other applicable, federal, state or local laws, rules and regulations and requirements.

h. No Prior Soil Remediation. To Seller's actual knowledge, and except as set forth in the Environmental Report, the Property has never been subject to soil remediation.

i. Bankruptcy. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debt or relief laws which have been filed by Seller, or

contemplated by Seller, or are pending in current judicial or administrative proceedings against Seller.

j. Other Contracts, Options or Other Obligations. Other than this Agreement, Seller has no entered, and nor shall any of the Seller enter, into any contracts, options, or other obligations or rights for the purchase and sale of the Property, nor have any of the Seller entered into any leases, rights of occupancy or first refusals or options to purchase the Property. Notwithstanding anything to the contrary, if there are any other leases, contracts or obligations for the purchase and sale of the Property or rights of occupancy for the Property, Seller shall terminate all leases, contracts or obligations prior to the Close of Escrow. Except to the extent Seller gives Buyer notice as herein below provided, Seller represents and warrants to, and covenants with, Buyer that the foregoing representations and warranties will be true and correct as of the Closing Date. The foregoing representations and warranties shall survive the Closing for a period of one year. Seller agrees to take no voluntary and intentional actions or omissions to act that would cause any of its representations, warranties or covenants in this Agreement to become untrue. If, after the Escrow Opening Date, Seller obtains actual knowledge that any of its representations, warranties or covenants are, or have become, untrue in any material adverse respect (whether occurring before or after the Escrow Opening Date), with or without the voluntary and intentional act or omission to act of Seller, then Seller shall immediately give written notice of such fact to Buyer. Within ten days after receipt of any such notice from Seller or discovery of such changes by Buyer (and, if necessary, the Closing shall be appropriately extended until the expiration of the ten day period at Buyer's election), Buyer may, as Buyer's sole and exclusive remedy, in its sole and absolute discretion and without obligation to do so, cancel this Agreement, in which event this Agreement and the Escrow shall automatically terminate, the Deposit shall be returned to Buyer, and neither party shall thereafter have any further obligations or liability under this Agreement except as herein expressly provided for otherwise. "To Seller's actual knowledge" and similar phrases used in this Section 11 mean to the actual conscious knowledge of the Economic Development Department of the City of Avondale without any duty of investigation and without any imputed or constructive knowledge. If Seller gives notice of any changes or Buyer discovers any changes and Buyer does not elect to cancel this Agreement, Seller's representations, warranties and covenants shall be deemed amended to reflect the changes.

k. This purchase is subject to the approval of a Development Agreement pursuant to Arizona Revised Statutes, Section 9-500.05 providing for Seller's participation in the financial cost of certain public infrastructure, normally the responsibility of buyer. In the event that Seller fails to approve the Development Agreement, then Buyer is under no legal obligation to close this transaction and Buyer's purchase price and earnest money shall be returned to Buyer.

l. Municipal Organization. Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Arizona, and has full power and authority to enter into and perform this Agreement in accordance with its terms. All proceedings of Buyer to consummate the transaction contemplated by this Agreement and all documents and instruments required to be executed and delivered hereunder by Buyer have been duly and validly authorized, and upon execution and delivery by Buyer will constitute the valid and binding obligations of Buyer in accordance with their terms.

m. **Foreign Persons.** Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code 1986, as amended, or any regulations promulgated thereunder (collectively, the "**Code**"); and Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

14. **Conditions to Buyer's Obligation to Close.** The Buyer's obligation to purchase the Property from Seller is conditioned upon and subject to (unless waived in writing by Buyer in Buyer's sole and absolute discretion):

a. Escrow Agent (or its title insurance affiliate, if appropriate) committing to issue to Buyer at or promptly after the Closing the title insurance policy required under Section 7 of this Agreement.

b. Approval of a Development Agreement as set forth in Section 11.k. by Seller.

If either condition described in this Section 14 is not satisfied, Buyer, at its election, may (1) cancel this Agreement by notice to Seller and Escrow Agent, whereupon this Agreement and the Escrow shall automatically terminate and the Deposit shall be returned to the Buyer. Neither party shall thereafter have any further obligations or liability to the other hereunder except as herein expressly provided for otherwise, or (2) waive the condition and close Escrow subject thereto.

15. **Representations of Buyer.** Buyer represents and warrants to, and covenants with Seller that:

a. Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms. Buyer is a Limited Liability Corporation validly formed and in good standing under the laws of the State of Louisiana. Buyer is duly qualified to do business and is in good standing in the State of Arizona. All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with this Agreement or shall have been taken on or prior to the Closing Date. Buyer's execution, delivery and performance of this Agreement have been duly authorized, and all required consents or approvals have been obtained. The individuals executing this Agreement on behalf of Buyer have the power and authority to bind Buyer to the terms and conditions of this Agreement;

b. This Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally;

c. Buyer has not violated any contract, agreement or other instrument to which Buyer is a party, nor any judicial order, judgment or decree to which Buyer is bound by: (i) entering into this Agreement; (ii) executing any of the documents Buyer is obligated to execute and deliver on the Closing Date or (iii) performing any of its duties or obligations under this Agreement or otherwise necessary to consummate the transactions contemplated by this Agreement;

d. There are no actions, lawsuits, litigation or proceedings pending or threatened in any court or before any governmental or regulatory agency that affect Buyer's power or authority to enter into or perform this Agreement;

e. Buyer shall defend and indemnify Seller against, and hold Seller harmless from, all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, asserted by third parties for any breach, default or violation of any Lease, or covenant thereof, occurring after the Closing Date;

f. Buyer is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations OFAC (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities; and

g. There are no judgments, orders, or decrees of any kind against Buyer unpaid or unsatisfied of record, nor any actions, suits or other legal or administrative proceedings pending or, to the best of Buyer's actual knowledge, threatened against Buyer, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Buyer or the ability of Buyer to consummate the transactions contemplated by this Agreement. Except to the extent Buyer gives Seller notice as herein below provided, Buyer represents and warrants to, and covenants with, Seller that the foregoing representations and warranties will be true and correct as of the Closing Date. The foregoing representations and warranties shall survive the Closing for a period of one year. Buyer agrees to take no voluntary and intentional actions or omissions to act that would cause any of its representations, warranties or covenants in this Agreement to become untrue. If, after the Escrow Opening Date, Buyer obtains actual knowledge that any of its representations, warranties or covenants are, or have become, untrue in any material adverse respect (whether occurring before or after the Escrow Opening Date), with or without the voluntary and intentional act or omission to act of Buyer, then Buyer shall immediately give written notice of such fact to Seller. Within ten days after receipt of any such notice from Buyer or discovery of such changes by Seller (and, if necessary, the Closing shall be appropriately extended until the expiration of the ten day period at Seller's election), Seller may, as Seller's sole and exclusive remedy, in its sole and absolute discretion and without obligation to do so, cancel this Agreement, in which event this Agreement and the Escrow shall automatically terminate, the Deposit shall be paid to Seller as liquidated damages, and neither party shall thereafter have any further obligations or liability under this Agreement except as herein expressly provided for otherwise. If Buyer gives notice of any changes or Seller discovers

any changes and Seller does not elect to cancel this Agreement, Buyer's representations, warranties and covenants shall be deemed amended to reflect the changes.

16. As-Is Sale. BUYER REPRESENTS AND WARRANTS THAT IT HAS THE EXPERIENCE AND ABILITY TO INVESTIGATE THE PROPERTY AND TO DETERMINE WHETHER THE PROPERTY IS SUITABLE FOR BUYER WITHOUT NEEDING TO RELY ON ANY REPRESENTATIONS FROM SELLER NOT EXPRESSLY STATED IN THIS AGREEMENT (THE TERM "THIS AGREEMENT" AS USED IN THIS SECTION SHALL INCLUDE THE CLOSING DOCUMENTS EXECUTED BY SELLER PURSUANT TO THIS AGREEMENT). EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, BUYER AGREES THAT SELLER HAS NOT MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PROPERTY, ITS PHYSICAL CONDITION OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND THE PROPERTY IS BEING CONVEYED AND TRANSFERRED TO BUYER "AS IS, WHERE IS AND WITH ALL FAULTS." SELLER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS MAY BE EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, BY CLOSING HEREUNDER, BUYER ASSUMES AND RELEASES SELLER AND ITS AFFILIATES HARMLESS FROM ANY LIABILITY, COST, EXPENSE, CLAIM, OBLIGATION OR JUDGMENT WHETHER KNOWN OR UNKNOWN AND WHETHER EXISTING NOW OR ARISING IN THE FUTURE, RELATED TO, ARISING FROM OR REGARDING THE CONDITION OF THE PROPERTY AND ANY WORK OR IMPROVEMENT RELATED THERETO AND FROM ALL OBLIGATIONS UNDER CERCLA OR ANY OTHER STATE, FEDERAL OR LOCAL ENVIRONMENTAL OR OTHER LAW CONCERNING THE PROPERTY AND, EXCEPT AS MAY BE EXPRESSLY OTHERWISE PROVIDED HEREIN, WAIVES ANY RIGHT TO HOLD SELLER AND ITS AFFILIATES RESPONSIBLE FOR ANYTHING WHICH OCCURRED PRIOR TO CLOSING WITH REGARD TO THE CONDITION OF THE PROPERTY. THE PROVISIONS OF THIS SECTION 14 WILL SURVIVE THE CLOSING.

17. Seller' Remedies. Except as otherwise expressly provided in this Agreement, if Buyer breaches this Agreement, after the applicable notice and Cure Period, Seller's sole and exclusive right and remedy shall be to terminate this Agreement and retain the Deposit as liquidated damages for Buyer's failure. The parties acknowledge that it would be impractical to fix the actual damages suffered by Seller as a result of such default, and the amount of liquidated damages represents a fair and reasonable compensation to Seller for such failure. Seller waives all other remedies. Neither party shall thereafter have any further obligations or liability to the other except as herein expressly provided for otherwise.

18. Buyer's Remedies. If the Escrow hereunder fails to close because of a breach by the Seller, after the applicable notice and Cure Period, Buyer's sole and exclusive right and remedy shall be to elect to either (a) terminate this Agreement by written notice to Seller and Escrow Agent and receive a refund of the Deposit, or (b) sue Seller for specific performance if Buyer fully and timely performs and brings such action within one (1) year after the Closing Date. If Buyer elects to terminate this Agreement pursuant to clause (a) of the previous sentence,

upon receipt of written notice to Escrow Agent and Seller, Escrow Agent shall return the Deposit to Buyer.

19. Breach; Cure. Failure or unreasonable delay by the Seller or City to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 5 days after written notice thereof from the other Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 5 days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said 5-day period and diligently proceeds to complete such performance or fulfill such obligation (the "Cure Period"); provided further, however, that no such cure period shall extend beyond the Closing Date, unless otherwise agreed to, in writing, by the parties. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the non-defaulting party shall have the rights and remedies set forth in Sections 17 and 18.

20. Eminent Domain. In the event that, prior to the Closing Date, any of the Property is taken by the power of condemnation or eminent domain, or in the event notice is given by any governmental authority (other than the City) of, or an action is commenced with respect to, the taking of any part of the Property by the power of condemnation or eminent domain, Seller shall give immediate written notice thereof to Buyer. Buyer may, in its sole discretion and within five (5) days after receipt of such notice from Seller or prior to the Closing Date, whichever period is shorter, elect to terminate this Agreement by written notice of such election to Seller and Escrow Agent. In the event Buyer elects to cancel this Agreement, neither party shall thereafter have any further obligation or liability to the other except as herein expressly provided for otherwise. If Buyer does not elect to so cancel this Agreement, all condemnation awards relating to the Property and rights thereto are hereby assigned to Buyer and shall be paid to Buyer and the Purchase Price shall not be reduced.

21. Risk of Loss. Prior to the Closing Date, the risk of loss resulting from any cause, including, without limitation, fire or other casualty, to the improvements or any property, real or personal, subject to this Agreement shall be that of Seller. If, at any time prior to the Closing, the improvements on the Property, if any, are destroyed or materially damaged, Buyer will close Escrow notwithstanding such damage, in which event all insurance proceeds from Seller's insurance are hereby assigned to Buyer and shall be paid to Buyer within ten days of a demand therefore. 22. Brokerage.

a. Buyer represents and warrants to Seller that it has not dealt or negotiated with or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a "Broker") in connection with this Agreement or the transactions contemplated hereby other than MJG Gas Station Specialists, LLC (MJG) (the "Buyer's Broker"). Buyer hereby agrees to indemnify, defend and hold Seller and its disclosed and undisclosed direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses,

costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made by any Broker (including Buyer's Broker) engaged by or claiming to have dealt with Buyer in connection with this Agreement or the transactions contemplated hereby. The parties agree that Buyer's Broker shall be paid a commission of three percent (3%) of the purchase price and authorize Escrow Agent to hold such amount for payment to Buyer's Broker.

b. Seller represents and warrants to Buyer that it has not dealt or negotiated with or engaged on its own behalf or for its benefit, any Broker in connection with this Agreement or the transactions contemplated hereby. Seller hereby agrees to indemnify, defend and hold Purchaser and its disclosed and undisclosed direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made by any Broker (including Seller's Broker) engaged by or claiming to have dealt with Seller in connection with this Agreement or the transactions contemplated hereby.

23. Insurance. The Buyer shall provide such evidence of insurance which Seller may require regarding Buyer's activities upon the Property.

24. General Provisions.

a. Further Instruments. Each party, promptly upon the request of the other, shall execute, acknowledge and deliver to the other any and all further instruments as may be necessary or proper to carry out the purpose and intent of this Agreement.

b. Assignment. Either party may assign or transfer its rights, duties and obligations under this Agreement only with the prior written consent of the other party, which consent may be withheld for any reason or for no reason. Any such transfer or assignment shall be subject to the terms of this Agreement.

c. Successors and Assigns. Except as otherwise provided herein, this Agreement and all the terms and provisions hereof shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

d. Entire Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral understandings or agreements between the parties.

e. Modification of Agreement. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

f. Waiver. The waiver of a breach of any term or condition of this Agreement may be made only in writing and shall not be deemed to constitute a waiver of

subsequent breach of such term or condition, or a waiver of a breach or subsequent breach of any other term or condition.

g. Survival. Subject to the one-year limitation on survival contained in Sections 13 and 15, all agreements, representations and warranties made in this Agreement shall survive the termination of this Agreement.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

i. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person may in the context require.

j. Descriptive Headings. The descriptive headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

k. Third Party Beneficiary. None of the terms or provisions of this Agreement shall be deemed or construed to create any third-party beneficiary rights to any person who is not a party hereto unless expressly otherwise provided.

l. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

If to Seller: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles A. Montoya, City Manager

and a copy to: City of Avondale
Office of the City Attorney
11465 West Civic Center Drive
Avondale, Arizona 85323

If to the Buyer: MGN1 LLC
Maan Ghazool, Member
5201 North Claidorne Avenue
New Orleans, LA 70117

*MJB Gas Station Specialists LLC
24828 N. 56TH DR.
Glendale AZ 85310
Attn: Michael Green*

With copy to:

If to Escrow Agent: Security Title Agency
4724 North 24th Street
Suite 200
Phoenix, AZ 85016
Attn. Victoria M. Smith

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (4) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

m. Governing Law and Venue. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Arizona. Any action at law or judicial proceeding instituted by any party relating to this Agreement shall be instituted in the state or federal courts located in Maricopa County, Arizona.

n. Attorneys' Fees. In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover its costs and expenses, including without limitation, reasonable attorneys' fees, expert witness fees and investigators' fees, which shall be determined by the court if the matter is litigated or otherwise in a separate action brought for that purpose.

o. Time of the Essence. All dates and times for performance set forth in this Agreement are of the essence.

p. Severability. If any provision or provisions of this Agreement, or the application thereof to any person or circumstance be determined to be invalid or unenforceable to any extent by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

q. Time Periods. If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

r. Acceptance. If Seller have not accepted the offer of Buyer as herein set forth on or before 12:00 p.m., local time, Phoenix, Arizona, on October 15, 2019, this offer shall be deemed revoked. Seller' acceptance shall occur when a fully executed copy of this Agreement is received by Escrow Agent.

s. Disclosure. This Agreement may be disclosed to any board, official, officer, party or person as Buyer or its counsel may determine is necessary, including entry into any public record and disclosure at any public meeting or hearing.

t. Public Funds Law. Nothing herein shall be construed or enforced in a manner that violates applicable Arizona law regarding public funds.

u. Cancellation. This Agreement may be cancelled by the Seller pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first written above.

"SELLER"

CITY OF AVONDALE, an Arizona
Municipal Corporation

By: _____
Charles A. Montoya, City Manager

ATTEST:

Marcella Carrillo, City Clerk

"BUYER"

MGN1 LLC, a Louisiana Limited Liability Corporation

By: _____
Its: Managing Member

ACCEPTED AND APPROVED:

ESCROW AGENT
STEWART TITLE & TRUST OF PHOENIX, INC.

By: _____

Name: _____

Title: _____

Dated: _____

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Extending the Locally Controlled Alternative Expenditure Limitation - Home Rule Option

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Lindsey Duncan, Finance & Budget Director, (623) 333-2011

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will hold the second of two required public hearings on the alternative expenditure limitation-home rule option.

BACKGROUND:

Title 42 of the Arizona Revised Statutes implies the adoption of a balanced budget where estimated revenues and resources are greater than or equal to the appropriated expenditures. In addition to the requirement of an adopted budget, the State Constitution imposes an expenditure limitation on every city and town in the State. The State-imposed limitation uses expenditures of local revenues from Fiscal Year (FY) 1980 as a baseline. Each year, the Economic Estimates Commission (EEC) adjusts the baseline expenditure limitation based on inflation and the population growth in the community to establish a new expenditure limitation. Avondale's State-imposed expenditure limitation for FY2020 is \$56.3 million.

Certain revenues are specifically excluded from the State-imposed expenditure limitation. Examples of revenues exempted from the State imposed limitation include revenue received from the issuance of bonds, revenue received from interest or dividends, revenue from Federal grants, and intergovernmental revenue already subject to another entity's expenditure limitation.

The State Constitution provides three options for cities and towns to exceed the state imposed expenditure limitation: alternative expenditure limitation (local home rule option), permanent base adjustment, one-time override.

All of the options require voter approval. If none of the options are approved by the voters, the State-imposed limitation will apply. The home rule option allows the City to set its own expenditure limitation when the budget is adopted. Home rule must be approved by the voters and is good for a period of four years. After the four years, extending the home rule option must be approved by the voters again. The City of Avondale voters last approved Home Rule in August 2016. To add the home rule option to the 2020 ballot, Avondale must hold two public hearings and after the second public hearing, a two-thirds majority of the City Council must vote to refer the home rule option to the 2020 ballot. The first required public hearing was held on December 9, 2019.

DISCUSSION:

In 2016, the Avondale voters adopted an alternative expenditure limitation – Home Rule option, with 86% voting yes and 14% voting no. The Home Rule option expires at the end of FY2021.

The FY2020 adopted City budget is \$236.7 million and staff estimates approximately \$200 million is subject to the state imposed expenditure limitation. The current State-imposed limitation is \$56.3 million. Staff estimates the City would have to cut approximately \$139 million from its budget or pay a penalty from the City's share of state income tax.

There are several factors that cause the City's budget to exceed the State-imposed expenditure limit. Since 1979, the voters of Avondale have approved revenues to enhance city services that are not included in the state imposed expenditure limit. Examples include the public safety sales tax (approved 2003), the dedicated sales tax for streets, transit, and utility improvements (approved 2001), the increase in general fund sales tax from 1% to 1.5% (1990), and the transient lodging tax (1989). If the City was subject to the state imposed expenditure limitation, the City would continue to collect these revenues but would not have the authorization to spend those revenues.

Additionally, the City funds a significant portion of capital improvements in the City through transfers of operating funds rather than debt. Utilizing existing funds rather than debt allows the City to save money from interest payments and preserve financial flexibility in the future. The state-imposed expenditure limitation incentivizes the use of debt since monies received from debt issuances and payments on debt are exempted from the state imposed limitation.

BUDGET IMPACT:

Extension of the alternative expenditure limitation - home rule option would allow the City of Avondale to continue to locally control the budget for the City from FY2022 to FY2025.

Without an alternative expenditure limitation, Avondale would either need to cut expenses to fall below the state imposed limit or pay a penalty as a portion of state shared income tax. For example, staff estimates the City FY2020 is \$144 million above the state imposed limitation. If home rule had not been in effect, the City would either need to cut that amount from the budget or pay a penalty of \$3.7 million (one-third of the City's state income tax allocation).

RECOMMENDATION:

Staff recommends that City council hold the second required public hearing on the alternative expenditure limitation - home rule option.

CITY COUNCIL REPORT

SUBJECT: Resolution 1001-0120 - Extending the Locally Controlled Alternative Expenditure Limitation - Home Rule Option

MEETING DATE: 1/6/2020

TO: Mayor and Council

FROM: Lindsey Duncan, Finance & Budget Director, (623) 333-2011

THROUGH: Charles A. Montoya, City Manager, (623) 333-1016

PURPOSE:

City Council will consider a request to adopt Resolution 1001-0120 proposing to submit to the qualified electors at the August 4, 2020 election a question to continue an alternative expenditure limitation - home rule option, in place of that provided by the State of Arizona and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

BACKGROUND:

Title 42 of the Arizona Revised Statutes implies the adoption of a balanced budget where estimated revenues and resources are greater than or equal to the appropriated expenditures. In addition to the requirement of an adopted budget, the State Constitution imposes an expenditure limitation on every city and town in the State. The State-imposed limitation uses expenditures of local revenues from Fiscal Year (FY) 1980 as a baseline. Each year, the Economic Estimates Commission (EEC) adjusts baseline expenditure limitation based on inflation and the population growth in the community to establish a new expenditure limitation. Avondale's State-imposed expenditure limitation for FY2020 is \$56.3 million.

Certain revenues are specifically excluded from the State-imposed expenditure limitation. Examples of revenues exempted from the State imposed limitation include revenue received from the issuance of bonds, revenue received from interest or dividends, revenue from Federal grants, and intergovernmental revenue already subject to another entity's expenditure limitation.

The State Constitution provides three options for cities and towns to exceed the state imposed expenditure limitation: alternative expenditure limitation (local home rule option), permanent base adjustment, one-time override.

All of the options require voter approval. If none of the options are approved by the voters, the State-imposed limitation will apply. The home rule option allows the City to set its own expenditure limitation when the budget is adopted. Home rule must be approved by the voters and is good for a period of four years. After the four years, extending the home rule option must be approved by the voters again. The City of Avondale voters last approved Home Rule in August 2016. To add the home rule option to the 2020 ballot, Avondale must hold two public hearings and after the second public hearing, a two-thirds majority of the City Council must vote to refer the home rule option to the 2020 ballot. The first required public hearing was held on December 9, 2019 and the second required public hearing was held on January 6, 2020.

DISCUSSION:

In 2016, the Avondale voters adopted an alternative expenditure limitation – Home Rule option, with 86% voting yes and 14% voting no. The Home Rule option expires at the end of FY2021.

The FY2020 adopted City budget is \$236.7 million and staff estimates approximately \$200 million is subject to the state imposed expenditure limitation. The current State-imposed limitation is \$56.3 million. Staff estimates the City would have to cut approximately \$139 million from its budget or pay a penalty from the City's share of state income tax.

There are several factors that cause the City's budget to exceed the State-imposed expenditure limit. Since 1979, the voters of Avondale have approved revenues to enhance city services that are not included in the state imposed expenditure limit. Examples include the public safety sales tax (approved 2003), the dedicated sales tax for streets, transit, and utility improvements (approved 2001), the increase in general fund sales tax from 1% to 1.5% (1990), and the transient lodging tax (1989). If the City was subject to the state imposed expenditure limitation, the City would continue to collect these revenues but would not have the authorization to spend those revenues.

Additionally, the City funds a significant portion of capital improvements in the City through transfers of operating funds rather than debt. Utilizing existing funds rather than debt allows the City to save money from interest payments and preserve financial flexibility in the future. The state-imposed expenditure limitation incentivizes the use of debt since monies received from debt issuances and payments on debt are exempted from the state imposed limitation.

BUDGET IMPACT:

Extension of the alternative expenditure limitation - home rule option would allow the City of Avondale to continue to locally control the budget for the City from FY2022 to FY2025.

Without an alternative expenditure limitation, Avondale would either need to cut expenses to fall below the state imposed limit or pay a penalty as a portion of state shared income tax. For example, staff estimates the City FY2020 is \$144 million above the state imposed limitation. If home rule had not been in effect, the City would either need to cut that amount from the budget or pay a penalty of \$3.7 million (one-third of the City's state income tax allocation).

RECOMMENDATION:

Staff recommends approval of the resolution to submit to the voters at the August 4, 2020 election a question proposing a continuation of a locally controlled alternative expenditure limitation-home rule option and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

RESOLUTION NO. 1001-0120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA PROPOSING TO SUBMIT TO THE QUALIFIED ELECTORS OF THE CITY AN ALTERNATIVE EXPENDITURE LIMITATION IN PLACE OF THAT PROVIDED BY THE STATE OF ARIZONA.

WHEREAS, the Arizona State Constitution permits the submission to the voters of a city or town the question of adoption of an alternative expenditure limitation for such city or town; and

WHEREAS, the voters of the City of Avondale in 2016 adopted an alternative expenditure limitation; and

WHEREAS, the City Council of Avondale after two public hearings has determined that the question of adoption of a new alternative expenditure limitation should be submitted for consideration by the qualified electors of the City of Avondale.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the recitals set forth above are hereby incorporated as if fully set forth herein.

SECTION 2. That the question of adoption of an alternative expenditure limitation extension be submitted to the voters of the City generally as follows:

Shall the following be adopted by the City of Avondale as an alternative expenditure limitation:

“The Mayor and Council of the City of Avondale shall annually, as part of the annual budget adoption process, adopt an alternative expenditure limitation equal to the total amount of budgeted expenditures/expenses as it appears on the annual budget as adopted by the City Council to apply to the City of Avondale for each of the four fiscal years immediately following such adoption. The alternative expenditure limitation shall be adopted each year after a public hearing at which the citizens of the City of Avondale may comment on the proposed alternative expenditure limitation. No expenditures may be made in violation of such alternative expenditure limitation, nor may any proposed expenditures be in excess of estimated available revenues, except that the Mayor and the Council may by three-fourths vote, declare an emergency and suspend the alternative expenditure limitation. The suspension of the alternative expenditure limitation shall be in effect for only one fiscal year at a time.”

SECTION 3. That the question of adoption of an alternative expenditure limitation shall be placed on the City of Avondale primary election ballot which is set for August 4, 2020.

SECTION 4. That the City Clerk is authorized to enter into such agreements as necessary with Maricopa County and the County Elections department to facilitate the placement of this question upon the ballot

SECTION 5. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the City Council of Avondale, January 6, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney