



City of Avondale

City Council Online Meeting

Monday, August 10, 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

Tracy Stevens, Deputy City Manager

Nicholle Harris, Interim City Attorney

Marcella Carrillo, City Clerk

Online Meeting

Join the meeting and view presentations: <https://avondaleaz.zoom.us/j/3083557784>

Using a Mobile Device? Download the Zoom Cloud Meeting App

Join the meeting with audio only: Call 301-715-8592 (meeting ID: 308 355 7784)



City Council Online Meeting Notice & Agenda Monday, August 10, 2020

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Unscheduled public appearances will not be permitted at this meeting as City Council. Members of the public may listen to the discussions by joining the meeting online at <https://avondaleaz.zoom.us/j/3083557784>.

REGULAR MEETING

6:00 PM

CALL TO ORDER BY MAYOR

1. ROLL CALL BY THE CITY CLERK

2. 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. BUDGET ADJUSTMENT FOR VARIOUS POSITIONS

City Council will consider a request to authorize two new full-time equivalent (FTE) positions to include a Deputy City Manager and Assistant Director of Development and Engineering Services, and authorize a budget adjustment in the amount of \$443,600 from the General Fund contingency to fund the positions. The Council will take appropriate action.

b. MINOR LAND DIVISION - MCDONALD'S AVONDALE (APPLICATION PL-20-0110)

City Council will consider a request by Mr. Jason Morris, Withey Morris PLC, for approval of Application PL-20-0110 McDonald's Avondale Minor Land Division (MLD) on 2.75 gross acres of property located at the northeast corner of Avondale Boulevard and Lower Buckeye Road. The proposed MLD will dedicate public right-of-way and utility easements for Avondale Boulevard and Lower Buckeye Road adjacent to a planned new McDonald's drive-through restaurant. The proposed MLD will also formalize a previous split created by Special Warranty Deed in 2005. Cross-access easements are included for connection to future commercial development with the adjacent parcel. The Council will take appropriate action.

c. RESOLUTION 1056-0820 - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TOLLESON FOR DETENTION SERVICES

City Council will consider a request to adopt Resolution 1056-0820, authorizing an Intergovernmental Agreement (IGA) with the City of Tolleson for Avondale to provide Detention Services to the City of Tolleson and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

3. ADJOURNMENT

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

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica. 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: Budget Adjustment for Various Positions

MEETING DATE: 8/10/2020

TO: Mayor and Council

FROM: Marshall Pimentel, Management Analyst, 623-333-1027

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

PURPOSE:

City Council will consider a request to authorize two new full-time equivalent (FTE) positions to include a Deputy City Manager and Assistant Director of Development and Engineering Services, and authorize a budget adjustment in the amount of \$443,600 from the General Fund contingency to fund the positions. The Council will take appropriate action.

BACKGROUND:

Position Request - City Manager's Office

City facility construction, planning for new projects and numerous special projects continue at a rapid pace despite the pandemic. In addition, the Capital Improvement Program is proceeding with the hope that contingent projects can proceed with a few more months of revenue information. Numerous positions were added for the fiscal year, with many of them in Police and the potential for several more in Fire, should we receive the SAFER grant.

There is a need for additional oversight and assistance in the City Manager's Office. The attached organizational chart shows tentative plans for that position and other shifts in reporting relationships. An additional position will enable us to continue to improve operations, services to the community and to address Council priorities.

Position Request - Development & Engineering Services

During this year's budget process, a request was approved for an additional \$175,000 for project management assistance on the Police, Resource Center, City Annex buildings, and now future Fire Station. Council inquired during the presentation if it would be cheaper to hire someone in-house and staff responded that it was very difficult to find someone with the skills and experience necessary.

Currently, we have two firms engaged for approximately \$330,000 in purchase orders in FY 2020 for project management and since November 2018 we have signed contracts for approximately \$460,000 with one firm alone. Staff feels that there is interest and the skill set available in the industry to bring on an Assistant Director to further assist with all of the construction projects and planned projects in the queue. Staff would be seeking a seasoned licensed architect to fill this role with many years of experience in the building industry. This will help the department oversee all of the City's capital projects and assist the other divisions as well. Given the number of projects we have scheduled, this position will provide the City a much higher level of

expertise in building construction which will result in both contract and construction savings.

DISCUSSION:

Position Request - City Manager's Office

The Deputy City Manager would perform a variety of managerial duties in planning and directing activities of assigned departments, governmental relations, high-level special projects, and other City initiatives as assigned by the City Manager or Assistant City Manager. This position will also assist in the oversight of sensitive and key programs impacting City operations and management. Incumbents delegate considerable authority for the performance of technical and administrative activities but retain responsibility for results obtained.

Position Request - Development & Engineering Services

The Assistant Director for Development & Engineering Services (DES) would oversee and manage major functional areas to include horizontal and vertical construction management which includes all Capital Projects assigned to DES. The position will also assist in formulating construction costs and estimating project budgets, as well as manage daily operations of assigned divisions; conduct operational analyses; and provide oversight, guidance, and supervision necessary to ensure a successful project process. The position will represent all major construction programs and be the department liaison with contractors and consultants while managing and coordinating special projects across divisions and departments.

BUDGET IMPACT:

This item will approve the use of \$443,600 from the General Fund contingency appropriation in 101-5300-00-9900 to add a Deputy City Manager position in the City Manager's Office and an Assistant Director position in the Development & Engineering Services Department. Of the \$443,600, \$252,600 will be transferred to the City Manager's Office for the Deputy City Manager position, \$179,800 will be transferred to the Development & Engineering Services Department for the Assistant Director position, and \$11,200 will be transferred to the Information Technology Department for the support of these positions.

RECOMMENDATION:

Staff recommends Council authorize two new full-time equivalent (FTE) positions including a Deputy City Manager and Assistant Director of Development & Engineering Services and approve a budget amendment of \$443,600 from General Fund contingency to fund the positions.

City of Avondale
FY 2020-21
Position Request Form

Department: 150 - City Administration

Position Title: Deputy City Manager

Grade: g22.5

Total FTE/s: 1.00

A. Personal Services						
Fund	Division	Object	Description	Ongoing Request	One-Time Request	Total Request
101	5100	5010	Salaries & Wages	186,200		186,200
101	5100	5110	Social Security (OASDI)	11,500		11,500
101	5100	5120	Retirement ASRS	22,500		22,500
101	5100	5160	Health Insurance	11,800		11,800
101	5100	5180	Dental Insurance	600		600
101	5100	5190	Workman's Compensation 8810	300		300
101	5100	5220	Medicare	2,700		2,700
Sub-total				\$ 235,600	\$ -	\$ 235,600

B. Contractual/Commodities							
Fund	Division	Object	Description	Select	Ongoing Request	One-Time Request	Total Request
101	5122	7081	Laptop, Case & Monitors (2-24")	☒		3,000	3,000
101	5122	6325	Software (MS)	☒	400		400
101	5122	7081	Cell Phone	☒		1,200	1,200
101	5122	6220	Cell Phone Service	☒	600		600
101	5122	7081	IP Phone	☒		400	400
101	5100	7010	Office Furnishings	☒		15,000	15,000
101	5100	6500	Memberships	☒	1,000		1,000
101	5100	6520	Training	☒	1,000		1,000
101	5100						
Sub-total					\$ 3,000	\$ 19,600	\$ 22,600

Total Request	\$ 238,600	\$ 19,600	\$ 258,200
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City of Avondale
FY 2020-21
Position Request Form

Department: 450 - Development & Engineering Services
Position Title: Development and Engineering Services Assistant Director
Grade: g20
Total FTE/s: 1.00

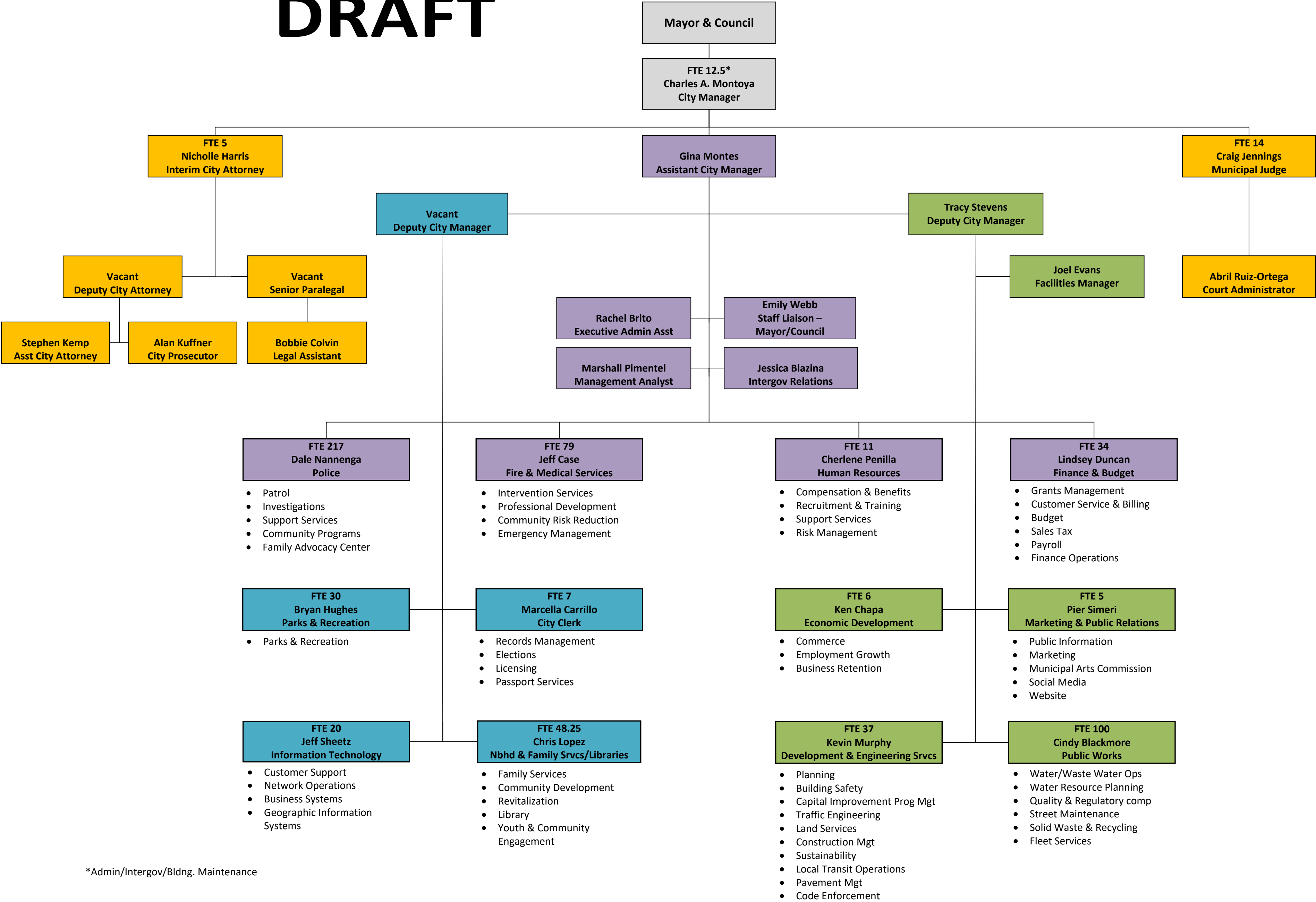
A. Personal Services						
Fund	Division	Object	Description	Ongoing Request	One-Time Request	Total Request
101	5430	5010	Salaries & Wages	137,000		137,000
101	5430	5050	Overtime			-
101	5430	5110	Social Security (OASDI)	8,500		8,500
101	5430	5120	Retirement ASRS	16,600		16,600
101	5430	5160	Health Insurance	11,800		11,800
101	5430	5180	Dental Insurance	600		600
101	5430	5190	Workman's Compensation 8810	200		200
101	5430	5220	Medicare	2,000		2,000
Sub-total				\$ 176,700	\$ -	\$ 176,700

B. Contractual/Commodities							
Fund	Division	Object	Description	Select	Ongoing Request	One-Time Request	Total Request
101	5122	7081	Laptop, Case & Monitors (2-24")	☒		3,000	3,000
101	5122	6325	Software (MS)	☒	400		400
101	5122	7081	Cell Phone	☒		1,200	1,200
101	5122	6220	Cell Phone Service	☒	600		600
101	5122	7081	IP Phone	☒		400	400
101	5430	7010	Office Furnishings	☒		1,100	1,100
101	5430	6500	Memberships	☒	1,000		1,000
101	5430	6520	Training	☒	1,000		1,000
101	5430						
Sub-total	Sub-total				\$ 3,000	\$ 5,700	\$ 8,700

Total Request	\$ 179,700	\$ 5,700	\$ 185,400
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City of Avondale Citizens

DRAFT



*Admin/Intergov/Bldng. Maintenance

CITY COUNCIL REPORT

SUBJECT: Minor Land Division - McDonald's Avondale (Application PL-20-0110)

MEETING DATE: 8/10/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Department Director

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

PURPOSE:

City Council will consider a request by Mr. Jason Morris, Withey Morris PLC, for approval of Application PL-20-0110 McDonald's Avondale Minor Land Division (MLD) on 2.75 gross acres of property located at the northeast corner of Avondale Boulevard and Lower Buckeye Road. The proposed MLD will dedicate public right-of-way and utility easements for Avondale Boulevard and Lower Buckeye Road adjacent to a planned new McDonald's drive-through restaurant. The proposed MLD will also formalize a previous split created by Special Warranty Deed in 2005. Cross-access easements are included for connection to future commercial development with the adjacent parcel. The Council will take appropriate action.

BACKGROUND:

The 2.75 gross acre vacant site (Exhibits A & B) was annexed into the City on March 15, 1999 and zoned Agricultural (AG). On March 17, 2008, City Council approved the rezoning of 215 acres of property, inclusive of the subject parcel, from AG to Durango Park Planned Area Development (PAD). The approved Durango Park PAD allows for Community Commercial (C-2) uses on the subject site.

The subject property was originally part of the larger adjacent parcel (APN: 101-54-652D) which was formed via the Durango Park PAD subdivision in 2001. In 2005, under a prior owner, the property was split from the larger adjacent parcel with a Special Warranty Deed.

This MLD application is associated with a Site Plan and Design Review application (PL-20-0109) for a proposed new McDonald's drive-through restaurant at the subject property. The proposed restaurant will be approximately 4,597 square feet, with a height of 23 feet. The building's contemporary architecture reflects the newest McDonald's standard prototype and will include a dining room and PlayPlace. Additionally, landscaping, site improvements, and signage as well as a new bus shelter along Avondale Boulevard are included. This application involves administrative review only and is in second review at the time of this report.

The existing uses and zoning of the surrounding properties are as follows:

NORTH: Vacant undeveloped land, zoned PAD (Durango Park) and designated for Community Commercial (C-2) uses

SOUTH OF LOWER BUCKEYE ROAD: Single-family rural residential development located within unincorporated Maricopa County

EAST: Vacant undeveloped land, zoned PAD (Durango Park) and designated for community commercial uses

WEST OF AVONDALE BOULEVARD: Vacant undeveloped land, zoned PAD (Del Rio Ranch) and designated for C-2 uses.

DISCUSSION:

SUMMARY OF REQUEST:

The applicant is requesting approval of a Minor Land Division (Exhibit C) for the subject property located at the northeast corner of Avondale Boulevard and Lower Buckeye Road. In addition to formalizing the previous lot split that created the 2.75-acre subject parcel via Special Warranty Deed in 2005, the proposed Minor Land Division dedicates public right-of-way (ROW) and public utility easements (PUEs) adjacent to the planned McDonald's restaurant, as follows:

- Lower Buckeye – A 50-foot x 8.5-foot triangular area of ROW, and an 8-foot public utility easement (PUE)
- Two (2) private cross access easements

PUBLIC PARTICIPATION:

Public notification is not required for Minor Land Division applications.

PLANNING COMMISSION ACTION:

The Planning Commission does not review Minor Land Division applications.

ANALYSIS:

- The proposed Minor Land Division has been reviewed by the City's contracted Registered Land Surveyor and the document has been confirmed as geometrically accurate and in conformance with Arizona Statutes governing the subdivision of real property.
- The proposed Minor Land Division complies with all applicable City documents, including but not limited to, the Avondale Subdivision Regulations, Zoning Ordinance, General Plan 2030, and the General Engineering Requirements Manual.
- The proposed Minor Land Division is in conformance with the Durango Park Planned Area Development (PAD).
- Approval of the proposed Minor Land Division will dedicate right-of-way and easements necessary to serve the planned McDonald's restaurant to be developed on the property.
- Approval of the Minor Land Division conforms to the boundaries of the Minor Land Division Map received on July 10, 2020.

STRATEGIC PLAN:

INITIATIVE: Foster sustainable community development.

STRATEGIC GOAL: Maintain and expand quality infrastructure and improve connectivity to City amenities

DISCUSSION:

1. The proposed Minor Land Division is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.

2. The proposed Minor Land Division is in conformance with the Durango Park Planned Area Development (PAD).
3. The proposed Minor Land Division is consistent with the proposed Site Plan for a McDonald's drive-through restaurant on the subject property.
4. The conditions of approval are reasonable to ensure conformance with the provisions as outlined in the Avondale Zoning Ordinance and all other applicable City codes, ordinances, and policies.

BUDGET IMPACT:

No budget impact.

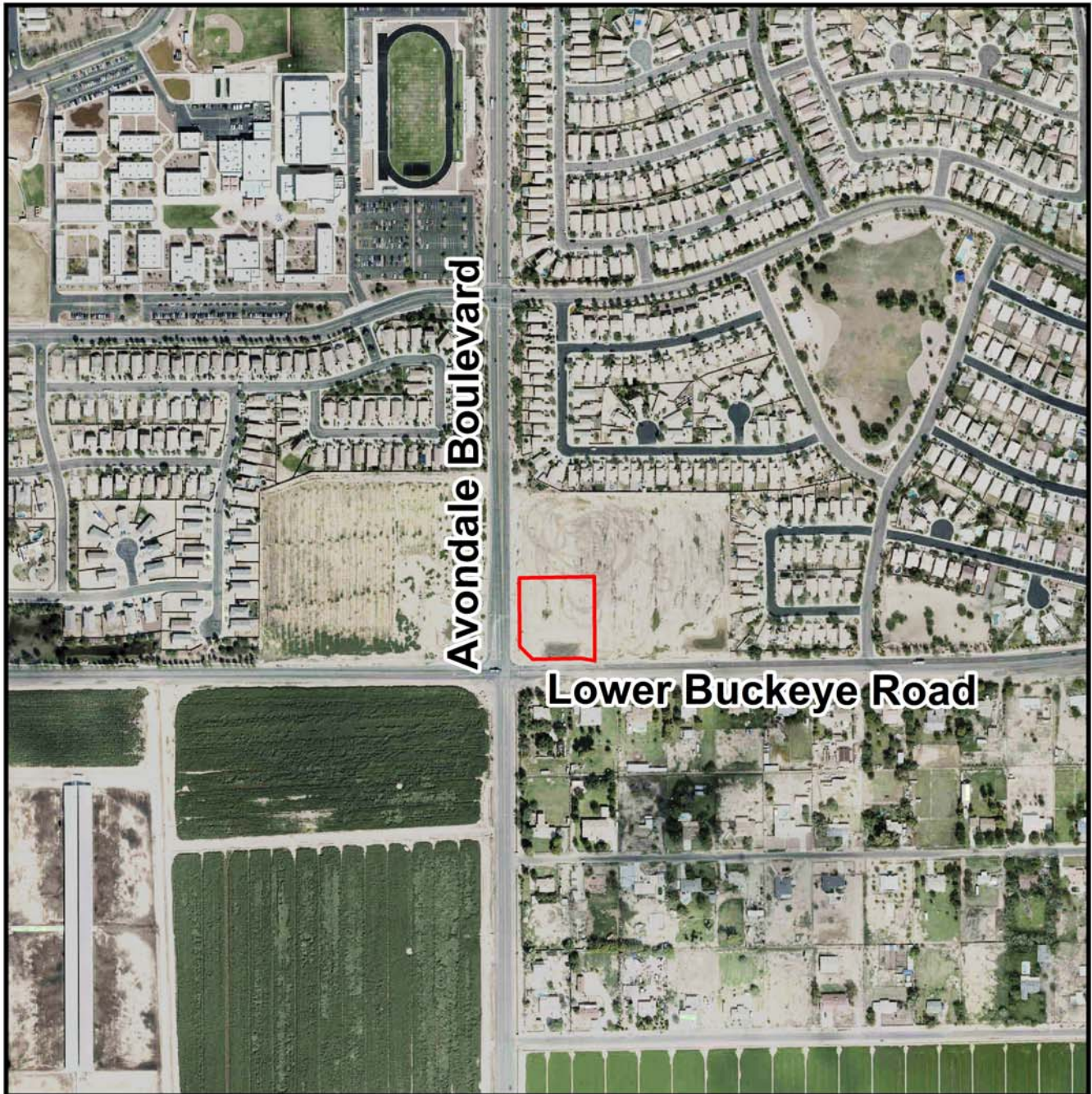
RECOMMENDATION:

Staff recommends that City Council **APPROVE** Application PL-20-0110 Minor Land Division for McDonald's Avondale, subject to the following one (1) condition of approval:

1. The recorded Minor Land Division shall be in conformance with the Minor Land Division for McDonald's Avondale submitted on 07/10/2020.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-20-0110 Minor Land Division for McDonald's Avondale, subject to one (1) recommended condition of approval as listed in the staff report.

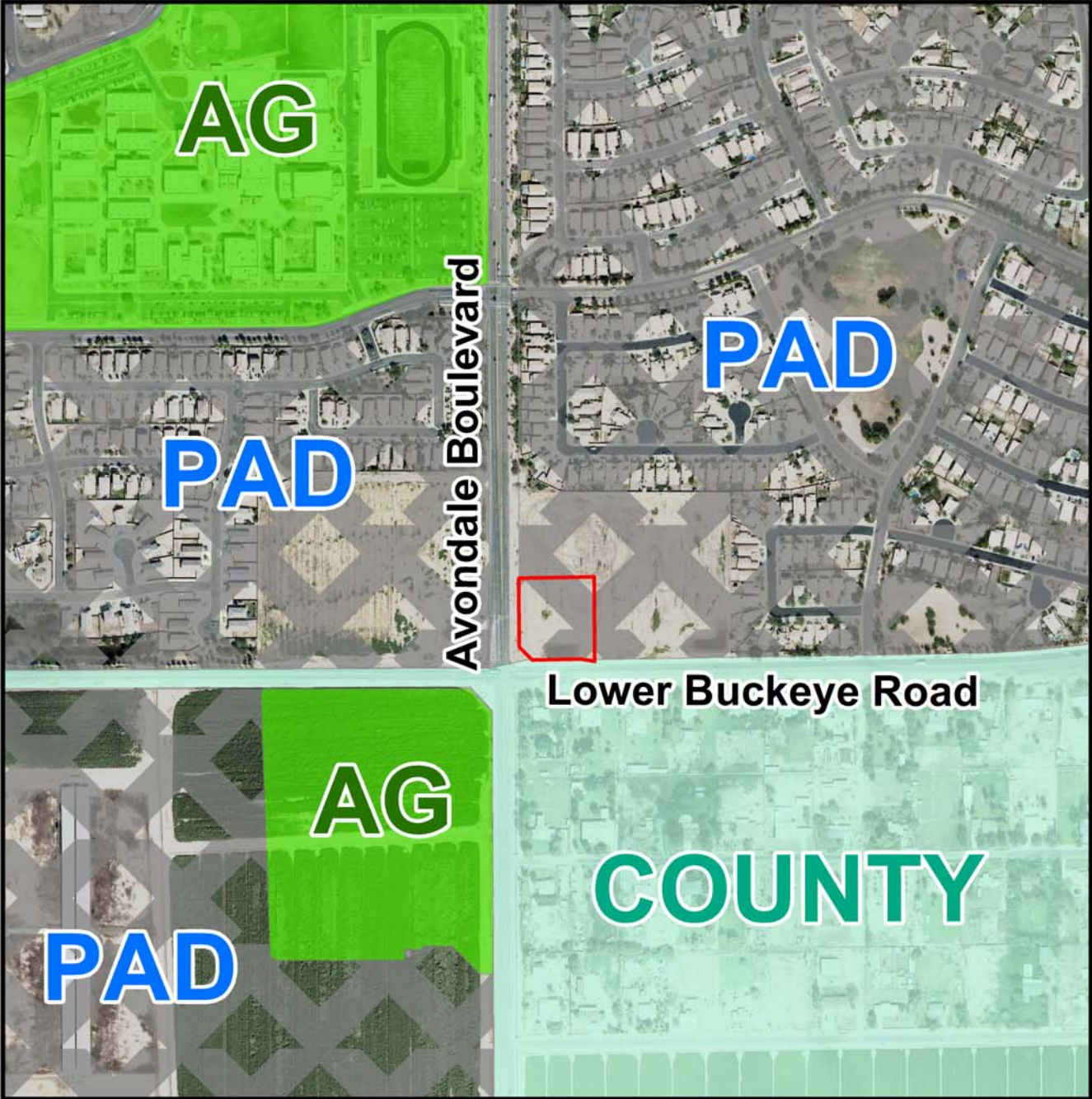


Aerial Image



Project Location



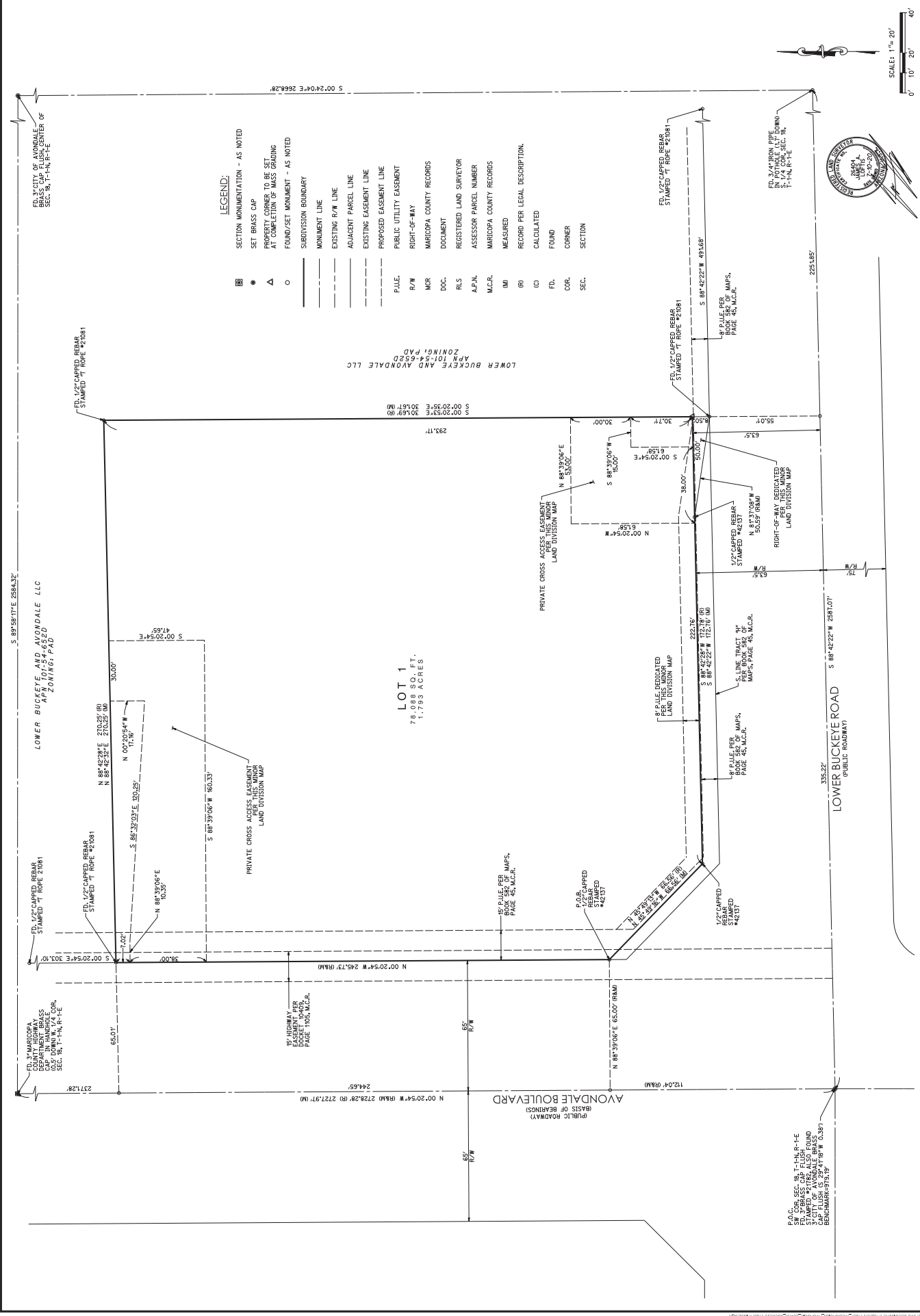


Zoning Vicinity Map



Project Location





CITY COUNCIL REPORT

SUBJECT: Resolution 1056-0820 - Intergovernmental Agreement with the City of Tolleson for Detention Services

MEETING DATE: 8/10/2020

TO: Mayor and Council

FROM: Dale Nannenga, Police Chief (623) 333-7207

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

PURPOSE:

City Council will consider a request to adopt Resolution 1056-0820, authorizing an Intergovernmental Agreement (IGA) with the City of Tolleson for Avondale to provide Detention Services to the City of Tolleson and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Since 2011, the City of Avondale has provided Detention Services for the Tolleson Police Department for the past 10 years. In return, the City of Tolleson has paid for one full time detention officer and associated court administration costs. These services include providing incarceration, housing, court administration, and transportation for Tolleson prisoners.

DISCUSSION:

This Agreement establishes the basis for the Tolleson Police Department to continue using the Avondale Detention Center, located at 519 E Western Ave, Avondale, for the processing and temporary incarceration of Tolleson prisoners. The Tolleson Police Department also desires to continue to utilize the Avondale City Court Judge for the administration of initial court appearances for Tolleson prisoners charged with a misdemeanor offense. Lastly, this IGA also establishes that the Tolleson Police Department engage the Avondale Police Department to transport Tolleson prisoners charged with felony offenses to the Maricopa County Jail for booking.

The term for this IGA shall remain in full force and effect until June 30, 2021. It shall then automatically renew for up to four successive one-year terms, subject to termination as provided within the IGA.

BUDGET IMPACT:

Compensation from the City of Tolleson to the City of Avondale for these services include:

1. Salary, overtime, ERE's, and uniform allowance equal to one full-time Detention Officer totaling \$86,075.
2. Avondale City Court Administrative Costs totaling \$21,519.

Funding for this activity is recorded in fund/division 101-6173 for detention services and 101-6200 for Court Administrative Costs.

RECOMMENDATION:

Staff recommends the City Council adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale and the City of Tolleson for Avondale to provide Detention Services to the City of Tolleson.

RESOLUTION NO. 1056-0820

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TOLLESON RELATING TO DETENTION SERVICES.

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

SECTION 1. The Intergovernmental Agreement with the City of Tolleson relating to the Avondale Police Department providing incarceration, court administration and transportation services for Tolleson prisoners (the "Agreement") is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement 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, August 10,2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, Interim City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1056-0820

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE CITY OF TOLLESON**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is entered into as of _____, 2020 between the City of Avondale, an Arizona municipal corporation, acting by and through the Avondale Police Department (“Avondale”), and the City of Tolleson, an Arizona municipal corporation, acting by and through the Tolleson Police Department (“Tolleson”). Avondale and Tolleson are referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

A. Avondale owns, and the Avondale Police Department operates, a detention center, located at 519 East Western Avenue, Avondale, Arizona (the “Detention Facility”).

B. Tolleson Police Department desires to utilize the Detention Facility for the processing and the temporary incarceration of Tolleson prisoners (the “Incarceration Services”).

C. Tolleson Police Department desires to utilize the Avondale City Court Judge for the administration of initial court appearances for Tolleson prisoners charged with a misdemeanor offense (the “Administrative Services”).

D. Tolleson Police Department also desires to engage the Avondale Police Department to transport Tolleson prisoners charged with felony offenses (the “Transportation Services”) to the Maricopa County Jail located at 201 South 4th Avenue, Phoenix, Arizona (the “County Jail”).

E. Avondale and Tolleson are authorized to enter into this Agreement under the authority of ARIZ. REV. STAT. § 11-951 *et seq.*

F. The Parties desire to define the terms and conditions under which Avondale will perform the Incarceration Services, the Administrative Services and the Transportation Services (collectively, the “Services”) for Tolleson.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing 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 is hereby acknowledged, Avondale and Tolleson hereby agree as follows:

1. Services.

1.1 Incarceration Services. Except as provided in this Subsection 1.1, Avondale agrees to accept and process all Tolleson prisoners transported to the Detention Facility by Tolleson and to incarcerate such prisoners until such time as Avondale either (i) releases such prisoners on the order of the court or (ii) transports such prisoners to the County Jail. The Parties agree that the Incarceration Services will be administered for the Tolleson prisoners on the same basis that Avondale incarcerates Avondale prisoners.

A. Avondale shall not be required to accept, process or incarcerate any Tolleson prisoner where:

i. The Tolleson prisoner's medical condition would pose a threat to Avondale prisoners or to Detention Facility employees and/or the Tolleson prisoner's medical condition would create a need for medical care that cannot be provided at the Detention Facility; or

ii. The Tolleson prisoner's behavior or mental state demonstrates that the prisoner will pose a threat to Avondale prisoners or to Detention Facility employees; or

iii. Because of events outside of the control of Avondale, it will be unfeasible for the Avondale City Court Judge to administer the Administrative Services for the Tolleson prisoner prior to the next regularly scheduled Avondale initial court appearances.

B. Tolleson shall provide, as requested by Avondale, such administrative supplies as may be necessary for Avondale to accept and process Tolleson prisoners including, but not limited to, fingerprint compliance forms and prisoner DNA packets.

C. Subject to Section 4 below, Tolleson shall be responsible for paying all costs incurred by third parties providing medical care to Tolleson prisoners while such prisoners are in the custody of Avondale.

1.2 Administrative Services. Avondale agrees to make available the Avondale City Court Judge to administer the initial court appearances for each of the Tolleson prisoners charged with misdemeanor offenses. The Parties agree that the Administration Services will be administered for the Tolleson prisoners on the same basis that the Avondale City Court Judge administers initial court appearances for each of the Avondale prisoners charged with misdemeanor offenses.

1.3 Transportation Services. Avondale agrees to transport the Tolleson prisoners charged with felony offenses from the Detention Facility to the County Jail. The Parties agree that the Transportation Services will be administered for the Tolleson prisoners on the same basis that Avondale transports Avondale prisoners to the County Jail. The Parties

acknowledge that Avondale may, but is not required to, transport Tolleson prisoners to or from any locations other than the Detention Facility and the County Jail.

2. Compensation; Payments. For the Initial Term, Tolleson shall pay Avondale \$86,075 for the Services:

- a. Services include salary, overtime, ERE's and uniform allowance.
- b. Tolleson shall pay Avondale Administrative Costs of \$21,519.

Thereafter, for each subsequent Renewal Term, if any, Tolleson agrees that slight salary and COLA adjustments will be made to the compensation amount as necessary. Tolleson shall pay Avondale the compensation amount agreed upon by the Parties 30 days prior to the beginning of any Renewal Term.

3. Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2021 (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four successive one-year terms (each, a "Renewal Term"), subject to termination as provided in Section 7 below. At least 30 days prior to the termination of either the Initial Term or a Renewal Term, either Party may provide written notification to the other Party of its intention not to renew this Agreement.

4. Indemnification. To the extent permitted by law each Party shall defend, indemnify and hold harmless the other Party and its council members, departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) for damages to property or for injury to or death of persons which relate to the performance of this Agreement and which result from any act, omission or negligence of the indemnifying Party or its council members, departments, officers, employees or agents.

5. Insurance. The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self insurance program may fulfill the insurance requirement.

6. Budget. Subject to Subsection 7.4 below, each Party shall provide for its own financial obligations under this Agreement through its annual budget process or by separate resolution as allowed by law and as deemed appropriate by its City Council. Nothing in this Agreement shall be construed as committing Avondale to incur capital expenditures for equipment, facilities, or otherwise, or to incur expenses not expressly set forth in this Agreement.

7. Termination.

7.1 For Convenience. This Agreement is for the convenience of the Parties and, as such, may be terminated without cause by either Party by providing the non-terminating Party 30 days' written notice of its intention to terminate.

7.2 Conflict of Interest. This Agreement may be canceled by either Party for conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.

7.3 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days.

7.4 Agreement Subject to Appropriation. Each Party is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during such Party's then current fiscal year. Each Party's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Party concerning budgeted purposes and appropriation of funds. Should either Party elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and such Party shall be relieved of any subsequent obligation under this Agreement. The Parties agree that each Party has no obligation or duty of good faith to budget or appropriate the payment of the Party's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The Parties shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Parties shall keep each other informed as to the availability of funds for this Agreement. The obligation of either Party to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Party. The Parties hereby waives any and all rights to bring any claim against the each other from or relating in any way to the either Party's termination of this Agreement pursuant to this section.

8. Miscellaneous.

8.1 Independent Contractor. Avondale and Tolleson acknowledge and agree that, in providing the services under this Agreement, Avondale shall be considered an independent contractor, not an employee or agent of Tolleson, except as provided in Section 8.12 below. Avondale and its employees are not entitled to worker's compensation benefits from Tolleson. Tolleson does not have the authority to supervise or control the actual work of Avondale or its employees. Avondale, and not Tolleson, shall determine the time of its performance of the Services provided under this Agreement so long as Avondale performs the Services as set forth in Section 1 above. Tolleson and Avondale do not intend to nor will they combine business operations under this Agreement.

8.2 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

8.3 Amendment. This Agreement may be modified only by a written amendment approved by the Parties' respective governing bodies and signed by persons duly authorized to enter into contracts on behalf of Avondale and Tolleson. Any attempt at oral modification of this Agreement shall be void and of no effect.

8.4 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 Avondale: City of Avondale
 11465 West Civic Center Drive
 Avondale, Arizona 85323
 Attn: Charles Montoya, City Manager

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

If to Tolleson: City of Tolleson
 9555 West Van Buren
 Tolleson, Arizona 85353
 Attn: City Manager

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 (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.

8.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid or unenforceable by a Court of competent

jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

8.6 Entire Agreement; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the Party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of and entry into this Agreement.

8.7 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

8.8 Laws and Regulations. The Parties agree to comply with the provisions of applicable state and federal regulations governing equal employment opportunity and non-discrimination and immigration. Each Party shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Party is responsible for abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the services, including, but not limited to, the following: (A) existing and future city and county ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration standards.

8.9 Disposition of Property upon Termination. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner. With respect to the compensation paid by Tolleson to Avondale pursuant to Section 2 above: (i) if Avondale terminates this Agreement because of a material breach of the Agreement by Tolleson, Avondale shall be entitled to retain the compensation paid by Tolleson; (ii) if Tolleson terminates this Agreement because of a material breach of the Agreement by Avondale or if either Party terminates this Agreement for convenience, Avondale shall return to Tolleson a prorated portion of the compensation paid by Tolleson pursuant to Section 2 above calculated as of the date Tolleson provides written notice to Avondale of the material breach.

8.10 Approvals. With respect to any provision of this Agreement requiring the consent or approval of either Party as to any matter, unless specifically provided to the contrary in the particular provision requiring such consent or approval, that consent or approval shall not be unreasonably withheld, conditioned or delayed by the Party whose consent or approval is required.

8.11 Assignment; Delegation. No right or interest in this Agreement shall be assigned by a Party to this Agreement without prior, written permission of the other Party signed

by such other Party's City Manager, or authorized designee, and no delegation of any duty of any Party shall be made without prior, written permission of the other Party signed by such other Party's City Manager, or authorized designee. Any attempted assignment or delegation by either Party in violation of this provision shall be a breach of this Agreement.

8.12 Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

8.13 Waiver. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other subsequent breach.

8.14 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

8.15 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

8.16 E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

IN WITNESS WHEREOF, Avondale and Tolleson have executed this Agreement as of the date of the last signature set forth below.

“Avondale”

“Tolleson”

CITY OF AVONDALE, an Arizona
municipal corporation

CITY OF TOLLESON, an Arizona
municipal corporation

Kenneth N. Weise, Mayor

Anna Tovar, Mayor

Date

Date

ATTEST:

ATTEST:

Marcella Carrillo, City Clerk

Crystal Zamora, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned City Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Nicholle Harris
Avondale Interim City Attorney

Justin Pierce
Tolleson City Attorney