



City of Avondale
City Council Online Meeting
Monday, August 23, 2021

Mayor and Council

Kenneth Weise, Mayor

Veronica Malone, Vice Mayor

Tina Conde, Council Member | Pat Dennis, Council Member

Bryan Kilgore, Council Member | Curtis Nielson, Council Member

Mike Pineda, Council Member

Administration

Charles A. Montoya, City Manager

Cherlene Penilla, Assistant City Manager

Tracy Stevens, Deputy City Manager | Lindsey Duncan, Deputy City Manager

Nicholle Harris, City Attorney | Marcella Carrillo, City Clerk

Online Meeting

Join the meeting and view presentations: <https://avondaleaz.zoom.us/j/99706985158>

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City Council Online Meeting Notice & Agenda Monday, August 23, 2021

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Request to Speak: Anyone wishing to address the Council regarding items listed on the agenda or under unscheduled public appearance should email a request to PublicComment@AvondaleAZ.gov prior to consideration of that agenda item.

SPECIAL MEETING 6:00 PM

CALL TO ORDER BY MAYOR PLEDGE OF ALLEGIANCE AND MOMENT OF REFLECTION

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

2. UNSCHEDULED PUBLIC APPEARANCES

(Time is limited per person. Please state your name.)

3. INTRODUCTION OF NEW EMPLOYEE

Public Works Department staff will introduce the new Water Resource Manager, Jennifer Davidson. This item is for discussion only.

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 following City Council meeting minutes: (a) May 17, 2021, (b) June 7, 2021, (c) June 21, 2021, and (d) June 22, 2021. The Council will take appropriate action.

b. BUDGET CARRYOVER AND ACCOUNTING ADJUSTMENTS

City Council will consider a request to adjust the FY2021 and FY2022 budgets to adjust the FY2022 carryover appropriations and improve financial reporting. The Council will take appropriate action.

c. FUNDING REQUEST FOR THE BLVD WATER FEATURES PROJECT

City Council will consider a request to provide funding in the amount of \$300,000 from General Fund Contingency to pay for a Splash Pad and Additional Landscape scope, to fund construction, and to authorize staff to take the necessary action to complete the budget amendment. The Council will take appropriate action.

d. GENERAL FUND CONTINGENCY REQUEST FOR ECONOMIC OPPORTUNITIES FUND

City Council will consider a request to approve a transfer of appropriation in the amount of \$1,600,000 to the Economic Opportunities Fund from the General Fund Contingency to support the City's and the Economic Development Department's fiscal year initiatives, increase awarding authority, and modify the interfund transfer schedule as well as authorize the City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. COST PARTICIPATION AGREEMENT WITH THE SALT RIVER PROJECT FOR A TEMPORARY DEVIATION FOR OPERATION OF THE ROOSEVELT DAM FLOOD CONTROL SPACE.

City Council will consider a request to approve a Cost Sharing Agreement with the Salt River Project (SRP) to develop a Temporary Deviation Plan for operation of the Roosevelt Dam Flood Control Space, and receive potential water deliveries as a result of this Plan, to be used for Long Term Storage Credits and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. LIQUOR LICENSE - SERIES 10 (BEER AND WINE STORE) FOR HOME 2 SUITES BY HILTON

City Council will consider a request to recommend approval to the Arizona Department of Liquor License and Control of a Series 10 (Beer and Wine Store) Liquor License submitted by Sanat B. Patel for the sale of beer and wine at Home 2 Suites by Hilton located at 10275 West McDowell Road and authorize the City Clerk to execute the necessary documents. The Council will take appropriate action.

g. RESOLUTION 1059-0821 - PUBLIC ART MASTER PLAN

City Council will consider a request to adopt Resolution 1059-0821, approving an update to the Avondale Public Art Master Plan as recommended by the Avondale Municipal Art Committee and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. RESOLUTION 1060-0821 - UPDATING THE SANITATION (SOLID WASTE) FEE SCHEDULE

City Council will consider a request to adopt Resolution 1060-0821, approving a sanitation (solid waste) rate schedule and setting an effective date, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. RESOLUTION 1061-0821 - ADOPTION OF FEE SCHEDULE FOR FACILITY RENTALS

City Council will consider a request to adopt Resolution 1061-0821, approving a fee schedule for the Avondale Visitor and Conference Center, which is scheduled to open in January 2022, and the recently opened Arizona Complete Health Avondale Resource Center and authorizing the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

j. RESOLUTION 1062-0821 – INTERGOVERNMENTAL AGREEMENT WITH AGUA FRIA UNION HIGH SCHOOL DISTRICT #216 FOR A SCHOOL RESOURCE OFFICER

City Council will consider a request to adopt resolution 1062-0821 authorizing an Intergovernmental Agreement between the Agua Fria Union High School District #216 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

k. RESOLUTION 1063-0821 – INTERGOVERNMENTAL AGREEMENT WITH AMERICAN CHARTER SCHOOLS FOUNDATION, ESTRELLA HIGH SCHOOL FOR A SCHOOL RESOURCE OFFICER

City Council will consider a request to adopt Resolution 1063-0821 authorizing an Intergovernmental Agreement between the American Charter Schools Foundation and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

- I. RESOLUTION 1064-0821 – INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT #216, LA JOYA/WESTVIEW FOR A SCHOOL RESOURCE OFFICER**
City Council will consider a request to adopt Resolution 1064-0821, authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.
- m. RESOLUTION 1065-0821 – INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT #216, WEST POINT FOR A SCHOOL RESOURCE OFFICER**
City Council will consider a request to adopt Resolution 1065-0821, authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.
- n. RESOLUTION 1066-0821 - OUTDOOR RECREATION LEGACY PARTNERSHIP GRANT FOR THE AQUATIC CENTER PROJECT**
City Council will consider a request to adopt Resolution 1066-0821, authorizing the application and acceptance of an Outdoor Recreation Legacy Partnership Fund grant from Arizona State Parks and Trails in the amount of \$5,000,000 for the Avondale Aquatic Center Project and authorize and direct staff to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution. The Council will take appropriate action.
- o. RESOLUTION 1067-0821 - LAND AND WATER CONSERVATION FUND GRANT FOR THE CIVIC CENTER PARK PROJECT AND A GENERAL FUND CONTINGENCY REQUEST**
City Council will consider a request to adopt Resolution 1067-0821 authorizing the application and acceptance of a Land and Water Conservation Fund grant from Arizona State Parks and Trails in the amount of \$1,000,000 for the Civic Center Park Project and authorize and direct staff to take all steps necessary to cause the execution of the Agreement, to take all steps necessary to carry out the purpose and intent of this Resolution, and to transfer from General Fund Contingency the amount necessary for the City's funded portion of the project if the grant is awarded. The Council will take appropriate action.
- p. RESOLUTION 1068-0821 - WELL SHARING AND WATER TRANSPORTATION AGREEMENT AND INTERIM OPERATING AGREEMENT FOR ALAMAR DEVELOPMENT IN CITY OF AVONDALE**
City Council will consider a request to adopt Resolution 1068-0821, authorizing the Agreement with the Alamar Community Association, Inc. (HOA) for well sharing and water transportation and an Interim Operating Agreement with the Alamar Community Association, Inc. and Brookfield Lakin, LLC and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.
- q. ORDINANCE 2033-0821 - LEASE AGREEMENT WITH DESERT TAP LLC DBA: TAP2**
City Council will consider a request to adopt Ordinance 2033-0821, approving the Lease Agreement with Desert Tap LLC DBA: Tap2 for the property located at 745 North 114th Avenue, Suite 101, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.
- r. ORDINANCE 2034-0821 - LEASE AGREEMENT WITH WEST VALLEY INSTITUTE LLC DBA AVEDA INSTITUTE OF AVONDALE**
City Council will consider a request to adopt Ordinance 2034-0821, approving the Lease Agreement with West Valley Institute LLC dba Aveda Institute of Avondale for the properties located at 775 North 114th Avenue and 745 North 114th Avenue, Suite 102, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. Council will take appropriate action.

s. ORDINANCE 2035-0821 - CITY CODE AMENDMENT - CHAPTER 20 AND CHAPTER 23 RELATING TO THE POLICE DEPARTMENT AND TRAFFIC

City Council will consider a request to adopt Ordinance 2035-0821, amending Avondale City Code Chapter 20, Police Department, Article 1, Section 20-7 and deleting Chapter 23, Traffic, Article II, Administration and Enforcement Section 23-29, authority to direct traffic relating to traffic direction and enforcement and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

t. ORDINANCE 2036-0821 - ACCEPTING DONATION OF REAL PROPERTY FOR PUBLIC USE FOR THE BLVD WATER FEATURES

City Council will consider a request to adopt Ordinance 2036-0821, authorizing the acceptance of real property located at the southeast corner of Avondale Boulevard and The BLVD for public use and authorize the Mayor or City Manager, City Attorney and City Clerk to take all steps to execute the necessary documents to carry out this purpose. The Council will take appropriate action.

u. ORDINANCE 2037-0821 - GRANTING AN ELECTRICAL EASEMENT TO SALT RIVER PROJECT (SRP) FOR THE NEW FIRE STATION NO. 175

City Council will consider a request to adopt Ordinance 2037-0821, granting an Electrical Easement to Salt River Project for the new Fire Station No. 175 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

v. ORDINANCE 2038-0821 - SRP BLANKET EASEMENT FOR SRP FOR THE BLVD WATER FEATURES

City Council will consider a request to adopt Ordinance 2038-0821, granting a Blanket Easement to the Salt River Project for the new BLVD Water Features and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

w. AUTHORIZATION TO PROCEED WITH ANNEXATION – CLEARSKY REHABILITATION HOSPITAL OF AVONDALE – APPLICATION PL-21-0124

City Council will consider a request by Mr. Danny Banks, ClearSky Health, to authorize the annexation process of approximately 7.11 acres located at the southwest corner of McDowell Road and 109th Avenue. The Council will take appropriate action.

x. FINAL PLAT FOR AVONDALE COMMERCE PARK PH II - APPLICATION PL-21-0036

City Council will consider a request by Mr. James A. Brucci, Hunter Engineering, for approval of Application PL-21-0036 Avondale Commerce Park Phase II Final Plat on 40.03 gross acres of property located at the northwest corner of 101st Avenue and Van Buren Street. The proposed Final Plat will dedicate public utility easements, sidewalk easement, and right-of-way. The Council will take appropriate action.

y. FINAL PLAT FOR MGN1, BEING A REPLAT OF AVONDALE CITY CENTER PHASE 2 LOT 8, FOR THE BLVD WATER FEATURE - APPLICATION PL-21-0091

City Council will consider a request to approve a Final Plat for MGN1 being a Replat of Avondale City Center Phase 2 Lot 8, approximately 4.099 acres of private property located at the southeast corner of Avondale Boulevard and The BLVD. The Council will take appropriate action.

z. FINAL PLAT FOR RIVER RUN - APPLICATION PL-20-0134

City Council will consider a request by Mr. Jeff Giles, Clouse Engineering, Inc., for approval of a Final Plat for River Run, approximately 14.52 gross acres located west of the southwest corner of Thomas Road and 119th Avenue. Consistent with the Preliminary Plat approved by City Council in November 2019, the proposed Final Plat will create 103 single-family residential lots. The Council will take appropriate action.

5. ADJOURNMENT

Request to Speak: Anyone wishing to address the Council regarding the Public Hearing items listed on the agenda should email a request to speak to PublicComment@AvondaleAZ.gov prior to consideration of that agenda item.

REGULAR MEETING 7:00 PM

CALL TO ORDER BY MAYOR

1. ROLL CALL BY THE CITY CLERK

2. REGULAR AGENDA (PUBLIC HEARING ITEMS)

- a. PUBLIC HEARING - ORDINANCE 2039-0821 - ALP INDUSTRIAL PARK REZONING FROM COMMUNITY COMMERCIAL (C-2) TO GENERAL INDUSTRIAL (A-1) - APPLICATION PL-21-0050**
City Council will hold a public hearing and consider a request to adopt Ordinance 2039-0821, approving a request by Jinia Sarker, Cawley Architects to rezone 2.67 gross acres of land located approximately 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street from Community Commercial (C-2) to General Industrial (A-1). Light industrial, office, and indoor auto body repair uses are proposed. The Council will take appropriate action.
- b. PUBLIC HEARING - ORDINANCE 2040-0821 – MAJOR AMENDMENT TO AVONDALE AUTOMALL PLANNED AREA DEVELOPMENT (PAD) – APPLICATION PL-21-0047**
City Council will hold a public hearing and consider a request to adopt Ordinance 2040-0821, approving a request by Mr. Paul E. Gilbert, Beus Gilbert McGroder PLLC, for a Major Amendment to the Avondale Automall Planned Area Development (PAD) to revise the permitted uses to allow, subject to approval of a Conditional Use Permit, an automotive dealership selling used vehicles only on approximately 9.11 acres at the northeast corner of 107th Avenue and Roosevelt Street, provided that the used automotive dealership has a minimum consolidated annual revenue of \$500 million dollars and maintains a minimum of 140 vehicles on display at all times on the Avondale Automall property. The request will revise permitted uses within the PAD for only the 9.11-acre subject property, Assessor Parcels 102-54-045D and 102-54-101; used automotive dealerships will remain prohibited within the remainder of the Automall except where a 2020 PAD Amendment allowed for the use on an adjoining property. A request for approval of a Conditional Use Permit for a proposed AutoNation used automotive dealership on the subject property will be considered separately; approval of the PAD Amendment is required for the Commission to consider the requested Conditional Use Permit. The Council will take appropriate action.
- c. PUBLIC HEARING – CONDITIONAL USE PERMIT FOR AUTONATION USED AUTOMOTIVE DEALERSHIP – APPLICATION PL-21-0049**
City Council will hold a public hearing and consider a request by Mr. Paul E. Gilbert, Beus Gilbert McGroder PLLC, for approval of a Conditional Use Permit (CUP) to allow an AutoNation used automotive dealership to operate on approximately 9.11 acres at the northeast corner of 107th Avenue and Roosevelt Street, Assessor Parcels 102-54-045D and 102-54-101. The proposed AutoNation would occupy a currently vacant dealership facility consisting of two (2) buildings totaling 10,895 square feet in area, surrounding paved area to be used for parking and display of the dealership's vehicle inventory, and a currently undeveloped portion of land abutting Roosevelt Street that would be improved to accommodate additional inventory parking and display. A request for approval of a Major Planned Area Development (PAD) Amendment revising the Avondale Automall PAD's permitted uses to allow a used automotive dealership on the property subject to Conditional Use Permit approval will be considered separately; approval of the PAD Amendment is required before approval of this CUP may be considered. The Council will take appropriate action.

d. PUBLIC HEARING - RESOLUTION 1069-0621 - CERRO VISTA - MINOR GENERAL PLAN AMENDMENT - APPLICATION PL-18-0079

City Council will hold a public hearing and consider a request to adopt Resolution 1069-0621, approving a request by Virtua Avondale Eleven Owner, LLC, for a Minor Amendment to the Avondale General Plan 2030 Land Use Map for Cerro Vista, a proposed high-density multi-family residential development with 249 units on 11.51 gross acres located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street. The request is to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre). City Council will consider a concurrent request to rezone the property from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). The Council will take appropriate action.

e. PUBLIC HEARING - ORDINANCE 2041-0821 - CERRO VISTA REZONING FROM AGRICULTURAL (AG) & COMMUNITY COMMERCIAL (C-2) TO MULTI-FAMILY (R-4) - APPLICATION PL-18-0080

City Council will hold a public hearing and consider a request to adopt Ordinance 2041-0821 approving a request by Virtua Avondale Eleven Owner, LLC, to rezone 11.51 acres of land located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). City Council will consider a concurrent request to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre). The requests will allow for the development of a 249-unit multi-family residential development at a density of approximately 23.94 dwelling units per acre. The Council will take appropriate action.

f. PUBLIC HEARING - RESOLUTION 1070-0821- UPDATING CITY OF AVONDALE WATER AND SEWER RATES

City Council will hold a public hearing and consider a request to adopt Resolution 1070-0821, modifying water and sewer rates to become effective October 1, 2021 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

3. ADJOURNMENT INTO EXECUTIVE SESSION

City Council will consider a request to adjourn the Regular Meeting and hold an executive session pursuant to Ariz. Rev. Stat. § 38--431.03(A)(1) for discussion or consideration of the employment evaluation of the City Manager.

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: Minutes

MEETING DATE: 8/23/2021

TO: Mayor and Council

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

THROUGH: Tracy Stevens, Deputy City Manager, 623-333-1014

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Connected Community - Avondale will work directly and closely with our communities to develop programs and infrastructure that connect residents to the city's resources, the region, and each other.

The approval of this agenda item provides residents with access to a previous meeting's minutes, which includes a summary of the meeting. The minutes are posted online where residents can access and read the summary. The minutes provide another outlet for residents to connect with the City Council.

PURPOSE:

City Council will consider a request to approve the following City Council meeting minutes: (a) May 17, 2021, (b) June 7, 2021, (c) June 21, 2021, and (d) June 22, 2021. The Council will take appropriate action.

BACKGROUND:

n/a

DISCUSSION:

n/a

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

Staff recommends City Council approve the following City Council meeting minutes: (a) May 17, 2021, (b) June 7, 2021, (c) June 21, 2021, and (d) June 22, 2021.

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
May 17, 2021

A **Work Session** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 6:00 p.m. All participants attended by phone or video.

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

Members Absent: Vice Mayor Veronica Malone*.

**Vice Mayor Malone joined the online meeting at 6:14 p.m.*

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Interim Deputy City Manager; Nicholle Harris, City Attorney; Linda Mendenhall, Deputy City Clerk; Kirk Beaty, Public Works Director; Marcella Carrillo, City Clerk; Ken Chapa, Economic Development Services Director; Tony Corsi, Fire & Medical Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Craig Jennings, Judge; Chris Lopez, Neighborhood and Family Services Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Mark Neerings, Assistant Chief Information Officer; Marshall Pimentel, Intergovernmental Affairs Administrator; Abril Ruiz-Ortega, Court Administrator; and Pier Simeri, Marketing and Public Relations Director.

Audience: Three members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. PROPOSED CHANGES FOR SANITATION RATES

City Council received a presentation from staff on the forecast for the sanitation utility and discuss potential rate changes for sanitation. This item was for discussion only.

Keith Fallstrom, Interim Director of Finance and Budget stated that sanitation services are offered for residents only. Currently, there are 22,900 customers with an average fee of \$20 per month. The last rate increase was in 2009. A review of services was provided. Cost increases are due to landfill fees, recycling changes, vehicle and equipment costs, personnel costs, and growth and development. The statistics on the various cost increases were discussed, with costs nearly doubling from 2009. Failure to take action will result in a reduction of the minimum fund balance. Initial increases are proposed, to be followed by consistent, predictable smaller increases. Proposed rate increases were presented along with a comparison of services to surrounding cities. Next steps were reviewed.

Council Member Pineda stated he is looking forward to receiving information regarding comments from the public. He noted that, as the graph presented, small incremental increases may not be a long-term solution. He noted the importance of preparing residents for the incremental changes, stressing the importance of the feedback from the public and residents.

Mayor Weise stated he is looking at the future and the cost of living increase, making the public aware of a possibly two to three percent increase in the upcoming years.

In response to a question from Council Member Conde, Mr. Fallstrom stated that there were eight people in attendance at the last public meetings. He noted on the feedback received from the public regarding the online tool. Council Member Conde acknowledged the need of the increase and agreed with the more predictable smaller increases.

Council Member Kilgore requested clarification on the sanitation services through the Town of Gilbert. Mr. Fallstrom clarified that the Town of Gilbert has bulk trash pick-up monthly and no green waste collection. Council Member Kilgore stated he was curious how the Town of Gilbert sanitation rates were so low. Mr. Fallstrom was not aware of why sanitation was at such a low rate. Council Member Kilgore explained he understood the need to increase rates gradually. He stated he was able to attend one of the public meetings and there was only one question from the public. He stated he is looking forward to additional feedback from residents.

Mayor Weise added that the Town of Gilbert is currently conducting a rate study for recycling and sanitation.

Council Member Nielson inquired on the recycling program. Mr. Fallstrom stated the city has a contract with the City of Phoenix for recycling services. Council Member Nielson suggested revisiting the categories of recycling allowed in order to potentially lower costs.

Mayor Weise added that some of the intervening issues with recycling is due to the contamination rate for recycled products.

Mr. Montoya stated that the City of Chandler and Town of Gilbert have lower rates because they have a long-term agreement with the Salt River Pima-Maricopa Indian Community, while Avondale's recycling goes through the City of Phoenix or the City of Glendale. The current agreement with the City of Phoenix continues for the next few years.

Vice Mayor Malone joined the meeting at 6:14 p.m.

In response to a question from Council Member Dennis, Mr. Fallstrom stated that impact fees cannot be used for expansion and growth, such as buying new trucks or adding new routes. Development fees can be used for the increased cost of the development for water and sewer. Council Member Dennis inquired on when that changed as she recalls development impact fees being used in such a manner in the past. Mr. Montoya commented that over the past eight to ten years, impact fees have been reduced

dramatically. Action by the legislature no longer allows cities to service commercial businesses. Rates currently being discussed are solely based on what it costs to provide the service. Mr. Fallstrom concurred, clarifying that in 2011, the legislature eliminated the authority for the development impact fee for sanitation.

Council Member Dennis agreed with the increases, but she expressed concern with the legislature continuing to degrade the City's ability to manage growth. In response to the questions from Council Member Dennis, Lindsey Duncan, Interim Deputy City Manager, stated that the City has a replacement schedule for sanitation vehicles. There is a separate line item for this, with funds set aside on an annual basis for vehicle replacement. The City also plans for additional growth-related vehicles and positions throughout the five-year plan.

Mayor Weise agreed that the proposed increases were reasonable, and he looked forwarded to public comments.

Council Member Pineda stressed the importance of effective outreach, noting the average resident does not have an understanding as to why the rates should be raised. He stressed the importance of providing information to the residents to ensure as many of the 22,000 customers are made aware. Mr. Montoya provided details on the City's extensive outreach and education efforts.

Council Member Dennis commented that electric companies provide opportunities for residents to donate to a fund for payment assistance to residents in need. Ms. Duncan confirmed that this is one of the services the City is considering implementing this year.

3. HOMELESS SERVICES UPDATE

City Council received an update from staff on the City's homeless services. This item was for discussion only.

Christopher Lopez, Director of Neighborhood and Family Services, reviewed the historic point in time data for the City. The peak of the unsheltered count occurred in 2020, with 56 unsheltered homeless individuals. The first summertime point in time count took place in the summer of 2020, as recommended by Dr. Sheila Harris, consultant for the City, as an approach to gather more data. The increase in homelessness in Avondale is consistent with what is being seen across Maricopa County.

The resources provided within Avondale were reviewed. Dr. Sheila Harris' assessment included three specific recommendations to the current services. Prioritize expanding the I-HELP shelter services seven days a week, gather long-term data, and broaden the spectrum of affordable housing. All three recommendations have been accomplished and incorporated into the City's ongoing practices and planning.

Mr. Lopez presented the programs offered through the Neighborhood and Family Services Department designed to prevent or intervene homelessness. A total of \$1.5 million is being programmed to address the causes of homelessness. New program offerings were presented with a total funding of \$10.4 million. Maricopa Association of

Governments (MAG) is collaborating with the Maricopa Regional Continuum of Care and the Regional Collaborative on Homelessness. They have initiated a comprehensive process to develop a regional framework and strategies to address homelessness. The goals of the effort were reviewed. MAG has conducted extensive data collection through surveys, interviews, and stakeholder forums. More than ten key stakeholder interviews were conducted with representatives from cities, counties, and the Continuum of Care as well as several stakeholder forums with a variety of sectors.

The five themes and strategies that emerged include: Diversion/prevention, housing, coordination, services, and shelter. The existing challenges and promising practices were reviewed.

Mayor Weise encouraged Council Members to view the video from the May 12 MAG Management Committee meeting, which included discussion on funding and each city's role on homelessness. MAG's 14-point program is generally agreeable; however, there are issues in terms of funding allocation and priorities.

Mr. Montoya stated that over the past eight to ten months, Avondale and other cities have been taking part in the effort to institute working groups which resulted in a 70-page report. At the last Management Team meeting, he had concerns that most staff in surrounding cities had not read the report. There are 14 strategic tenets and all cities were pushed for acceptance and adoption; however, there was not clear acknowledgement that all cities are working from a leveled platform. A general acknowledgement of conditions must be provided from all cities as a starting point. Mr. Montoya has pushed for the adoption of the 14 tenets, which were subsequently adopted. Avondale is providing more services than any other city within the West Valley.

Council Member Conde commented that the City is doing a phenomenal job but cannot bear the burden of the region alone. Conversations with surrounding communities is essential. During meetings with MAG, the consensus was the need for more temporary housing with case management.

Council Member Dennis noted that if the homeless population regionally is increasing by 219 percent then it is from other West Valley cities. Issues need to be addressed with a regional approach. She inquired as to legal aid services for assisting organizations in Avondale or the region. Mr. Lopez said the City continues to work with Community Legal Aid; however, they are extremely overwhelmed in trying to assist those who are in the process of being evicted. Council Member Dennis inquired if there are other agencies providing similar services. Mr. Lopez stated the City had a meeting with A New Leaf which is an organization that provides tools such as landlord engagement that they are exploring.

Council Member Kilgore thanked staff for the presentation and thanked staff for all they do. He noted he has been advocating for the department since 2014 and gave accolades for their wonderful job as a department. He noted that each time residents contact him for assistance, staff are quick to provide the necessary resource. He agreed with the regional approach and in closing, thanked staff for its diligent service to the homeless population.

Council Member Nielson asked about methods for reaching out to those who need assistance. Mr. Lopez said staff works on this on a daily basis and the most important aspect is building relationships. The City uses social media platforms and press releases to promote its services. The City also has solid relationships with school district leadership, which has intimate knowledge of the families and their needs.

Mayor Weise noted that staff can only do so much in respect to outreach. Mr. Lopez stated that his whole team of 53 employees is working on this with seven employees within family services.

Council Member Pineda agreed that a regional approach would be the most successful. The services provided in Avondale attract those in need, which gives the appearance that Avondale has a larger homeless population than surrounding cities. He applauded all who are working towards this cause, including Council Members who attend the various relevant meetings as well as Mr. Montoya and his leadership.

Vice Mayor Malone thanked staff for their continued work and agreed with a regional approach. Even as Avondale is a beacon of hope in the West Valley, they must still engage surrounding cities. She noted that the population has increased since last summer and surmised that there would be continued increases. She noted that there will be additional funding from the CARES Act and asked whether this would be to engage just the Avondale community or whether it will extend beyond the City. Mr. Montoya stated that for the new funding, the City will look at specific programs for individuals living in Avondale that have been displaced. Funds of approximately \$800 million are also being filtered by the Valley. If the City employs a blanket open-door policy, it cannot be restricted just to Avondale community members.

Mayor Weise added that there has been more engagement by West Valley mayors on the homeless issue than ever before. The City needs to pay special attention to developers who build affordable housing developments. Mr. Montoya commented that the legislature gives no abilities to cities for such requirements. Unfortunately, the cost of steel and wood have escalated, and development is generally cost-prohibitive at this time.

4. ADJOURNMENT

There being no further business before the Council, Vice Mayor Malone moved to adjourn the Work Session meeting; Council Member Nielson seconded the motion.

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

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

Meeting adjourned at 7:11 p.m.

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 7:20 p.m. All participants attended by phone or video.

Mayor Kenn Weise led the Pledge of Allegiance, followed by a moment of silent reflection in remembrance of the people of Palestine and Israel.

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

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Interim Deputy City Manager; Nicholle Harris, City Attorney; Linda Mendenhall, Deputy City Clerk; Kirk Beaty, Public Works Director; Marcella Carrillo, City Clerk; Ken Chapa, Economic Development Services Director; Tony Corsi, Fire & Medical Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Craig Jennings, Judge; Chris Lopez, Neighborhood and Family Services Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Mark Neerings, Assistant Chief Information Officer; Marshall Pimentel, Intergovernmental Affairs Administrator; Abril Ruiz-Ortega, Court Administrator; and Pier Simeri, Marketing and Public Relations Director.

Audience: Approximately ten members of the public were present.

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

2. UNSCHEDULED PUBLIC APPEARANCES

Miguel Banuelos, resident of Avondale, addressed the noise ordinance regarding automotive exhaust noise. He was recently cited and fined due to exhaust noise from his vehicle. He was unable to find a fee schedule attached to the governing ordinance. Mr. Banuelos surmised that the officer used the noise issue to pull him over in search of other citable issues. He requested that Council revisit the noise ordinance as there is a gray area being used to pull vehicles over. In addition, motorcycles in the City are not held to the same standard. Mayor Weise stated that someone from staff would follow up with Mr. Banuelos.

Bryan Depauw, President of the Avondale Professional Firefighters Association, spoke on behalf of the Association to thank City Council and the employees of Avondale for their diligent work, dedication, and service during the COVID pandemic. He presented a plaque for the Mayor Weise, noting that the Association has made plaques for City Council and City Management.

3. RECOGNITION ITEMS

a. EXCEPTIONAL STUDENT OF AVONDALE RECOGNITION (AVI STAR STUDENT)

City Council recognized Avondale students from schools located in Avondale for their character and achievement. This item was for discussion only.

Donna Gardner, Community Engagement Manager, presented the Exceptional Student of Avondale nominations:

- Angel Ndum, Avondale Elementary School District
- Jaylene Flores, Littleton Elementary School District
- Nazhly Ramirez, Pendergast Elementary School District
- Mason Hernandez, Avondale Elementary School District
- Adrianna Fernandez, Littleton Elementary School District
- Robert Grant, Tolleson Union High School District

Mayor Weise and Councilmembers each took a moment to offer congratulations, advice, and encouragement to the students.

b. NEW EMPLOYEE INTRODUCTION

Harold Siguenza, the new Deputy Director of the Public Works Department, was introduced to City Council.

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.

Note from the City Clerk: The presented minutes of the April 5, 2021 City Council Meeting will be revised to reflect the following comments by Council Member Kilgore on Page 5: *“He spoke on comments received from residents within the area and stressed the importance of doing what is best for the residents.”*

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

Upon vote, the motion carried unanimously 7 to 0.

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

a. MINUTES

City Council approved the April 5, 2021 City Council Meeting Minutes as revised.

b. REAPPOINTMENT OF JUDGES PRO TEMPORE

City Council reappointed the existing judges pro tempore to two-year terms expiring on June 1, 2023 and authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

c. AWARD AUTHORITY FOR SAFETY EQUIPMENT AND APPAREL

City Council approved a request to increase spending authority for safety equipment and apparel in the amount of \$80,000.

d. AWARD AUTHORITY FOR TECHNOLOGY EQUIPMENT REPLACEMENTS

City Council approved a request to increase Administrative Award authority for information technology related purchases in the amount of \$870,000.

e. AWARD AUTHORITY FOR ARSENIC/NITRATE BRINE DISPOSAL

City Council approved a request to increase spending authority for arsenic and nitrate brine disposal in the amount of \$45,000 and to authorized staff to execute the necessary documents.

f. PARK 10 MAIN ENTRY IDENTIFICATION SIGN – AMENDMENT TO THE PARK 10 COMPREHENSIVE SIGN PLAN – APPLICATION PL210109

City Council approved a request by Mr. James Kyung, Parkland Development, LLC for approval of Application PL-21-0109 Park 10 Main Entry Identification Sign to allow an amendment to the Park 10 Comprehensive Sign Plan (CSP).

g. FINAL PLAT FOR VILLAGE AT THE BLVD (RE-PLAT OF AVONDALE CITY CENTER PHASE 3 LOT C) – APPLICATION PL-20-0269

City Council approved a request by Ms. Shelby Duplessis, EMC Management, LLC, for approval of a Final Plat for Village at The BLVD, a re-plat of Avondale City Center Phase 3 Lot C, approximately 27.02 gross acres of land located at the southwest corner of the Roosevelt Street alignment and the 111th Avenue alignment. Consistent with the approved Village at The BLVD Development Plan, the proposed Final Plat divides the subject property into two (2) parcels, creating a 15.81 acre parcel for Village at The BLVD (Lot 1) and a separate 9.52 acre parcel to accommodate future high density multifamily residential development (Lot 2). The Final Plat also dedicates right-of-way for Roosevelt Street and 111th Avenue adjacent to Lot 1, dedicates public utility easements (PUEs) on Lot 1, and dedicates a 30-foot-wide public trail easement along the southern edge of Lot 1 to accommodate development of a trail that will connect 111th Avenue to Park Avenue.

h. THIRD AMENDMENT TO CONTRACT FOR SERVICES – AREA AGENCY ON AGING

City Council approved an amendment to the current contract with Area Agency on Aging (AAA) for fiscal year 2020-2021 to receive additional funding in the amount of \$10,000 for the Home Delivered Meal Program and authorize the City Manager and City Clerk to execute the necessary documents; and authorized a transfer of expenditure appropriations from the grant contingency account to provide the expenditure authority for these funds.

i. RESOLUTION 1028-0521 – AUTHORIZING BANKING & INVESTING AUTHORITY

City Council adopted Resolution 1028-0521 authorizing certain city officials and staff to execute and endorse checks and other items for and on behalf of the City, authorizing certain city staff to authorize certain electronic payments and transfers of funds, authorizing certain city staff to open investment and safekeeping accounts, invest city funds, and execute contracts, agreements or transactions in connection with such investment accounts, and declaring an emergency; and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

j. RESOLUTION 1029-0521 - – AUTHORIZING GRANT ACCEPTANCE FROM GOHS FOR “WORK ZONE SAFETY” ENFORCEMENT CAMPAIGN

City Council adopted Resolution 1029-0521 authorizing the acceptance of a grant provided by the Governor’s Office of Highway Safety (GOHS) in the amount of \$4,600, which will support the Police Department’s funding of Arizona’s Work Zone Safety Enforcement laws through overtime expenses and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

k. RESOLUTION 1030-0521 - – AUTHORIZING GRANT ACCEPTANCE FROM GOHS FOR “BUCKLE UP ARIZONA...IT’S THE LAW!” ENFORCEMENT CAMPAIGN

City Council adopted Resolution 1030-0521 authorizing the acceptance of a grant provided by the Governor’s Office of Highway Safety (GOHS) in the amount of \$3,000, which will support the Police Department’s funding of Arizona’ safety belt and child passenger safety laws through overtime expenses and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

l. RESOLUTION 1031-0520 - – INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY SHERIFF’S OFFICE

City Council adopted Resolution 1031-0520, authorizing to renew an Intergovernmental Agreement (IGA) with the Maricopa County Sheriff’s Office (MCSO) to utilize their sworn basic training academy for the training of new police recruits and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

m. RESOLUTION 1032-0521 – INTERGOVERNMENTAL AGREEMENT FOR WASTE COLLECTION AND TRANSPORTATION MUTUAL AID

City Council adopted Resolution 1032-0521 approving a five-year extension to the Intergovernmental Agreement with various cities for Waste Collection and Transportation Mutual Aid and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

n. RESOLUTION 1033-0521 - AMENDMENT NO. 7 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY ADMINISTERED BY THE HUMAN SERVICES DEPARTMENT

City Council adopted Resolution 1033-0521, approving Amendment No. 7 of the Intergovernmental Agreement (IGA) with the Maricopa County Human Services Department for the provision of the Community Action Program (CAP) services, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

o. RESOLUTION 1034-0521 - – FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH CITY OF GLENDALE FOR LAW ENFORCEMENT SERVICES AT STATE FARM STADIUM

City Council adopted Resolution 1034-0521 for a First Amendment to an Intergovernmental Agreement (IGA) with the City of Glendale to provide professional law enforcement security and traffic management services at State Farm Stadium (formerly known as the University of Phoenix Stadium) and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

p. RESOLUTION 1035-0521 – INTERGOVERNMENTAL AGREEMENT WITH LITCHFIELD PARK FOR POLICE SERVICES

City Council adopted Resolution 1035-0521, authorizing an Intergovernmental Agreement (IGA) with the City of Litchfield Park to provide law enforcement services to their community beginning on July 1, 2021 and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

q. ORDINANCE 2023-0521 – DEDICATING AN IRRIGATION EASEMENT TO SALT RIVER PROJECT AT 119TH AVENUE AND CORPORATE DRIVE

City Council adopted Ordinance 2023-0521 dedicating an Irrigation Easement to Salt River Project (SRP) in the 119th Avenue right-of-way at the intersection of Corporate Drive, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

r. MEMORANDUM OF UNDERSTANDING WITH FLOCK GROUP, INC

City Council approved a Memorandum of Understanding (MOU) with the Flock Group, Inc. to grant access to the Avondale Police Department of Flock's technology platform and Flock Safety dashboard for investigative purposes, in order to view and search photos and videos recorded by Flock devices located throughout the City of Litchfield Park and authorized the City Manager and City Clerk to execute the necessary documents.

5. ADJOURNMENT

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

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

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

Meeting adjourned at 7:45 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 17th day of May 2021. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Carrillo, City Clerk

Date Approved by City Council

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
ONLINE MEETING
June 7, 2021

A **Work Session** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 5:56 p.m. All participants attended by phone or video.

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

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Kirk Beaty, Public Works Director; Ken Chapa, Economic Development Services Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Marshall Pimentel, Intergovernmental Affairs Administrator; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Three members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. PRESENTATION AND DISCUSSION OF THE CITY'S WATER RESOURCES

City Council received an update from staff regarding the City's diverse water portfolio, the current condition of our resources and the planning underway to ensure that our water resources grow with the future of our City. This item was for discussion only.

Kirk Beaty, Public Works Director, stated the City's water resource portfolio is comprised of the Salt River Project, the Central Arizona Project (CAP), and reclaimed wastewater. Water from these sources is used to replenish the aquifer from which the City draws groundwater for delivery to City consumers. A small portion of the CAP allocation is used as a portable source for the North Avondale water supply. The City recharges more than it takes and stores excess water for the future. Resource allocations, percentages and costs were reviewed. Costs for obtaining water have increased over the past several years and are expected to continue to rise. Avondale currently consumes 1.2 million gallons more water per day compared to this time last year. Of the 18,482 acre-feet allocated in 2020, the City used 14,697 acre-feet and the difference was placed into long-term storage. City service areas and water well locations were reviewed. The North Avondale water supply is the City's connection to the City of Phoenix, which delivers treated and ready for consumption CAP water. Consumption types were reviewed. Approximately 55 percent of water used is not recaptured into the effluent stream, as it is used for outdoor landscaping.

The City utilizes five recharge facilities as well as a recharge region managed by Salt River Project. One of the interdepartmental action items related to the City's Strategic Plan is the expansion and improvement of facilities for recreational use. Part of the strategy for recharge is water storage for the future. Avondale is well positioned for the future to protect itself against possible shortages. The City currently has eight years of long-term storage credits based on the current demand for water. Based on a recent water resource analysis that considers growth and buildout and other conditions, such as a possible drought, the City will need to achieve 200,000 acre-feet of long-term storage credits to maintain the same eight years of protection in the future. The goal is key to the re-designation of the 100-year assured water supply which will be completed in 2025. The City is depleting its groundwater allowance account, as those allowances may not be applicable in the renewed assured water supply designation. Avondale is a contract member of the Central Arizona Groundwater Replenishment District. As a last resort, the City can purchase water from this source at a very expensive rate.

Mr. Beaty reviewed how Avondale is preparing for the future of water resources. Planning efforts involve several projects and studies, including a study with Salt River Project to better utilize flood control space at Roosevelt Dam. The 100-year assured water supply program is administered by the Arizona Department of Water Resources, which assures that water is available to sustain growth and to demonstrate it by meeting certain requirements. Requirements include that the water is legally, financially, and physically available.

The City's current designation of shared water supply must be renewed in 2025. Public Works is preparing for this effort, which is supported by funding in the fiscal year 2022 operating budget. The re-designation will support the City's strategic plan goal of creative and sustainable community development. One of the City's strategic goals is planning and development south of the Estrella Mountains. Over the next few years, Public Works is going to work to secure water resources, conduct studies, and develop infrastructure plans to meet this very significant goal. It is anticipated that this area may have a new and separate water resource portfolio and a 100-year designation of assured water supply that is separate from the current designation north of the Estrella Mountains.

A review of water shortage conditions in the overall region was given in terms of decreased levels of the Colorado River and Lake Mead. The Bureau of Reclamation is leading an effort in conjunction with basin states to develop a drought contingency plan for the Colorado River, which was adopted in May of 2019. It identifies key trigger points that define drought conditions and resulting actions for mitigation. The Bureau of Reclamation is projecting that the basin will be in a tier one shortage by the end of this year, when the lake level drops below 1075 feet in elevation. All lower basin states will be impacted by the shortage and the subsequent cuts in water allocations. Arizona has been planning for this and has positioned itself to manage through the drought. Avondale has done the same through its long-term planning and robust water portfolio which will lessen the impacts to the City. Only 29 percent of Avondale's portfolio comes from Colorado River water. Avondale is diverse in other areas of its water portfolio.

The drought contingency plan identifies low priority water, mainly for agriculture, which will be cut first. Avondale has high priority water, noted as municipal and industrial, so it will not be impacted until there is a tier 2-B shortage. Avondale also has insurance policies, such as long-term storage credits.

There will be no immediate and significant impact to the supply of water for Avondale due to the tier one shortage; however, there will be other impacts. Costs for Colorado River water will increase. Avondale agreed to be a partner in the mitigation strategy outlined in the drought contingency plan and up to 3500 acre-feet its Colorado River allocation will be redistributed to make up for cuts to agricultural water supplied to farmers. Avondale will receive long-term storage credits in exchange for that water. Avondale will continue efforts in diversifying its portfolio and making efficient use of water, including and promoting water conservation. Staff will work with partners to develop consistent messaging and information to share with citizens and businesses.

Mayor Weise noted that Avondale is in a great position for water compared to other West Valley cities. He commented that it will be interesting to see the water portfolio as cities develop on the south side of the Estrella Mountains.

Council Member Dennis asked about water availability on the SRP line. Mr. Beaty said the SRP watershed seems to be more resilient than the Colorado River watershed. They have not specifically mentioned reductions or curtailments. Council Member Dennis inquired on the acre-feet amounts that will be accessible through the Phoenix transmission line. Mr. Beaty said he did not have an immediate answer, but that the City can take as much as it wants as the City pays for it whether it is used or not. Mr. Montoya added that the cost varies from current costs to an increase of 5 to 7 cents. In response to a question from Council Member Dennis, Mr. Montoya confirmed that if an agricultural property changes to alternate zoning designation, the water usage changes as well.

Council Member Pineda noted the importance of sharing the information to the community, particularly through Channel 11 regarding sustainability of water. He asked about the impact of data centers regarding development. Mr. Montoya stated that the City has been approached in the last year regarding a data center and if brought to fruition, only one data center will be permitted within the City due to them being water intensive. The City is not currently seeking data centers.

Mayor Weise commented that data centers were discussed at the summit, with the possibility of a company coming in with another semiconductor facility. While it would be incredible to have that be a part of the City, it would fundamentally change who Avondale is as a city and would put a burden on the City's existing water resources.

Council Member Kilgore thanked staff for the presentation, noting the importance of the topic. He inquired whether the City is still in partnership with the Arizona Municipal Water Users Association (AMWUA). Mr. Montoya confirmed that the City is still party to the association. As Council Member Kilgore was referring to, in 2019, the federal government required the City to be in partnership with several states, including every county and city in Arizona. All areas had to agree to a certain allocation going to Pinal County and those

with higher farming capabilities. The agreement is anticipated to come back up in the next year or so. Council Member Kilgore expressed his concerns, and the concerns of past Council Members, of the water levels of Lake Mead. In closing, Council Member Kilgore thanked staff for sharing the presented information and stated he is looking forward to partnerships, like the partnership with the City of Phoenix.

In response to a question from Council Member Nielson, Mr. Beaty confirmed that Avondale is using 1.2 million gallons per day more in 2021 than in 2020. This is attributed to several factors, including growth and to COVID, as many people have been home using more water for the past year. In response to a question from Council Member Nielson, only 45 percent of water used is recovered and recharged. Council Member Nielson suggested adding conservation information in the water bill. Mr. Montoya confirmed the City will be doing so as well as providing public safety announcements related to fireworks, pool safety, and vehicle incidents.

Council Member Conde stressed the importance of keeping water reserves to match the development in the City as well as communicating water conservation information to residents.

Vice Mayor Malone agreed on the importance of community engagement and education.

Mayor Weise commented that the details and current status of the water supply and management is the impetus for the City's need to reevaluate and adjust rates charged to residents.

3. PROPOSED CHANGES FOR WATER AND SEWER RATES

City Council received a presentation from staff on the forecast for the water and sewer utilities and discuss potential rate changes for water and sewer. This item was for discussion only.

Keith Fallstrom, Interim Finance and Budget Director reviewed the public outreach efforts and programs held regarding the water and sewer rate changes. These efforts included three public meetings, various social media notices, the creation of a City website where residents can view a bill comparison, targeted outreach emails to HOA's, and a notice on the paper bill and online payment system. There was little participation in the public meetings with a total of eight participants. During the meetings, staff was asked to improve the tool for the residential bill comparison.

The City has approximately 23,500 water customers and 22,900 sewer customers. The last rate change was in February of 2018. The goal for the rate change is to allow for modest incremental increases and simplified rates. Staff plan to address the cost of providing services. Fixed sewer charges should be based on meter size. The current multifamily rates are very complicated with their water rates pattern matching the commercial rates. In addition, the intent is to remove the tiers from commercial rates and to collapse 16 commercial classifications.

In terms of conservation, there will be separate rates for landscape water use and a modification to the tiers to promote conservation. The City is currently spending more funds than it is recovering for the water fund. Based on the proposed changes, the City can retain a fund balance of six months' worth of operating expenditures. For sewer, the City would like to plan for a future water reclamation facility expansion, which is estimated to cost approximately \$75 million. It is anticipated that \$18 million cash would be needed, with bonding for the remainder. A comparison to other city rates was provided.

In terms of proposed increases, the average customer would see an overall bill increase of \$4.58 for October of 2021 and a \$4.44 increase for January of 2023. The recommendation is for a two-step rate increase to conclude in January of 2023. After that, the City would evaluate the need for small inflationary increases starting in fiscal year 2024. On the consent agenda, there is a notice of intent for approval which starts the formal process for adjusting water and sewer rates. Water and sewer rate adjustments would be considered at the August 23, 2021 City Council Meeting. Public outreach methods and next steps were reviewed.

Mayor Weise asked Council Member Dennis to comment on how the rates will impact the budget for a typical HOA.

Council Member Dennis stated that the HOA has anticipated water increases and most are considering retrofitting communities to be more water conscious. She thanked staff for holding the additional public meetings and for the outreach efforts.

Council Member Kilgore thanked staff for the presentation and concurred with Council Member Dennis on the outreach efforts. He thanked staff for making the information accessible to the public. He recognized the need to make the adjustments and inquired on the timeframe as to when future adjustments will be made. Mr. Montoya stated the intent is to look at the adjustments every year to reevaluate the information. Council Member Kilgore was in favor of evaluating the information annually so small adjustments can be made, if needed.

Council Member Pineda concurred with Council Member Dennis and he explained he feels prepared and can provide information to residents who contact him with concerns. He noted on being proactive himself by sharing information on his social media.

Council Member Nielson added his thanks to staff for their outreach efforts. He noted that his HOA will be meeting soon to discuss the costs of waters and incremental increases to cover the costs related to water.

Council Member Conde thanked staff providing the presented information as it will help her justify the increase to constituents as she is now equipped with the information. She noted the importance of modest increases.

Vice Mayor Malone thanked staff for the information as it helps Council speak to the community. She expressed her appreciation for the outreach done

Mayor Weise commented on the low public attendance at meetings but surmised that this may also mean that the public is generally aware that modest increases are required in terms of maintaining level of service.

4. ADJOURNMENT

There being no further business before the Council, Vice Mayor Malone moved to adjourn the Work Session meeting; Council Member Nielson seconded the motion.

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

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

Meeting adjourned at 6:50 p.m.

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 7:01 p.m. All participants attended by phone or video.

Council Member Nielson led the Pledge of Allegiance, followed by a moment of silent reflection.

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

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Kirk Beaty, Public Works Director; Ken Chapa, Economic Development Services Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Marshall Pimentel, Intergovernmental Affairs Administrator; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Four members of the public were present.

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

2. UNSCHEDULED PUBLIC APPEARANCES

Representing the Delta Sigma Theta Sorority, Inc., Max White addressed the Council regarding the Arizona West Valley Alumni Chapter. She spoke about the Chapter's history and current efforts regarding voter rights and other issues. Mayor Weise thanked the Chapter for serving the City and community.

3. 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 Council Member wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Council Member Pineda, seconded by Council Member Dennis, to approve the Consent Agenda.

Upon vote, the motion carried unanimously 7 to 0.

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

a. MINUTES

City Council considered a request to approve the April 19, 2021 City Council Meeting Minutes.

b. ADOPTION OF THE FISCAL YEAR 2022 PENSION FUNDING POLICY

City Council considered a request to adopt an updated Pension Funding Policy for Fiscal Year 2022 and authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

c. AWARD AUTHORITY FOR BIOSOLIDS HAULING THROUGH THE FIRST AMENDMENT CONTRACT WITH REPUBLIC SERVICES OF PHOENIX

City Council approved an increase in budgetary spending authority for Republic Services, Biosolids Hauling from \$205,000 to \$240,000 for Fiscal Year 2021, and authorized the Mayor, or City Manager and City Clerk to execute the necessary documents.

d. RESOLUTION 1036-0621 - DESIGNATION OF CHIEF FISCAL OFFICER FOR THE ANNUAL EXPENDITURE LIMITATION REPORTING SYSTEM (AELR)

City Council adopted Resolution 1036-0621, designating Lindsey Duncan as the Chief Fiscal Officer for the submittal of the annual expenditure limitation report and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

e. RESOLUTION 1037-0621 – FISCAL YEAR 2022 PROPOSED FEE CHANGES

City Council adopted Resolution 1037-0621, approving the Fiscal Year 2022 proposed fee changes and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

f. RESOLUTION 1038-0621 - NOTICE OF INTENT TO MODIFY WATER AND WASTEWATER RATES

City Council adopted Resolution 1038-0621, providing a notice of intent to increase water and wastewater user charges or rate components and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

g. RESOLUTION 1039-0621 - COMPREHENSIVE FINANCIAL POLICIES

City Council adopted Resolution 1039-0621, adopting Comprehensive Financial Policies and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

h. RESOLUTION 1040-0621 - AUTHORIZING THE RENAMING OF THE LAKIN COMMUNITY FACILITIES DISTRICT TO THE ALAMAR COMMUNITY FACILITIES DISTRICT

City Council adopted Resolution 1040-0621, amending Resolution 3453-518 pertaining to the formation of the Lakin Community Facilities District by authorizing the renaming of the district to Alamar Community Facilities District and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

i. RESOLUTION 1041-0621 – AUTHORIZING GRANT ACCEPTANCE FROM ARIZONA STATE PARKS AND TRAILS FOR LWCF PROJECT AT DONNIE HALE PARK

City Council adopted Resolution 1041-0621, accepting a Land and Water Conservation Fund grant in the amount of \$577,216 and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

j. RESOLUTION 1042-0621 - FIRST AMENDMENT - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR WATER TREATMENT AND DELIVERY

City Council adopted Resolution 1042-0621, authorizing a first amendment to the Intergovernmental Agreement with the City of Phoenix for water delivery and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

k. RESOLUTION 1043-0621 - AMENDED AND RESTATED - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR WATER STORAGE, RECOVERY AND EXCHANGE

City Council adopted Resolution 1043-0621, authorizing the Amended and Restated Intergovernmental Agreement with the City of Phoenix for water storage, recovery and exchange and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action

I. RESOLUTION 1044-0621 INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LITCHFIELD PARK FOR AUTOMOBILE AND EQUIPMENT PREVENTATIVE MAINTENANCE AND REPAIR

City Council adopted Resolution 1044-0621 approving an Intergovernmental Agreement with the City of Litchfield Park for the City of Avondale Fleet Maintenance Division of Public Works to provide preventative maintenance and repair services for the City of Litchfield Park automobile and equipment fleet, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

m. RESOLUTION 1045-0621 - ADOPTION OF PROPERTY TAX LEVIES FOR MAINTENANCE IMPROVEMENT DISTRICTS (MIDS)

City Council adopted Resolution 1045-0621, adopting Property Tax Levies for Maintenance Improvement Districts (MIDs) and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

n. ORDINANCE 2024-0621 - ABANDONMENT OF DRAINAGE EASEMENT WEST OF AVONDALE BOULEVARD AND SOUTH OF DALE EARNHARDT DRIVE

City Council adopted Ordinance 2024-0621, authorizing the Abandonment of a Drainage Easement generally located west of Avondale Boulevard and south of Dale Earnhardt Drive, and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

o. DONUT HIDEAWAY (DUNKIN DONUTS) MINOR LAND DIVISION - APPLICATION PL-20-0337

City Council approved a request by Mr. Ron Hecht, of Valley Architecture, for approval of Application PL-20-0337 Donut Hideaway (Dunkin Donuts) Minor Land Division (MLD) on 1.14 gross acres of property located at the southeast corner of Indian School Road and Santa Fe Trail. The MLD dedicated public right-of-way and utility easements along Santa Fe Trail and Indian School Road.

p. SCHOOL AT ALAMAR (LITTLETON DISTRICT ELEMENTARY SCHOOL SITE) FINAL PLAT - APPLICATION PL-21-0089

City Council approved a request by Mr. Frank Koo with Wood, Patel & Associates, for approval of a Final Plat for School at Alamar. In conformance with the approved Alamar Planned Area Development (PAD), the proposed Final Plat creates a 21.22 gross acre parcel near the northeast corner of Broadway Road and the planned El Mirage Road realignment to accommodate development of a new K-8 elementary school by the Littleton Elementary School District.

q. HILLCREST VILLAS MINOR LAND DIVISION - APPLICATION PL-21-0068

City Council approved a request by James Williamson, Superior Surveying Services, Inc. (on behalf of property owner Scott Nylen, Avondale 84 LLC) for approval of a Minor Land

Division for Hillcrest Villas. The site is located approximately 940 feet south of the southwest corner of Western Avenue and 3rd Avenue. The proposed Minor Land Division combines three (3) lots into a single parcel and dedicates an 8-foot Public Utility Easement along 3rd Avenue to accommodate a proposed multi-family residential development.

r. CITY OF AVONDALE VAN BUREN FIRE STATION FACILITY FINAL PLAT - APPLICATION PL-21-0073

City Council approved a City-initiated request for approval of a Final Plat for City of Avondale Van Buren Fire Station Facility, a partial Re-Plat of the Coldwater Place Final Plat. The Final Plat creates three (3) new lots from Lots 2 and 3 Coldwater Place Final Plat for the construction of City of Avondale Fire Station Number 175 and two (2) remaining parcels. The site is located approximately 578 feet west of the southwest corner of Van Buren Street and Fairway Drive.

4. REGULAR AGENDA

Note from the Clerk: Regular Agenda Items 4a and 4b were presented together.

a. PUBLIC HEARING - FISCAL YEAR 2022 FINAL BUDGET

City Council held a public hearing to receive comment on the final budget for fiscal year 2021-2022 (FY 2022). No Council action was required.

Rob Baer, Budget Manager, stated the final budget for fiscal year 2021-2022 is \$336,147,700, unchanged from the tentative budget adopted May 3rd. A review of the final budget changes was provided. Modifications to the tentative budget were reviewed, as were the fiscal year 2022 final budget documents. Upcoming budget adoption steps were discussed. A review of property tax uses was given, and levy amounts were listed.

Mayor Weise opened the public hearing and did not receive any requests to speak. Mayor Weise closed the public hearing.

Mr. Montoya noted that the levy has been reduced across the City but overall, residents may see an increase of approximately \$1.50 on an annual basis.

b. PUBLIC HEARING - TRUTH IN TAXATION HEARING AND RESOLUTION 1046-0621 SETTING FORTH THE INTENT TO RAISE THE PROPERTY TAX LEVY

City Council held a public hearing and considered a request to adopt Resolution 1046-0621, setting for the city's intent to levy primary property taxes in the amount of \$0.6672 per hundred (\$100) of assessed valuation and secondary property taxes in the amount of \$0.7552 per hundred (\$100) of assessed valuation and set the property tax adoption for June 21, 2021 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Mayor Weise opened the public hearing and opened the floor for comments from the public. Marcella Carrillo, City Clerk, stated Bridgette McCoy submitted a Request to

Speak as she was against this agenda item. Ms. Carrillo explained that staff contacted Ms. McCoy since that time to provide additional information regarding the agenda item, which they believed alleviated her concerns. Ms. McCoy was provided the opportunity to speak but she was not on the Zoom meeting.

Mayor Weise closed the public hearing and opened the floor for comments from Council, but no comments were provided.

Vice Mayor Malone moved to adopt Resolution 1046-0621, setting forth the City's intent to levy primary and secondary property taxes as well as set the adoption date of June 21, 2021; Council Member Dennis seconded the motion.

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

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

5. ADJOURNMENT

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

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

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

Meeting adjourned at 7:18 p.m.

A **Special Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 7:19 p.m. All participants attended by phone or video.

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

Members Absent: None.

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Kirk Beaty, Public Works Director; Ken Chapa, Economic Development Services Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Marshall Pimentel, Intergovernmental Affairs Administrator; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Four members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. RESOLUTION 1047-0621 - SETTING FORTH THE FINAL BUDGET FOR FISCAL YEAR 2021-2022

City Council considered a request to adopt Resolution 1047-0621, approving the final budget for fiscal year 2021-2022 (FY2022) in the amount of \$336,147,700 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Council Member Dennis moved to adopt Resolution 1047-0621, approving the final budget for fiscal year 2021-2022; Council Member Pineda seconded the motion.

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

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

3. ADJOURNMENT

There being no further business before the Council, Vice Mayor Malone moved to adjourn the Special Meeting; Council Member Conde seconded the motion.

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

Council Member Conde	Aye
Council Member Dennis	Aye
Council Member Kilgore	Aye
Council Member Nielson	Aye

Council Member Pineda	Aye
Vice Mayor Malone	Aye
Mayor Weise	Aye

Meeting adjourned at 7:22 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, Regular, and Special Meeting of the Council of the City of Avondale held on the 7th day of June 2021. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Carrillo, City Clerk

Date Approved by City Council

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
ONLINE MEETING
June 21, 2021

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 7:01 p.m. All participants attended by phone or video.

Mayor Kenn Weise led the Pledge of Allegiance, followed by a moment of silent reflection in remembrance of firefighters fighting fires in California, Arizona, Nevada and Washington.

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

Members Absent: Council Member Pat Dennis (Excused Absence)

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; Kirk Beaty, Public Works Director; Ken Chapa, Economic Development Services Director; Keith Fallstrom, Interim Finance and Budget Director; Bryan Hughes, Parks and Recreation Director; Chris Lopez, Neighborhood and Family Services Director; Darcy Lowery, Interim Human Resource Director; Kevin Murphy, Development and Engineering Services Director; Dale Nannenga, Police Chief; Marshall Pimentel, Intergovernmental Affairs Administrator; Jeffrey Scheetz, Chief Information Officer; and Pier Simeri, Marketing and Public Relations Director.

Audience: Thirteen members of the public were present.

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

2. UNSCHEDULED PUBLIC APPEARANCES

None.

3. AVONDALE EDGE VIDEO PRESENTATION)

A video was presented to City Council as part of an Economic Development (Avondale EDGE) video series.

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 Council Member wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Council Member Nielson, seconded by Council Member Pineda, to approve the Consent Agenda.

Upon vote, the motion carried unanimously 6 to 0.

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

a. AMENDED MINUTES

City Council approved an amendment to the March 22, 2021 City Council Meeting Minutes.

b. BUDGET ADJUSTMENT FOR BOND FUNDED CAPITAL PROJECTS

City Council amended the fiscal year 2021 budget for projects partially funded through bond proceeds.

c. RESOLUTION 1048-0621 – INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR RECYCLING SERVICES

City Council adopted Resolution 1048-0621, authorizing an Intergovernmental Agreement with the City of Phoenix for recyclable materials processing services and authorized the Mayor, or City Manager and City Clerk to execute the necessary documents.

d. RESOLUTION 1049-0621 – INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GLENDALE FOR LANDFILL SERVICES

City Council adopted Resolution 1049-0621, approving an Intergovernmental Agreement with the City of Glendale relating to landfill disposal services and authorized the Mayor, or City Manager and the City Clerk to execute the necessary documents.

e. RESOLUTION 1050-0621 – INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY HUMAN SERVICES DEPARTMENT FOR SHELTER AND HOMELESS SUPPORT SERVICES

City Council adopted Resolution 1050-0621 and approving the Third Amendment to an intergovernmental agreement with the Maricopa County Human Services Department for a grant in the amount of \$107,500 for the provision of emergency shelter services, outreach, and case management to people experiencing homelessness in Avondale, and authorized the Mayor, City Manager and City Clerk to execute the necessary documents and amendments.

f. RESOLUTION 1051-0621 – AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY

City Council adopted Resolution 1051-0621, approving an Amendment to the Intergovernmental Agreement with the Regional Public Transportation Authority for Fiscal Year 2022 relating to public transportation services, and authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

g. ORDINANCE 2025-0621 – CHAPTER 23 CODE AMENDMENT REGARDING THE STOPPING, STANDING, OR PARKING, SECTION 23-62, PARKING OF TRUCKS AND TRAILERS

City Council adopted Ordinance 2025-0621, amending Chapter 23, Section 23-62 regarding the stopping, standing, or parking of trucks and trailers within the City to include the City Manager's authority to suspend enforcement actions for designated events and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

h. ORDINANCE 2026-0621 – ABANDONMENT OF RIGHT-OF-WAY - 114TH LANE AND THOMAS ROAD

City Council adopted Ordinance 2026-0621, authorizing the abandonment of right-of-way located on 114th Lane south of Thomas Road and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

i. ORDINANCE 2027-0621 – GRANTING AN ELECTRICAL EASEMENT TO SALT RIVER PROJECT (SRP) ON PALM LANE WEST OF 116TH AVENUE

City Council adopted Ordinance 2027-0621, granting an Electrical Easement to Salt River Project on Palm Lane, West of 116th Avenue and authorized the Mayor or City Manager, and City Clerk to execute the necessary documents.

j. ORDINANCE 2028-0621 – ACQUISITION OF REAL PROPERTY - AVONDALE CIVIC CENTER - AVONDALE BOULEVARD AND CIVIC CENTER DRIVE

City Council (a) adopted Ordinance 2028-0621 authorizing the purchase of real property located east of Avondale Boulevard and south of Civic Center Drive; (b) approved budget authorization not-to-exceed \$2,500,000 to cover the land acquisition and closing costs; (c) approved a budget amendment in the amount of \$2,500,000; and (d) authorized the Mayor or City Manager and City Clerk to execute the necessary documents.

k. FINAL PLAT FOR ALAMAR PHASE 4 - APPLICATION PL-20-0346

City Council approved request by Mr. Frank Koo, Wood, Patel & Associates, for approval of a Final Plat for Alamar Phase 4. In conformance with the Alamar Phase 4 Preliminary Plat approved by City Council in February 2021, the proposed Final Plat will create 464 single-family residential lots, 55 common area tracts, and dedicate streets and easements on approximately 161.02 gross acres located at the southwest corner of the planned El Mirage Road realignment and the planned Alamar Boulevard alignment. The proposed Final Plat does not include 22 lots and 2 common area tracts within the Phase 4 boundary that are located, in whole or in part, within existing El Mirage Road right-of-way; those lots will be created by a future Re-Plat. A Maintenance Improvement District for the entirety of Phase 4 will be brought forward concurrently with the future Re-Plat.

5. REGULAR AGENDA

a. RESOLUTION 1052-0621 - SETTING THE FISCAL YEAR 2022 PRIMARY AND SECONDARY PROPERTY TAX LEVY

City Council considered a request to adopt Resolution 1052-0621, setting the primary and secondary property tax levy for the fiscal year ending June 30, 2022 and authorize the Mayor, City Manager, and City Clerk to execute the necessary documents.

Robert Baer, Budget Manager with the Finance and Budget Department, presented the proposed tax levies for fiscal year 2022. For the primary tax levy, which can be used for general purposes, is in the amount of \$3,290,678 for a total of 66 cents per \$100 of net assessed value. The proposed secondary levy, which is used to repay the debt for general obligation bonds, is in the amount of \$3,724,510 for a total of 75 cents per \$100 net assessed value. The total levy amount is \$7,015,188.

Mayor Weise asked for the levy amount that has been increased since last year. Mr. Baer stated that the primary levy is limited by state statute so the levy can only be raised 2 percent per year, excluding new construction. The secondary levy is based off the amount of general obligation debt. The total rate is approximately the same as last year.

Council Member Kilgore moved to adopt Resolution 1053-0621, setting the Fiscal Year 2022 Primary and Secondary Property Tax Levy; Council Member Conde seconded the motion.

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

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

b. VERDE TRAILS PARCEL 6 – PRELIMINARY PLAT – APPLICATION PL-20-0284

City Council considered a request by Mr. Paul Haas, HILGARTWILSON, LLC, for approval of a Preliminary Plat for Verde Trails Parcel 6, a proposed 110-unit, gated single-family residential subdivision located on approximately 14.45 gross acres at the northwest corner of 107th Avenue and the Wier Avenue alignment. The subject site is part of the 181-acre Verde Trails Unit I master planned community.

Ken Galica, Division Lead Planner with the Development and Engineering Services Department, presented a preliminary plan for a 110 lot cluster subdivision. The property is just under 14.5 gross acres located at the future intersection of 107th Avenue and Weir Avenue in the Verde Trails Master Plan Development. The property was annexed as Verde Trails, at the time known as Hillcrest planned area development, in November 2007 with a major amendment overhauling the PAD approved by Council in May 2018. As part of the May 2018 PAD amendment, parcel 6 was designated for a cluster type of

community with minimum 2,200 square foot lots. The parcel was formally created in February 2019 by the master plat for Verde Trails; however, no individual lots were created at that time. Surrounding property details were reviewed. Verde Trails is currently under construction, with grading, utilities, and streets in various stages of completion. The General Plan land use map designates the property as high density residential, which is 12 to 30 dwelling units per acre. The proposal is under this allowance, at under 12 units per acre. This is acceptable, as the PAD zoning was approved under a previous General Plan and was consistent at that time.

Lot sizes and attributes were reviewed. Resident access will be from the south off the new Weir Avenue collector street. There will be a future traffic signal at 107th Avenue and Broadway Road. The community will be gated with private internal streets. Private alleys will provide access to approximately two and six cluster lots, with the garages located off the alleys. There will be 114 on-street guest parking spaces. The development provides 23 percent open space and various amenities. Landscaping and signage will be consistent with the remainder of Verde Trails. The preliminary plat conforms to the approved Verde Trails PAD. The preliminary plat and landscape plan both meet and exceed zoning ordinance regulations, subdivision regulations, and single-family design manual requirements. Sufficient access is provided with a secondary point of emergency provided onto 107th Avenue. Certificates of adequate school facilities have been received from both the Littleton Elementary School District and the Tolleson Union High School district. Littleton Elementary School District does not currently have adequate capacity; however, a donation agreement is in place with the developer. The Planning Commission recommended approval on May 19th, 2021. Staff recommends approval, subject to four recommended conditions.

In response to a question from Council Member Nielson, Mr. Galica identified the garage locations and access points. The homes will be two to three stories high with ample room to turn into the garages.

Mayor Weise stated the product is similar to a development Council had toured in the past, noting the distance for vehicles to backout and pull into the garages.

Council Members Pineda and Kilgore thanked staff for the presentation and did not have any additional questions.

Council Member Conde asked if there is a similar product in the West Valley. Mr. Galica explained the Parkside Project at 99th and Indian School will have similar components, as will a future phase of Alamar. Mr. Montoya stated that the closest example would be located near Verrado. Council Member Pineda added that another example would be in Palm Valley. Vice Mayor Malone cited another example at Dysart Road south of Buckeye Road. Mr. Galica concurred, noting that location is the Villages at Tres Rios.

Vice Mayor Malone expressed excitement for the project and thanked staff for adding the traffic signal at 107th Avenue and Broadway Road.

Vice Mayor Malone moved to approve Application PL-20-0284 Verde Trails Parcel 6 Preliminary Plat subject to four (4) recommended conditions; Council Member Nielson seconded the motion.

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

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

c. PUBLIC HEARING - EXTRA SPACE STORAGE - CONDITIONAL USE PERMIT - APPLICATION PL-21-0003

City Council held a public hearing and considered a request by Paul Hedges (on behalf of Extra Space Storage), for approval of a Conditional Use Permit (CUP) to allow for the operation of one (1) mini-storage personal warehouse use. The 2.28-acre subject property is located at the southwest corner of Indian School Road and Osborn Road.

Brian Craig, Planning Manager with Development and Engineering Services, provided a history of the parcel and gave details regarding the surrounding parcel usage. Much of the surrounding area is zoned Palm Valley PAD. North of the site is zoned Litchfield Park jurisdiction. Within the C-2 Community Commercial district, mini-storage warehouse and personal storage uses require Council approval of a conditional use permit. A replat is required to combine the lot and a half with future development prior to completion of construction on the lot. Development design details were reviewed. The proposed building is two stories, just under 110,000 square feet with a 900 square-foot office component. Hours of operation for the office are planned to be 9:30 a.m. to 6 p.m., Monday through Friday with Saturday hours from 9:30 a.m. to 5:30 p.m.

Internal access is available through the internal secured gate from 6 a.m. to 10 p.m., seven days per week. The entire building is enclosed with climate control and no visible exterior access. Parking facilities were reviewed. Storage facilities are low traffic-generating and as such, no additional improvements are required to the adjacent street network. Staff finds that the development is compatible with the local commercial General Plan designation as well as the Palm Valley PAD. It is compatible with the commercial industrial design manuals. The site is adequately served by streets and utilities. The design has been reviewed by the City's traffic engineer and other civil engineers on staff and has been deemed safe and meets all City requirements.

A neighborhood meeting was held on April 20, 2021 with four attendees. Broad discussion areas included the zoning allowance and the proposed architectural design, traffic impacts, and the competitive need for the use of the proposed location. Since the neighborhood meeting, the Applicant provided analysis of competition within a three-mile

radius. There are four additional storage uses, all currently over 95 percent occupied. This will be a one of a kind enclosed climate-controlled facility. All required notifications were completed for the neighborhood meeting, Planning Commission and City Council meetings. Two comments were posted on aVOICE, both in support. The Planning Commission approved the item with a vote of 3 to 2. Although a majority present and voting were in favor of the recommendation, it must be forwarded as a recommendation for denial. City Code requires a minimum of four affirmative votes to secure a recommendation for approval to City Council. Staff recommends approval.

Mr. Montoya noted that based on Council Member Dennis' recommendation, there is a stipulation to ensure that the color scheme blends in with the general area. As Council Member Dennis was not present, Mayor Weise made the stipulation on her behalf.

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 Nielson asked about accommodation for large trucks. Mr. Craig stated that many, but not all trucks will be able to fit underneath the overhead. Some will park farther out and extend their ramps.

Council Member Kilgore thanked staff for the presentation and stated he liked the project as it looks nice. He thanked Council Member Nielson for the question as he had the same questions.

Council Member Pineda acknowledged that the storage businesses are needed in the City; however, having a two-story structure is new for the City. Initially, he did not think the proposed location was appropriate but recognized the fact the City needs products like this. He acknowledged the recommended denial from the Planning Commission was due to technicalities and not necessarily because the Planning Commission did not want the project to move forward.

In response to a question from Council Member Conde, Mr. Craig stated that the business accommodates internal storage only, with no RV or vehicle storage. Council Member Conde expressed loading concerns based on the configuration.

Mayor Weise asked about the scale of distance from the security gate to the shared access drive. Mr. Craig stated that the drive aisle itself is approximately 28 feet. Parking should be an additional 20-foot stall. The stacking area is approximately 150 feet long.

Mayor Weise noted that upon first consideration, he questioned the location of the site as well as the impact on the community, which is the City of Litchfield Park. Based on the amount of traffic, the development fits with the neighborhood. There will be no traffic after 10 p.m. and minimal traffic during the day. As such, he is in favor of the development.

Vice Mayor Malone moved to approve Application PL-21-0003, a request for approval of a Conditional Use Permit to allow for the operation of Extra Space Storage mini-storage

facility at the southwest corner of Indian School Road and Osborn Road, subject to four (4) conditions and a fifth (5th) stipulation to direct staff to work with the developer on appropriate color schemes; Council Member Conde seconded the motion.

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

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

d. PUBLIC HEARING - RESOLUTION 1053-0621- CERRO VISTA - MINOR GENERAL PLAN AMENDMENT - APPLICATION PL-18-0079

City Council was to hold a public hearing and consider a request to adopt Resolution 1053-0621, approving a request by Virtua Avondale Eleven Owner, LLC, for a Minor Amendment to the Avondale General Plan 2030 Land Use Map for Cerro Vista, a proposed high-density multi-family residential development with 249 units on 11.51 gross acres located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street. The request is to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre). City Council will consider a concurrent request to rezone the property from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). The item was continued at the request of the applicant.

Council Member Nielson moved to continue agenda item 5d – Resolution 1053-0621- Cerro Vista – Minor General Plan Amendment – Application PL-18-0079 to the August 23, 2021 City Council Meeting; Council Member Pineda seconded the motion.

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

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

e. PUBLIC HEARING - ORDINANCE 2029-0621 - CERRO VISTA - REZONING FROM AGRICULTURAL (AG) AND COMMUNITY COMMERCIAL (C-2) TO MULTI-FAMILY RESIDENTIAL (R-4) - APPLICATION PL-18-0080

City Council was to hold a public hearing and consider a request to adopt Ordinance 2029-0621 approving a request by Virtua Avondale Eleven Owner, LLC, to rezone 11.51 acres of land located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). City Council will consider a concurrent request to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High

Density Residential (12 to 30 dwelling units per acre). These requests will allow for the development of the subject property with a 249-unit multi-family residential development at a density of approximately 23.94 dwelling units per acre. The item was continued at the request of the applicant.

Vice Mayor Malone moved to continue agenda item 5e – Ordinance 2029-0621-Cerro Vista – Rezoning from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4) – Application PL-18-0080 to the August 23, 2021 City Council Meeting; Council Member Conde seconded the motion.

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

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

6. ADJOURNMENT

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

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

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

Meeting adjourned at 7:54 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 Regular Meeting of the Council of the City of Avondale held on the 21st day of June 2021. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Carrillo, City Clerk

Date Approved by City Council

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
ONLINE MEETING
June 22, 2021

A **Special Meeting** of the City Council of the City of Avondale, Arizona was convened using the Zoom Cloud Meeting platform in open and public session at 6:08 p.m. All participants attended by phone or video.

Members Present: Mayor Kenn Weise; Vice Mayor Veronica Malone; Council Members Tina Conde, and Mike Pineda.

Members Absent: Council Members Pat Dennis, Curtis Nielson and Bryan Kilgore (Excused Absence).

Other Municipal Officials Present: Charles Montoya, City Manager; Cherlene Penilla, Assistant City Manager; Tracy Stevens, Deputy City Manager; Lindsey Duncan, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Carrillo, City Clerk; and Dale Nannenga, Police Chief.

Audience: No members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. ADJOURNMENT INTO EXECUTIVE SESSION

City Council will consider a request to adjourn the Special Meeting and hold an executive session pursuant to Ariz. Rev. Stat. §38341.03 A(3) (i) discussion and legal advice from attorneys regarding the City's grievance and personnel procedures under the City Charter, City Code and City policies and (ii) discussion and legal advice from attorneys regarding legal issues pertaining to the organization and operation of the Fire-Medical Department under the City Code and City policies.

There being no further business before the Council, Vice Mayor Malone moved to adjourn the Special Meeting into Executive Session; Council Member Pineda seconded the motion.

Upon vote, the motion was carried unanimously 4 to 0.

Council Member Conde	Aye
Council Member Pineda	Aye
Vice Mayor Malone	Aye
Mayor Weise	Aye

Meeting adjourned at 6:08 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 Special Meeting of the Council of the City of Avondale held on the 22nd day of June 2022. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Carrillo, City Clerk

Date Approved by City Council

CITY COUNCIL REPORT

SUBJECT: Budget Carryover and Accounting Adjustments

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Keith Fallstrom, Interim Finance and Budget Director, (623) 333-2016

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government. This action will ensure planned capital projects have adequate capacity and enhance flexibility within the budget, allowing the city to further innovate.
-

PURPOSE:

City Council will consider a request to adjust the FY2021 and FY2022 budgets to adjust the FY2022 carryover appropriations and improve financial reporting. The Council will take appropriate action.

BACKGROUND:

Staff is recommending adjusting the FY2021 and FY2022 budgets to adjust the FY2022 carryover appropriations and improve financial reporting. The City's adopted Financial Policies require City Council approval to transfer appropriations between funds.

Carryforward appropriations accommodate projects and other expenses that are not able to be completed during the budget year. These are most often needed for capital projects and other specific programs that take more than one year to complete. Staff are required to estimate the amount needed to be "carried over" as part of the development of the budget. Now that FY2021 is complete, these estimates need to be adjusted to match what was spent in FY2021 and what is still needed in FY2022 to complete these projects.

Additionally, the city is adopting better accounting practices by reporting liabilities (bond payments) due on July 1, 2021 in FY2021 instead of FY2022. This shift in reporting requires a one-time budget adjustment.

DISCUSSION:

Some projects originally budgeted in FY2021 did not conclude by year-end (June 30, 2021) and appropriations needed to be carried over into FY2022. Because the budget for the FY2022 was adopted before the fiscal year ended, the amount to be carried over was estimated and must be updated based on

actual expenditures. Staff recommends transferring the carryover budget capacity totaling \$10,860,000 for expenses that occurred prior to June 30 to the Unanticipated Resource Appropriation line item. During FY2022, staff may transfer from this line item for unbudgeted expenses in FY2022 with identified funding sources.

The City sets aside funds to pay certain liabilities (bond payments) throughout the year and pays them when due. Historically, the City reported the payments due on July 1st in the new fiscal year even though the payment was for the last half of the prior fiscal year. The City plans to change this practice to better report its financial activity. In order to accommodate this change for FY2021, we need to increase appropriations to show the payments as of 6/30/21 rather than 7/1/2021. Sufficient funds have been reserved to make the payment in FY2021 but budget appropriations will need to be increased by \$4,415,000 to make the change.

BUDGET IMPACT:

The proposed FY2022 budget adjustment will increase the Unanticipated Resource Appropriation line item by \$10,860,000. However, the additional budget capacity from the budget transfers of excess carryover capacity does not increase the available funding, as the expenses tied to the additional budget capacity occurred during FY2021.

RECOMMENDATION:

It is recommended that City Council approve the transfer of budget capacity and the adjustment to project contract award authority detailed in Exhibit A.

FY2021 Budget Adjustment**Decrease**

Account Name	Account	Amount
Unanticipated Resource Appropriation	209-5300-00-6990	\$ 4,415,000

Increase

Account Name	Account	Amount
General Obligation Debt Principal	401-5300-00-9410	\$ 2,235,000
Dedicated ST Debt Principal	430-5300-00-9410	\$ 2,061,000
Other Debt Principal	417-5300-00-9410	\$ 119,000

FY2022 Budget Adjustment**Decrease**

Account Name	Account	Amount
107th Ave/McDowell Widening	20340900-86000-T0002	\$ 29,000
107th Ave/McDowell Widening	30140900-86000-T0002	\$ 106,000
119th Ave Rd Connection	22040900-80000-T0004	\$ 7,000
ADA and Sidewalk Gap Study	11040900-86000-T0009	\$ 50,000
Almar Park	30455900-81100-P0171	\$ 3,088,000
Avondale BLVD - McDowell to Encanto	22040900-86000-T0016	\$ 39,000
Avondale BLVD Median Impr	11040900-80000-T0017	\$ 2,000
Avondale BLVD Median Impr	11040900-86000-T0017	\$ 107,000
BLVD Water Feature	11040900-80000-B0130	\$ 194,000
BLVD Water Feature	11040900-82000-B0130	\$ 1,073,000
Bridge Repairs	22040900-86000-T0019	\$ 18,000
Civic Center Annex	11040900-80000-M0025	\$ 93,000
Civic Center Annex	11040900-84000-M0025	\$ 52,000
Civic Center Annex	11040900-82000-M0025	\$ 746,000
Command Vehicle	20430900-85000-S0030	\$ 14,000
Communication Conduit / Fiber	11040900-84000-T0031	\$ 9,000
Communication Systems and Data Center	38916910-84000-M0168	\$ 1,040,000
Computer and Equipment Replacements	51216910-83050-A0169	\$ 15,000
Computer and Equipment Replacements	54216910-83050-A0169	\$ 16,000
Computer and Equipment Replacements	38916910-83050-A0169	\$ 186,000
Crystal Gardens Trail Improvements	11055900-81100-P0034	\$ 107,000
Crystal Gardens Treatment Cell Assessment	51170900-86000-U0035	\$ 23,000
Distribution Pressure Improvements	51170900-80000-U0038	\$ 8,000
Dysart Rd Median Improve	11040900-86000-T0041	\$ 97,000
Dysart Rd Sewer Replacement	54170900-86000-U0045	\$ 72,000
Dysart Rd Traffic Flow	11040900-86000-T0046	\$ 64,000
Facilities Asset Replacement	12011910-83000-A0014	\$ 289,000
Fire Equipment Replacements	12034910-83010-A0058	\$ 194,000
Gateway Nitrate Treatment	51170900-86000-U0066	\$ 58,000
Glen Arm Farms Pavement Design	11040900-80000-T0068	\$ 21,000

McDowell Water Line - 99th to Avondale	51370900-86000-U0080	\$	500,000
Neighborhood Park Enhancements	11055900-81100-P0085	\$	21,000
Northside Arsenic Treatment	51170900-86000-U0158	\$	57,000
Old Town Avondale - Streets	20340900-80000-T0091	\$	42,000
Old Town Avondale - Streets	20340900-86000-T0091	\$	1,469,000
Old Town Avondale - Water	35040900-80000-T0091	\$	50,000
Old Town Avondale - Water	35040900-86000-T0091	\$	581,000
Palm Lane Extension	11040900-80000-T0092	\$	1,000
Palm Lane Extension	11040900-81000-T0092	\$	19,000
Palm Lane Extension	11040900-86000-T0092	\$	204,000
Rancho Santa Fe Reservoir Coating	51170900-80000-U0103	\$	44,000
Relocate Riley Lift Station	54170900-86000-U0106	\$	530,000
Replace Training Facility Support	11034900-82000-S0107	\$	61,000
Security Cameras and Equipment	11016900-84000-M0118	\$	53,000
Tenent Impr Phoenix Raceway	11040900-80000-M0127	\$	66,000
Thomas Rd Bridge Design	20340900-80000-T0133	\$	6,000
Traffic Signal - 119th Ave and McDowell	11040900-86000-T0135	\$	43,000
Traffic Signal - Avondale and Lower Buckeye	20340900-80000-T0173	\$	102,000
Van Buren Fire Station	11034900-80000-S0146	\$	590,000
Van Buren Fire Station	11034900-84000-S0146	\$	6,000
Van Buren Fire Station	11034900-83010-S0146	\$	9,000
Van Buren Fire Station	11034900-82000-S0146	\$	922,000
Van Buren Multi Use	11040900-81100-P0145	\$	19,000
Vehicle Replacements	38870910-85000-A0147	\$	867,000
Well and Booster Station Metering	51170900-86000-U0158	\$	20,000
Western - Central to 4th Ave	11040900-80000-T0161	\$	26,000

Increase

Account Name	Account	Amount
Civic Center Annex	33140900-86000-M0025	\$ 3,143,000
Agua Fria Trail	11055900-86000-P0011	\$ 66,000
Police Substation and Detention Center Study	11030900-80000-S0036	\$ 56,000
Unanticipated Resource Appropriation	28090000-69000	\$ 10,860,000

FY2022 Changes in Award Authority

Project	Amount
Civic Center Annex	\$ 3,143,000
Agua Fria Trail	\$ 66,000
Police Substation and Detention Center Study	\$ 56,000

CITY COUNCIL REPORT

SUBJECT: Funding Request for The BLVD Water Features Project

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

A complete and functional splashpad and additional ground surface material to provide a finished look for the lake in The BLVD Water Features project will provide an additional amenity for recreation and encourage development in the Park Avenue District to sustain and further The BLVD Specific Plan vision.

PURPOSE:

City Council will consider a request to provide funding in the amount of \$300,000 from General Fund Contingency to pay for a Splash Pad and Additional Landscape scope, to fund construction, and to authorize staff to take the necessary action to complete the budget amendment. The Council will take appropriate action.

BACKGROUND:

The BLVD Specific Plan (BSP) was adopted by the City Council in September 2019, establishing a new vision for development of the area generally bounded by I-10 to the north, Coldwater Springs Boulevard to the south, 111th Avenue to the east, and 117th Avenue to the west.

In conformance with The BLVD Specific Plan and the amended General Plan 2030, a new zoning district, The BLVD District (BLVDD), was adopted in September 2019 to assist in implementing the BSP's vision of a vibrant, urban, mixed use environment that will become a premier destination for shopping, dining, entertainment, employment, and various types of residential uses.

In FY 2020, a Design Build RFQ was issued and awarded by the City for Design Build Services for the BLVD Water Features for a lake and entry water features in the Park Avenue District. Design of the water features followed with commencement of construction in April 2021.

DISCUSSION:

During design of the water features, the City requested a Splash Pad be provided, which was not in the original scope of the Design Build Services RFQ Scope or the project budget. The project team currently has accounted for the splashpad infrastructure and hardscape in the original project budget, but funding is not sufficient to complete the equipment and landscape to provide a complete and functional splash pad without additional funding.

The city owned undeveloped portion of the project site beyond the lake parcel recently approved by Council will be cleared and stabilized for dust control within the original project budget. The City has requested additional ground surface materials to provide a finished look to the project until development begins around the lake for the area bordered by N 114th Ave on the west, W Fillmore Street on the south, and N Park Avenue on the east and including the three streets as well. This will require additional funding in order to be provided.

BUDGET IMPACT:

This action will transfer \$300,000 from the General Fund Contingency to create the necessary appropriation for the project.

RECOMMENDATION:

Staff recommends that City Council authorize funding in the amount of \$300,000 from General Fund Contingency to pay for a Splash Pad and Additional Landscape scope, authorize a budget amendment from General Fund Contingency, and authorize the Mayor, City Manager, and City Clerk to execute the necessary documents.

CITY COUNCIL REPORT

SUBJECT: General Fund Contingency Request for Economic Opportunities Fund

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kenneth Chapa, Economic Development Director, (623) 333-1411

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

Creative and Sustainable Community Development, Diverse Recreation and Entertainment Opportunities

PURPOSE:

City Council will consider a request to approve a transfer of appropriation in the amount of \$1,600,000 to the Economic Opportunities Fund from the General Fund Contingency to support the City's and the Economic Development Department's fiscal year initiatives, increase awarding authority, and modify the interfund transfer schedule as well as authorize the City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Avondale Mayor and City Council appropriated \$2,000,000 for FY 2022 to the Economic Opportunities Fund to support the City's and the Economic Development Department's fiscal year initiatives. The purpose of the fund is to support activities that promote economic vitality within the City of Avondale. Due to the department's successful marketing of the City-Owned BLVD retail shops, the entire \$2 Million appropriation is expected to be encumbered by the end of August 2021 to pay for tenant improvements authorized by Mayor and Council for incoming tenants. The Department requests that the Avondale Mayor and Council approve an additional appropriation of \$1,600,000 in order to continue supporting the city's economic development goals throughout FY 2022. The additional appropriation will be transferred from the General Fund Contingency.

DISCUSSION:

Below is a summary of the anticipated projects for the current FY 2022 one-time budget allocation of \$2,000,000. All of these items are expected to be encumbered by the end of August 2021.

- Phoenix Children's Hospital Tenant Improvement Allowance (Suite 765) = \$394,000
- New Penny Café Tenant Improvement Allowance (Suite 735) = \$384,000
- Soda Bomb Tenant Improvement Allowance (Suite 745 A) = \$165,000
- Dutch Bros. Roadway Improvements (114th Ave) = \$200,000
- Aveda Tenant Improvement Allowance and Broker Commissions (Suites 775 and 745 B) = \$983,624
- Desert Tap Tenant Improvement Allowance (Suite 724 C) = \$429,990

Total Amount: \$2,556,614

The additional \$1.6 Million that is being requested will be used to balance the city's obligations from the commitments outlined above as well as provide the department with resources to progress the City's FY 2022 economic development initiatives, such as.

- Infill Incentive = \$100,000
- Development and Impact Fee Incentives = \$500,000
- Business Engagement Programs = \$300,000
- NASCAR Promotions = \$100,000

In addition, staff requests that the Mayor and Council grant awarding authority for the \$1.6 Million, authorizing the City Manager and City Clerk to execute the necessary documents.

BUDGET IMPACT:

The proposed action would lower the General Fund Contingency and the General Fund Reserve by \$1,600,000 in FY2022. The tenant improvements included in the Economic Opportunities fund will ultimately increase lease and sales tax revenue to the city.

RECOMMENDATION:

Staff recommends that the Avondale Mayor and Council approve the transfer of appropriation in the amount of \$1,600,000 from the General Fund Contingency to the Economic Opportunities Fund, as well as designating awarding authority, modifying the interfund transfer schedule, and authorizing the City Manager and City Clerk to execute the necessary documents.

CITY COUNCIL REPORT

SUBJECT: Cost Participation Agreement with the Salt River Project for a Temporary Deviation for Operation of the Roosevelt Dam Flood Control Space.

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kirk Beaty, Public Works Director, (623) 333-4417

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Areas:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government.

This innovative agreement demonstrates a partnership between Avondale and Salt River Project (SRP) to identify opportunities which continue to strengthen our water portfolio.

- Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local businesses unified by pride and common values.

This agreement demonstrates creative collaboration to ensure a more sustainable water resource is available for current and future residents through effective water resource management.

PURPOSE:

City Council will consider a request to approve a Cost Sharing Agreement with the Salt River Project (SRP) to develop a Temporary Deviation Plan for operation of the Roosevelt Dam Flood Control Space, and receive potential water deliveries as a result of this Plan, to be used for Long Term Storage Credits and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

In February of 2020, Salt River Project contacted Avondale as well as other valley municipalities to discuss the protentional interest of sharing the costs to evaluate and receive water from future releases at the Roosevelt Dam under a temporary deviation water control plan developed by SRP.

DISCUSSION:

The cost sharing agreement will allow the Planning, Cost Evaluation, Legal analysis and the environmental and cultural compliance implications to be identified and formalized. Avondale's obligation under this cost

sharing agreement is proportional to its capacity interest in the water made available through the Temporary Deviation Plan (a.k.a., Temporary Deviation Water).

This Temporary Plan will be in place for 5 years, during which Salt River Project (SRP) would have authority to temporarily deviate from current Roosevelt Dam operating guidelines and deliver Temporary Deviation Water one time per year in 3 of the 5 years the plan is in place. Based on a total estimated cost of \$1,500,000 to evaluate, develop and receive approval of the Temporary Deviation Plan, and based on the total number of partners and their respective percentage interest in the anticipated volume of Temporary Deviation Water, Avondale's cost share is expected to be \$94,809 for an approximate total of 8,500-acre feet. This is not an annual increase in fees or volume of water, but instead a one-time total fee and potential maximum total water received over the 5-year duration. The total volume of Temporary Deviation Water that will be available is based on the probability of drainage basin water runoff into the Roosevelt Dam reservoir, of which any amount of water is not guaranteed. Based on the probability that Avondale will receive 8,500 acre-feet of Temporary Deviation Water, the cost figures to about \$11 per acre foot of water, which is nearly 70% less than current market rates for SRP water.

Avondale's plan is to store this water and receive Long Term Storage Credits, which helps us achieve our long term and strategic goals of having an 8 year "Build Out" supply.

BUDGET IMPACT:

Funding for the Cost Share Agreement with Salt River Project (SRP) has been budgeted in line item 50170120-74000, Water Purchases.

RECOMMENDATION:

Staff recommends Council approve a Cost Participation Agreement with the Salt River Project (SRP) for a Temporary Deviation of the Roosevelt Dam Flood Control Space in an amount not to exceed \$94,809 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**AGREEMENT TO SHARE COSTS ASSOCIATED WITH SEEKING TO OBTAIN APPROVAL
FOR THE OPERATION OF THE FLOOD CONTROL SPACE
IN MODIFIED ROOSEVELT DAM UNDER A TEMPORARY DEVIATION
TO THE WATER CONTROL PLAN
AMONG VARIOUS PARTICIPATING ENTITIES,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

1. PARTIES:

This Agreement to Share Costs Associated with Seeking to Obtain Approval for Operation of the Flood Control Space in Modified Roosevelt Dam Under a Temporary Deviation to the Water Control Plan (“Agreement”), entered into this ____ day of _____, 2021 is by and among the Arizona cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe, Town of Gilbert, Roosevelt Water Conservation District, Buckeye Water Conservation and Drainage District, Salt River Pima-Maricopa Indian Community, Roosevelt Irrigation District, and Freeport Minerals Corporation (“Participating Entities”); and the Salt River Project Agricultural Improvement and Power District (“SRP”). SRP and the Participating Entities are referred to collectively as “Parties”.

2. RECITALS:

This Agreement is made with regard to the following:

- 2.1 SRP will propose and seek to obtain approval from the United States Army Corps of Engineers (“Corps of Engineers”) and United States Department of the Interior’s Bureau of Reclamation (“Reclamation”) to authorize SRP to operate the flood control space in Modified Roosevelt Dam (“Flood Control Space”) under a planned deviation (“Temporary Deviation Plan”).
- 2.2 The Temporary Deviation Plan is expected to allow SRP to extend the required evacuation period for water within the first five (5) feet of the Flood Control Space (“Temporary Deviation Space”) from twenty (20) days to one hundred and twenty (120) days after such water first occupies such space. It is expected that the Temporary Deviation Plan will allow SRP to extend the required evacuation period once a year in a maximum of three (3) years over a five (5) year period.

- 2.3 The purpose of this Agreement is to set terms and conditions among the Parties for (1) the estimated costs SRP is expected to incur to seek and obtain approval for the Temporary Deviation Plan, (2) how the costs will be shared among the Parties, and (3) the process for the Participating Entities to pay their cost share.
- 2.4 SRP executed a reimbursement agreement with Reclamation on May 21, 2020 (“Reclamation-SRP Reimbursement Agreement”) to complete risk assessments and environmental compliance activities necessary to facilitate a federal decision on the Temporary Deviation Plan. The goal at the time of execution of the Reclamation-SRP Reimbursement Agreement was to obtain formal federal approval of the Temporary Deviation Plan by no later than February 2023.
- 2.5 The Parties have executed a nonbinding term sheet dated May 7, 2021 that, among other things, summarizes the principle terms for agreements (1) to share costs among SRP and the Participating Entities to seek and obtain approval from the Corps of Engineers and Reclamation for the Temporary Deviation Plan, and (2) for SRP to operate the Flood Control Space under the Temporary Deviation Plan (“Participating Entities-SRP Term Sheet” attached hereto as Exhibit A). This Agreement fulfills the intent of the cost share agreement identified in Paragraph 3 of the SRP-Participating Entities Term Sheet.

3. AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. INCORPORATION OF RECITALS:

The recitals listed above are hereby incorporated into and expressly made part of this Agreement.

5. DEFINITIONS:

The listed terms, when used with initial capitalization, whether in singular or plural, shall have the meaning specified in Exhibit B.

6. SCOPE:

This Agreement is intended to set terms and conditions for (1) the estimated costs SRP is expected to incur to seek and obtain approval for the Temporary Deviation Plan, (2) how the costs will be shared among the Parties, and (3) the process for the Participating Entities to pay their cost share.

7. EFFECTIVE DATE AND TERM OF AGREEMENT:

7.1. This Agreement shall become effective upon the execution by the Parties and shall remain effective until terminated as provided in Subparagraphs 7.2 or 7.3.

7.2. This Agreement will terminate when the both of the following have occurred: (1) the Temporary Deviation Plan is approved by the Corps of Engineers and Reclamation, and (2) when the last funds are transferred from the Participating Entities to SRP as provided in Paragraph 10.

7.3. This Agreement may terminate as provided in this Subparagraph 7.3 in the event the Corps of Engineers and Reclamation make a final determination that they will not approve the Temporary Deviation Plan. In such an event, (1) SRP will meet and confer with the Participating Entities on such determination and whether SRP and the Participating Entities have exhausted their reasonable options to seek approval of the Temporary Deviation Plan, and (2) after such meeting, SRP may terminate this Agreement. In such an event, SRP will provide written notice to the Participating Entities of the termination of this Agreement. The Agreement will terminate on the date SRP sends the written notice of termination under this Subparagraph 7.3.

8. AUTHORIZED REPRESENTATIVES:

Within sixty (60) days after execution of this Agreement, each Party shall designate in writing to the other Parties or by electronic mail with read receipt to the other Parties, an Authorized Representative and an alternate to administer this Agreement on behalf of the designating Party. Written notice of a change of an Authorized Representative or alternate shall be provided within (60) days of such change. The alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the alternates shall have authority to amend, modify, or supplement this Agreement. Agreements of the Authorized Representatives pursuant to this Agreement shall be in writing and signed by them.

9. ESTIMATED COSTS:

- 9.1 SRP estimates it will cost about \$1,211,549 for SRP to complete the work necessary to seek and obtain approval and authorization for the Temporary Deviation Plan. These costs include those for environmental and cultural resources compliance, among others. An itemized list of estimated costs is included as Exhibit C.
- 9.2 In the event the actual costs referenced in Exhibit C increase above a total of \$1,500,000, SRP and the Participating Entities shall meet and confer to discuss whether to incur such increased costs.
- 9.3 In the event the actual costs referenced in Exhibit C are below the total estimated cost of \$1,211,549, cost savings will be shared among SRP and the Participating Entities in the same proportion as the estimated costs.

10. PAYMENT:

- 10.1. Each Participating Entity shall pay a share of costs for SRP to complete the work necessary to seek and obtain approval and authorization for the Temporary Deviation Plan. The share of costs for each Participating Entity is based on the percentage of the Temporary Deviation Water that will be apportioned to that Participating Entity. Exhibit D shows the percentage of costs and Temporary Deviation Water allocated to each Participating Entity under the Temporary Deviation Plan that will be incorporated into the temporary operating agreement described in Paragraph 4 of the Participating Entities-SRP Term Sheet.
- 10.2. SRP will notify the Participating Entities of unforeseen costs within a reasonable time. Parties will share unforeseen costs based on the apportionment described in Subparagraph 10.1, within the limitations described in Subparagraph 9.2.
- 10.3. SRP shall send an invoice to each Participating entity for their cost share within five (5) days after execution of this Agreement, or within five (5) days after SRP notifies the Participating Entities of unforeseen costs as provided in Subparagraph 10.2, and the Participating Entities shall pay such invoices within sixty (60) days after SRP sends such invoices.
- 10.4. Any bills not paid when due shall be delinquent and shall bear interest at the Wall Street Journal Prime Rate, on the date the bill was due plus 5% (Wall Street Journal Prime Rate plus 5%) per annum from the date when the bill was due until the bill

is paid in full (including any accrued interest). In the event the Wall Street Journal no longer publishes the Wall Street Journal Prime Rate, the Authorized Representatives shall select an appropriate substitute.

- 10.5. In the event any portion of any bill is disputed, the disputed amount shall be paid under protest when due and shall be accompanied by a written statement indicating the basis for the protest. If the protest is found to be valid, the Participating Entity shall be refunded any overpayment plus interest, accrued at the rate set forth in Subparagraph 10.4, prorated by days from the date payment was credited to the Participating Entity to the date the refund check is mailed.
- 10.6. In the event any delinquent amount is not paid by the Participating Entity within sixty (60) days after receipt by the Participating Entity of written notice by SRP to the Participating Entity of the delinquency and the remedies available to SRP under this Agreement if the delinquent amount is not paid, SRP shall have the right, without liability of any kind, to suspend the delivery of Temporary Deviation Water so long as the said amount remains unpaid. Nothing herein shall limit the rights of SRP to use any other available legal remedy to effect collection of said amounts.

11. DISPUTE RESOLUTION; RECORDS INSPECTION; CHOICE OF LAW:

- 11.1. Any dispute under this Agreement shall first be submitted to the Authorized Representatives for resolution. If the matter cannot be resolved by the Authorized Representatives, any Party may submit the matter to the SRP General Manager and the Party's chief operating officer. If the matter cannot be resolved by the SRP General Manager and the Party's chief operating officer, any Party may bring suit upon the matter, provided however, that it is expressly agreed that the venue shall only be in Maricopa County Superior Court or its successor court. In the event a dispute arises wherein the Salt River Pima Maricopa Indian Community is a party then the Parties agree the venue shall be in a court of competent jurisdiction.
- 11.2. Upon reasonable request by a Participating Entity, SRP will allow such Participating Entity to inspect the records documenting the costs of seeking the Temporary Deviation Plan.
- 11.3. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona and any applicable federal law.

- 11.4. In the event of any future dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees.
- 11.5. Pending the resolution of a dispute, the Parties shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Amounts paid by a Party under this Subparagraph 11.4 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

12. UNCONTROLLABLE FORCES:

No party shall be considered to be in default in the performance of any of its obligations hereunder if failure of performance is due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by Court order or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing herein shall be construed so as to require either Party to settle any strike or labor dispute in which it is involved. Either party rendered able to fulfill any obligation hereunder by reason of an uncontrollable force shall exercise due diligence to remove such inability.

13. NOTICE; CHANGE OF NAME OR ADDRESS:

- 13.1. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

13.1.1.1. If to SRP:

Salt River Project Agricultural Improvement and Power District
c/o Corporate Secretary
P.O. Box 52025
Phoenix, AZ 85072-2205

with a copy to:

General Manager and CEO
Salt River Project Agricultural Improvement and Power District
P.O. Box 52025
Phoenix, AZ 85072-2205

13.1.2. If to the City of Avondale:

City of Avondale
c/o City Manager
11465 W. Civic Center Drive
Avondale, AZ 85323

with a copy to:

13.1.3. If to the City of Chandler:

City of Chandler
c/o Utility Resource Manager
PO Box 4008, M.S. 905
Chandler, AZ 85244-4008

with a copy to:

Chandler City Attorney
P O Box 4008, MS 602
Chandler, AZ 85225

13.1.4. If to the City of Glendale:

City of Glendale
c/o Water Resource Manager
5850 West Glendale Avenue, Ste. 431
Glendale, AZ 85301

with a copy to:

13.1.5. If to the City of Mesa:

City of Mesa
c/o Water Resources Department Director
PO Box 1466
Mesa, AZ 85211

with a copy to:

13.1.6. If to the City of Peoria:

City of Peoria
c/o Water Services Director
8401 W. Monroe Street
Peoria, AZ 85345

with a copy to:

13.1.7. If to the City of Phoenix:

Water Resources Management Advisor
Water Services Department
City of Phoenix
200 West Washington Street, 12th Floor
Phoenix, Arizona 85003-1611

With a copy to:

City Attorney
City of Phoenix
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003-1611

13.1.8. If to the City of Scottsdale:

City of Scottsdale – Scottsdale Water
c/o Executive Director
9312 N. 94th Street
Scottsdale, AZ 85258

with a copy to:

13.1.9. If to the City of Tempe:

City of Tempe
c/o Municipal Utilities Director
31 E. 5th Street
Tempe, AZ 85281

with a copy to:

13.1.10. If to the Town of the Gilbert:

Town of Gilbert
c/o Town Manager
50 E. Civic Center Drive
Gilbert, AZ 85296

with a copy to:

13.1.11. If to Roosevelt Water Conservation District:

Roosevelt Water Conservation District
PO Box 100
Higley, AZ 85212

with a copy to:

13.1.12. If to the Buckeye Water Conservation and Drainage District:

Buckeye Water Conservation and Drainage District
c/o General Manager
205 Roosevelt
Buckeye, AZ 85326

with a copy to:

13.1.13. If to the Salt River Pima-Maricopa Indian Community:

Salt River Pima-Maricopa Indian Community:
c/o Public Works Director
1005 E. Osborn Road
Scottsdale, AZ 85256

13.1.14 . If to the Roosevelt Irrigation District:

Roosevelt Irrigation District
103 W. Baseline Road
Buckeye, AZ 85326

with a copy to:

13.1.15 . If to Freeport Minerals Corporation:

Freeport Minerals Corporation
c/o _____
333 N. Central Avenue
Phoenix, AZ 85004

with a copy to:

13.2 Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change under Subparagraph 13.1.

14. SEVERABILITY:

Should any part of this Agreement be declared, in a final decision by a court or tribunal of competent jurisdiction, to be unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the

remainder of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

15. WAIVER:

The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

16. BINDING AGREEMENT:

All of the provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their heirs, successors and assigns; provided, however, that no Party shall assign its rights and obligations under this Agreement to another entity without the written consent of the other Parties. Such consent to assignment shall not, however, be unreasonably withheld, conditioned, or delayed.

17. NO THIRD-PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the Parties and does not create nor shall it be construed to create rights to any third party. No third party may enforce the terms and conditions of this Agreement.

18. NO PARTNERSHIP AND NO JOINT VENTURE:

Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Parties hereto. The covenants, obligations, and liabilities contained in this Agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an association, joint venture, agency, trust, or partnership, or to impose a trust or partnership covenant, obligation, fiduciary duty, or liability between the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as provided herein.

19. AUTHORITY:

The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.

20. CONFLICT OF INTEREST:

Pursuant to A.R.S. § 38-511, a Party who is a political subdivision of the State may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a Party is, at any time while this Agreement is in effect, an employee of another Party in any capacity, or a consultant to another Party with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice is received unless the notice specifies a later time.

21. ENTIRE AGREEMENT; MODIFICATION; COUNTERPARTS:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on the following pages]

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: _____

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

CITY OF AVONDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF CHANDLER

By: _____

Name: Gregg Capps

Title: Utility Resource Manager

APPROVED AS TO FORM

By: _____

Name: Jenny J. Winkler

Title: Assistant City Attorney

CITY OF GLENDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF MESA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF PEORIA

By: _____

Name: _____

Title: _____

ATTEST

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF PHOENIX

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF SCOTTSDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF TEMPE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

TOWN OF GILBERT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ROOSEVELT WATER CONSERVATION DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**BUCKEYE WATER CONSERVATION AND
DRAINAGE DISTRICT**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ROOSEVELT IRRIGATION DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

FREEPORT MINERALS CORPORATION

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

Exhibit A

Nonbinding Participating Entities-SRP Term Sheet

SUMMARY OF TERMS

Summary of Principle Terms for Agreements Among SRP and the Participating Entities to Obtain and Implement a Temporary Deviation to the Water Control Plan For Modified Roosevelt Dam

This term sheet (“Term Sheet”) summarizes the principle terms for SRP and the Participating Entities (defined below) to (1) share costs for SRP to seek and obtain approval from the U.S. Army Corps of Engineers (“Corps of Engineers”) and the Bureau of Reclamation (“Reclamation”) for a temporary deviation to the Water Control Plan (“Cost Share Agreement”) and (2) describe the principle terms for an agreement on how SRP will operate the Flood Control Space under the Temporary Deviation Plan (“Temporary Operating Agreement”). This term sheet is nonbinding, subject to legal review, and negotiation of final written agreements to implement the terms described herein as well as approval of such agreements by the appropriate governing boards, councils, or executive management. By executing this Term Sheet, the undersigned agrees to seek approval of the agreements from their appropriate and respective governing boards, councils, or executive management so long as the agreements are prepared consistent with the principle terms provided herein. The capitalized terms in this Term Sheet are defined in Attachment A.

1. PARTIES TO THE AGREEMENTS:

Cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe; Town of Gilbert; Roosevelt Water Conservation District, Buckeye Water Conservation and Drainage District, Roosevelt Irrigation District, Salt River Pima-Maricopa Indian Community, and Freeport McMoRan Inc. (“Participating Entities”); Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District (collectively “SRP”). SRP and the Participating Entities are referred to collectively as “Parties”.

2. DESCRIPTION OF PROPOSED TEMPORARY DEVIATION PLAN:

SRP will propose and seek approval from the Corps of Engineers and Reclamation to authorize SRP to operate the flood control space in Modified Roosevelt Dam (“Flood Control Space”) under the Temporary Deviation Plan. Under the Temporary Deviation Plan, SRP may declare a Temporary Deviation Event once a year in a maximum of three (3) years during a five (5) year period (“Temporary Deviation Period”). The Temporary Deviation Period is expected to begin in calendar year 2023. During a Temporary Deviation Event, SRP must evacuate water from the first five (5) feet of the Flood Control Space (“Temporary Deviation Space,” as generally illustrated in Attachment B) within one

hundred and twenty (120) days after such water first occupies such space. SRP shall measure the volume of water it will be evacuating from the Temporary Deviation Space during a Temporary Deviation Event, notify and deliver such water ("Temporary Deviation Water") to the Parties according to the share of Temporary Deviation Water allocated to each Party.

3. COST SHARE AGREEMENT:

The Cost Share Agreement will describe (1) the estimated costs SRP is expected to incur to seek and obtain approval for the Temporary Deviation Plan, (2) how the costs will be shared among the Parties, and (3) the process for the Participating Entities to pay their cost share.

- a. The Cost Share Agreement is expected to be executed by the Parties in June 2021 and will become effective when executed. The Cost Share Agreement will terminate when the Temporary Deviation Plan is approved by the Corps of Engineers and Reclamation. In the event the Corps of Engineers and Reclamation do not approve the Temporary Deviation Plan, the Parties may terminate the Cost Share Agreement by mutual written agreement.
- b. SRP estimates it will cost \$1,211,549 for SRP to complete the work necessary to seek and obtain approval and authorization for the Temporary Deviation Plan. These costs include those for environmental and cultural resources compliance, among others. An itemized list of estimated costs is included as Attachment C. In the event the costs referenced in Attachment C increase above a total of \$1,500,000, SRP and the Participating Entities shall meet and confer to discuss whether to incur such increased costs. SRP will notify the Participating Entities of unforeseen costs within a reasonable time. The Parties will share unforeseen costs under terms set forth in the Cost Share Agreement.
- c. Each Participating Entity shall pay its share of costs based on the percentage of the Temporary Deviation Water that will be allocated to that Participating Entity. Attachment D shows the share and estimated costs allocated to the Participating Entity. SRP shall send an invoice to each Participating entity for their cost share within five (5) days after execution of the Cost Share Agreement and the Participating Entities shall pay such invoice within thirty (30) days after SRP sends such invoice.

4. TEMPORARY OPERATING AGREEMENT:

The Temporary Operating Agreement will describe (1) how SRP will operate the Flood Control Space under the Temporary Deviation Plan, (2) how it will evacuate and deliver

Temporary Deviation Water from the Temporary Deviation Space to the Parties, and (3) the fees each Participating entity shall pay during the Temporary Deviation Period.

- a. Term. The Temporary Operating Agreement will become effective upon execution by the Parties and approval of the Temporary Deviation Plan by the Corps of Engineers and Reclamation. It will terminate following the conclusion of (1) the third Temporary Deviation Event, final delivery of Temporary Deviation Water, and payment of monies owed, or (2) the Temporary Deviation Period, whichever is sooner.
- b. Spill Conditions. SRP shall operate the Flood Control Space in Modified Roosevelt Dam under Spill Conditions while the (1) inflows into the Salt River Reservoir System exceed SRP Deliveries (i.e. water level in the Temporary Deviation Space is increasing), and (2) water level in Modified Roosevelt Dam is above the Temporary Deviation Space.
- c. Temporary Deviation Water. SRP shall (1) measure the highest elevation that water levels reach in the Temporary Deviation Space at the point where SRP Deliveries exceed inflows into the Salt River Reservoir System and (2) calculate such volume and apportion such water to the Participating Entities as Temporary Deviation Water. Attachment D includes the percentage of Temporary Deviation Water that will be apportioned to the Participating Entity. If additional precipitation events occur during a Temporary Deviation Event and additional water enters the Temporary Deviation Space, such water volume will be calculated and apportioned to the Participating Entities using the same percentages.
- d. Ordering and Delivery of Temporary Deviation Water. Participating Entities may order Temporary Deviation Water during a Temporary Deviation Event by requesting delivery prior to five (5) days before the end of the Temporary Deviation Event. SRP shall deliver and transport Temporary Deviation Water to Participating Entities on a mutually agreed upon schedule and under the applicable delivery agreement. SRP water delivery obligations to shareholders and contractors of the Salt River Valley Water Users' Association shall take priority over delivery of Temporary Deviation Water if any delivery capacity limitations arise. Any unused Temporary Deviation Water remaining at the end of a Temporary Deviation Event will be evacuated on the last day of such event and used to meet SRP Deliveries.

- e. Water Accounting and Reporting. SRP shall provide water accounting for the total volume of Temporary Deviation Water evacuated, apportioned, and delivered under the Temporary Operating Agreement. SRP shall send an initial report to Participating Entities within five (5) days after the time that the amount of Temporary Deviation Water is determined and send updated reports at the end of each month during a Temporary Deviation Event.
- f. Use of Temporary Deviation Water. Participating Entities and SRP may directly use, share between participants, exchange, or store underground Temporary Deviation Water pursuant to Arizona law.
- g. Fees. Participating Entities shall pay a one-time fee not to exceed three thousand two hundred fifty dollars (\$3,250.00) for creation of accounts to track volumes and delivery of Temporary Deviation Water billed at execution of the Temporary Operating Agreement. In a year that SRP declares a Temporary Deviation Event, Participating Entities shall pay an administrative fee of four thousand four hundred and two dollars (\$4,402.00), adjusted annually to account for inflation or other cost changes, for that year to administer the water accounting and reporting for the Temporary Deviation Event. Fees shall be revisited if a long-term program is developed for the Flood Control Space.
- h. Water Transportation Fees. Participating Entities will not be charged any applicable fees for transportation of Temporary Deviation Water during the Temporary Deviation Period. Fees shall be revisited if a long-term program is developed for the Flood Control Space.
- i. Transmission Losses. Transmission Losses shall be deducted from the Temporary Deviation Water apportioned to each Participating Entity at an amount of 6.3 percent at the time of scheduled delivery, which is deemed for the purposes of the Agreement to be the amount of water lost through transmission from Modified Roosevelt Dam to Granite Reef Dam. Participating entities shall not be charged for transmission losses between Granite Reef Dam and the point of delivery. Transmission losses within SRP's water delivery system below Granite Reef Dam shall be revisited if a long-term program is developed for the Flood Control Space.

[signatures on the following pages]

SALT RIVER PROJECT

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

Date: May 7, 2021

[PARTICIPATING ENTITY]

By: *Cherlene Penilla*
Cherlene Penilla (Aug 6, 2021 11:07 PDT)

Name: for Charles A. Montoya

Title: City Manager

Date: Aug 6, 2021

ATTEST: *Linda Mendenhall*



CITY OF CHANDLER

By: 

Name: GREGG W. CAPPS

Title: Utility Resource Manager

Date: 3/31/2021

CITY OF GLENDALE

By: City of Glendale *

Name: [REDACTED]

Title: Water Resource Manager

Date: 4/9/2021

* Pending Glendale City Council
Approvals

CITY OF MESA

By:  _____
✓

Name: Jake West

Title: Water Resources Department Director

Date: March 7, 2021

CITY OF PEORIA

By: _____



Name: David Burks

Title: Deputy Water Services Director

Date: 04/08/2021

CITY OF PHOENIX
[PARTICIPATING ENTITY]

By: 

Name: Cynthia Campbell

Title: Water Resources Mgmt Advisor

Date: April 24, 2021

CITY OF SCOTTSDALE

By: _____

Name: BRIAN K. BIESEMEYER

Title: Executive Director, Scottsdale Water

Date: 3-29-21

CITY OF TEMPE

By: _____

Name: Terrance Piekarz

Title: Municipal Utilities Director

Date: April 9, 2021

TOWN OF GILBERT

By: _____

Name: Patrick S. Banger

Title: Town Manager

Date: April 8, 2021

ROOSEVELT WATER CONSERVATION DISTRICT



Name: STAN M. LEONARD

Title: G.M.

Date: 5/4/20

**BUCKEYE WATER CONSERVATION &
DRAINAGE DISTRICT**

By: _____

Name: Noel Carter

Title: General Manager

Date: 4/6/2021

Roosevelt Irrigation District

By 

Name: DONOVAN L. NEESE

Title: SUPERINTENDENT

Date: 4/23/2021

**SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY**

By: 

Name: Mike Byrd

Title: Assistant PW Director

Date: April 15, 2021

Freeport Minerals Corporation

By: _____

Name: FRANCIS McALLISTER

Title: VICE PRESIDENT

Date: 4/29/21

Attachment A

Definitions

Flood Control Space: Reservoir space behind Modified Roosevelt Dam corresponding to the approximately 24 feet of elevation from 2150.78 feet above mean sea level to 2174.87 feet above mean sea level. The Flood Control Space is operated by SRP under a water control agreement with the U.S. Army Corp of Engineers (“Corps of Engineers”) and the U.S. Bureau of Reclamation (“Reclamation”).

Spill Conditions: The conditions described in Sections 4.32, 7.4, and 7.6 of the 1993 Operating Agreement for Additional Active Conservation Capacity at Modified Roosevelt Dam under which SRP delivers spill water to the entities in Appendix 1 of that agreement (also certain Participating Entities) where such water does not count against their respective contractual entitlements.

SRP Deliveries: SRP water deliveries, including those from the Salt River Reservoir System, to SRP shareholders and contractors.

Temporary Deviation Event: An event to regulate water in the Flood Control Space at Modified Roosevelt Dam under which SRP must evacuate water occupying the Temporary Deviation Space within one-hundred and twenty days (120) of such water first occupying such space.

Temporary Deviation Period: Five (5) year period under which SRP may declare a Temporary Deviation Event in three (3) of those five (5) years.

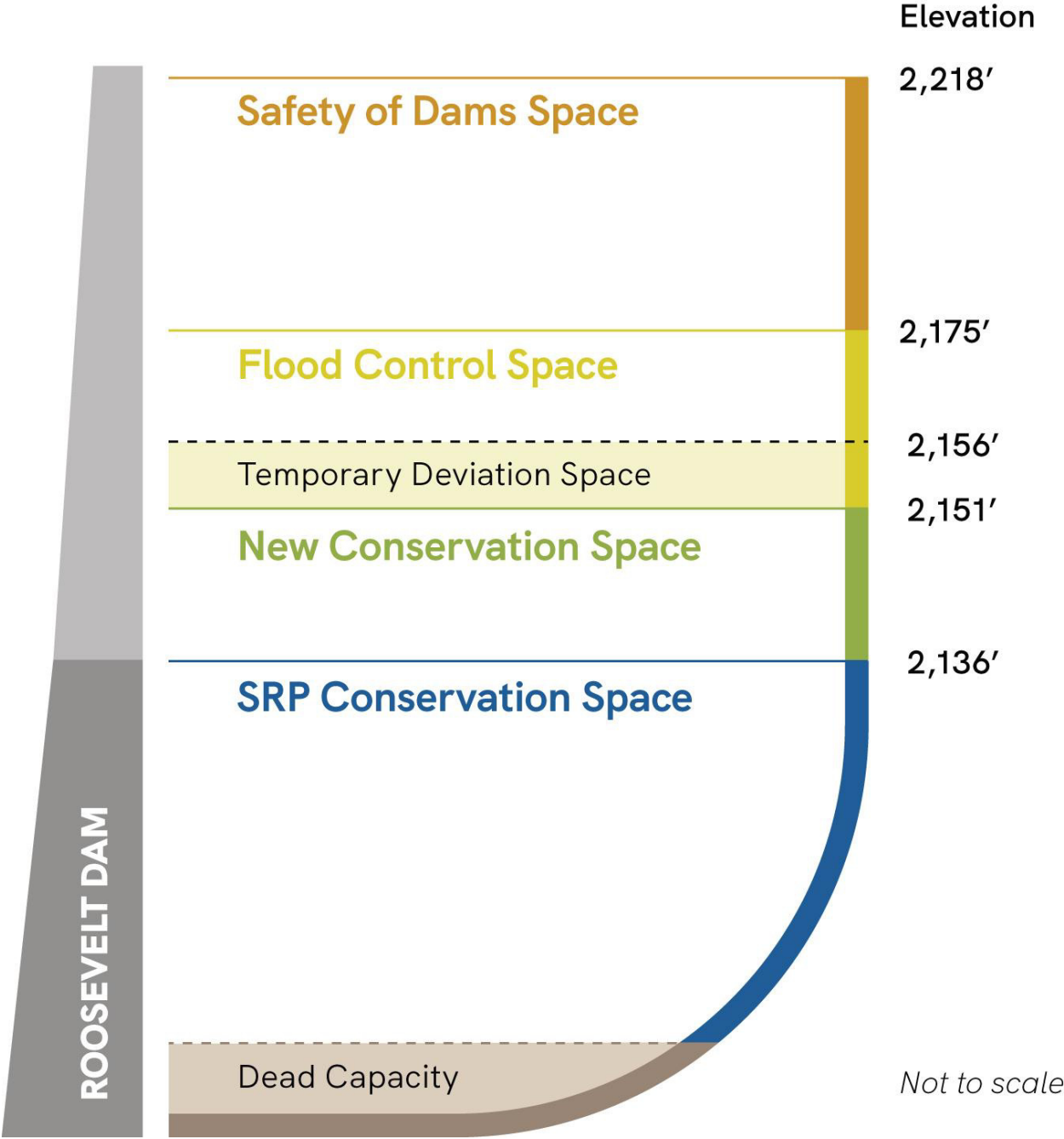
Temporary Deviation Plan: A planned deviation in flood control operations as approved by the Corps of Engineers and Reclamation that authorizes SRP to declare one (1) Temporary Deviation Event per year, in three (3) out of five (5) years during the Temporary Deviation Period.

Temporary Deviation Space: Reservoir space behind Modified Roosevelt Dam constituting the first five (5) feet of the Flood Control Space.

Temporary Deviation Water: Water that SRP evacuates from the Temporary Deviation Space during a Temporary Deviation Event.

Water Control Plan: Chapter 7 of the document entitled “Water Control Manual, Modified Roosevelt Dam (Theodore Roosevelt Dam), Salt and Gila Rivers, Arizona” dated September 1997 and prepared by the Corps of Engineers.

Attachment B



Attachment C

Itemized Estimated Costs of Seeking Authorization of Temporary Deviation Plan

Cost of Temporary Deviation		
Planning Costs (Reclamation)	\$78,000	FY21: Investigation= \$549k +/- \$109k
Planning Costs (USACE)	\$50,000	
Technical Evaluation Cost	\$233,549	
Env & Cultural Costs to-date	\$163,000	
Legal Analysis-Phase 1	\$25,000	
Env & Cultural Compliance Cost*	\$637,000	FY22: Implementation= \$662k +/- \$132k
Legal Analysis-Phase 2	\$25,000	
Total	\$1,211,549 +/- \$242k (20%)	

*Cost estimates for environmental and cultural resource compliance will be further refined by Reclamation and the Army Corps prior to invitation of environmental and cultural resource compliance activities.

Attachment D

Participating Entity	City of Avondale
Percentage of Temporary Deviation Water	8%
Participant Acre-Feet of Temporary Deviation Space	8,500 acre-feet
Expected Participant Costs	\$94,809

Attachment D

Participating Entity	City of Chandler
Percentage of Temporary Deviation Water	5%
Participant Acre-Feet of Temporary Deviation Space	5,500 acre feet
Expected Participant Costs	\$61,347

Attachment D

Participating Entity	City of Glendale
Percentage of Temporary Deviation Water	5%
Participant Acre-Feet of Temporary Deviation Space	5,500 acre feet
Expected Participant Costs	\$61,341

Attachment D

Participating Entity	City of Mesa
Percentage of Temporary Deviation Water	4%
Participant Acre-Feet of Temporary Deviation Space	4,800 acre feet
Expected Participant Costs	\$53,539

Attachment D

Participating Entity	City of Peoria
Percentage of Temporary Deviation Water	2%
Participant Acre-Feet of Temporary Deviation Space	2,500 acre feet
Expected Participant Costs	\$27,885

Attachment D

Participating Entity	City of Phoenix
Percentage of Temporary Deviation Water	18%
Participant Acre-Feet of Temporary Deviation Space	20,000 acre feet
Expected Participant Costs	\$223,080

Attachment D

Participating Entity	City of Scottsdale
Percentage of Temporary Deviation Water	2%
Participant Acre-Feet of Temporary Deviation Space	2,700 acre feet
Expected Participant Costs	\$30,116

Attachment D

Participating Entity	City of Tempe
Percentage of Temporary Deviation Water	2%
Participant Acre-Feet of Temporary Deviation Space	2,700 acre feet
Expected Participant Costs	\$30,116

Attachment D

Participating Entity	Town of Gilbert
Percentage of Temporary Deviation Water	4%
Participant Acre-Feet of Temporary Deviation Space	4,000 acre feet
Expected Participant Costs	\$44,616

Attachment D

Participating Entity	Roosevelt Water Conservation District
Percentage of Temporary Deviation Water	11%
Participant Acre-Feet of Temporary Deviation Space	11,420 acre feet
Expected Participant Costs	\$127,379

Attachment D

Participating Entity	Buckeye Water Conservation & Drainage District
Percentage of Temporary Deviation Water	5%
Participant Acre-Feet of Temporary Deviation Space	5,000 acre feet
Expected Participant Costs	\$55,770

Attachment D

Participating Entity	Roosevelt Irrigation District
Percentage of Temporary Deviation Water	10%
Participant Acre-Feet of Temporary Deviation Space	11,000 acre-feet
Expected Participant Costs	\$122,694

Attachment D

Participating Entity	Salt River Pima-Maricopa Indian Community
Percentage of Temporary Deviation Water	6%
Participant Acre-Feet of Temporary Deviation Space	6,000 acre feet
Expected Participant Costs	\$66,924

Attachment D

Participating Entity	Freeport Minerals Corporation
Percentage of Temporary Deviation Water	3%
Participant Acre-Feet of Temporary Deviation Space	3,000 acre feet
Expected Participant Costs	\$33,462

Exhibit B

Definitions

Authorized Representatives: Representatives of the Parties appointed to administer the provisions of this Agreement.

Corp of Engineers: United States Army Corp of Engineers which is authorized under Section 7 of the Flood Control Act of 1944 to prescribe regulations for the use of the Flood Control Space in Modified Roosevelt Dam allocated for flood control purposes.

Flood Control Space: Water control space in Modified Roosevelt Dam under the jurisdiction of the Corps of Engineers under Section 7 of the Flood Control Act of 1944. Such Flood Control Space corresponds to an elevation from 2150.78 feet above mean sea level to 2174.87 feet above mean sea level.

Modified Roosevelt Dam: Theodore Roosevelt Dam as modified under Plan 6 to increase the height approximately 77 feet.

Modified Roosevelt Dam Operating Agreement: Agreement entitled “Operating Agreement for Additional Active Conservation Capacity at Modified Theodore Roosevelt Dam among The Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users’ Association, United States Bureau of Reclamation, Flood Control District of Maricopa County, and the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe” dated December 14, 1993 that authorized and provided for SRP’s operations of Modified Roosevelt Dam as described in such agreement.

Modified Roosevelt Reservoir: The reservoir backed up by Modified Roosevelt Dam.

Participating Entities: Arizona cities of Avondale, Chandler, Glendale, Mesa, Peoria, Phoenix, Scottsdale, and Tempe, Town of Gilbert, Roosevelt Water Conservation District, Buckeye Water Conservation and Drainage District, Salt River Pima-Maricopa Indian Community, Roosevelt Irrigation District, and Freeport Minerals Corporation.

Reclamation: United States Department of the Interior’s Bureau of Reclamation.

Temporary Deviation Plan: A planned deviation in flood control operations as authorized by the Corps of Engineers and Reclamation to extend the required evacuation period for water occupying the Temporary Deviation Space from twenty (20) days to one hundred and twenty (120) days of such water first occupying the Temporary Deviation Space.

Temporary Deviation Space: The reservoir space at Modified Roosevelt Dam constituting the first five (5) feet of the Flood Control Space which corresponds to an elevation greater than 2150.78 feet and less than 2155.78 feet.

Temporary Deviation Water: Water that occupies the Temporary Deviation Space and is subject to the one hundred and twenty (120) day evacuation period as provided in the Water Control Plan.

Water Control Agreement: The agreement among Reclamation, the Salt River Project Agricultural Improvement and Power District and the Corp of engineers entitled “Water Control Agreement (WCA) among the Bureau of Reclamation (USBR), the Salt River Project Agricultural Improvement and Power District (SRP), and the Corps of Engineers (COE)” dated November 5, 1996 which authorized SRP’s operations of Modified Roosevelt Dam for flood control and other purposes under the Water Control Plan.

Water Control Manual: The Water Control Manual entitled “Water Control Manual, Modified Roosevelt Dam (Theodore Roosevelt Dam), Salt and Gila Rivers, Arizona” dated September 1997 and prepared by the Corps of Engineers which contains the Water Control Plan in Chapter 7 which describes how SRP shall operate Modified Roosevelt Dam for flood control and other purposes.

Water Control Plan: Chapter 7 of the Water Control Manual which describes how SRP shall operate Modified Roosevelt Dam, including the Flood Control Space, for flood control and other purposes.

Exhibit C

Itemized Estimated Costs of Seeking Authorization of Temporary Deviation Plan

Expected Total Cost of Temporary Deviation	
Planning Costs (Reclamation)	\$ 78,000
Planning Costs (USACE)	\$ 50,000
Technical Evaluation Cost	\$ 233,549
Env & Cultural Compliance Cost	\$ 800,000
Legal Analysis	\$ 50,000
Total	\$ 1,211,549
Cost Contingency* (20%)	+/- \$242,000

*Cost estimates continue to be refined through planning with Reclamation and Corps of Engineers. A +/- 20% contingency is identified as appropriate to include to identify that changes in anticipated costs may occur.

Exhibit D

Party	Acre-Feet of Temporary Deviation Space	Percentage of Temporary Deviation Water	Expected Cost
Avondale	8,500	7.83%	\$ 94,809
BWCDD	5,000	4.60%	\$ 55,770
Chandler	5,500	5.06%	\$ 61,347
Freeport Minerals	3,000	2.76%	\$ 33,462
Gilbert	4,000	3.68%	\$ 44,616
Glendale	5,500	5.06%	\$ 61,347
Mesa	4,800	4.42%	\$ 53,539
Peoria	2,500	2.30%	\$ 27,885
Phoenix	20,000	18.41%	\$ 223,080
RID	11,000	10.13%	\$ 122,694
RWCD	11,420	10.51%	\$ 127,379
Scottsdale	2,700	2.49%	\$ 30,116
SRP Shareholders	16,000	14.73%	\$ 178,464
SRPMIC	6,000	5.52%	\$ 66,924
Tempe	2,700	2.49%	\$ 30,116
Total	108,620	100%	\$ 1,211,549
Cost Contingency (20%)			+/- \$242,000

CITY COUNCIL REPORT

SUBJECT: Liquor License - Series 10 (Beer and Wine Store) for Home 2 Suites by Hilton

MEETING DATE: 8/23/2021

TO: Mayor and Council

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

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities – Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

The approval of this agenda item will promote Avondale community's social connectivity by providing a new social environment for family and friends. This item will increase visitor traffic to Avondale's local businesses.

PURPOSE:

City Council will consider a request to recommend approval to the Arizona Department of Liquor License and Control of a Series 10 (Beer and Wine Store) Liquor License submitted by Sanat B. Patel for the sale of beer and wine at Home 2 Suites by Hilton located at 10275 West McDowell Road and authorize the City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Home 2 Suites by Hilton is a hotel located approximately 386 feet south of the southeast corner of McDowell Road and 103rd Avenue. The hotel will feature a small, 220 square market near the registration desk where guests may purchase food and drink items for consumption in their guestrooms or in the hotel lobby. The requested liquor license will allow for the sale of beer and wine to hotel guests.

State Statute requires a series 10 liquor license to be separated a minimum of 300 feet from K-12 schools or church buildings. It also requires 300 feet of separation from fenced recreational areas that are part of a school building. There are no churches, schools, or fenced recreational areas associated with schools located within 300 feet of the Home 2 Suites property.

The General Plan designates the property as Freeway Commercial and the current zoning is Freeway Commercial (C-3). The use of the property as a hotel is compatible with both the General Plan designation and Planned Area Development (PAD) zoning.

DISCUSSION:

As required by law, the application was posted for the required period of time at 10275 W. McDowell Road beginning on August 2, 2021.

The Arizona Department of Liquor License and Control has accepted the submitted application as complete. The Police, Fire, Development Services and Finance Departments have reviewed the application and are recommending approval. Their comments are attached.

BUDGET IMPACT:

The fees in the amount of \$950 have been paid in full.

RECOMMENDATION:

Staff is recommending approval of a request to recommend approval to the Arizona Department of Liquor License and Control of an application for a Series 10 (Beer and Wine Store) Liquor License submitted by Sanat B. Patel for the sale of beer and wine at Home 2 Suites by Hilton located at 10275 West McDowell Road in Avondale.

**State of Arizona
Department of Liquor Licenses and Control**

Created 07/28/2021 @ 02:26:03 PM

Local Governing Body Report

LICENSE

Number:		Type:	010 BEER AND WINE STORE
Name:	HOME2SUITES BY HILTON		
State:	Pending		
Issue Date:		Expiration Date:	
Original Issue Date:			
Location:	10275 W MCDOWELL ROAD AVONDALE, AZ 85392 USA		
Mailing Address:	8194 W DEER VALLEY ROAD #106-266 PEORIA, AZ 85382 USA		
Phone:	(877)850-5130		
Alt. Phone:			
Email:	SANAT@AVANACAPITAL.COM		

AGENT

Name:	SANAT B PATEL
Gender:	Male
Correspondence Address:	8194 W DEER VALLEY ROAD #106-266 PEORIA, AZ 85382 USA
Phone:	(623)878-0258
Alt. Phone:	
Email:	SANAT@AVANACAPITAL.COM

OWNER

Name: PRETORIA AVONDALE HOTEL LLC
 Contact Name: SANAT B PATEL
 Type: LIMITED LIABILITY COMPANY
 AZ CC File Number: L20978770 State of Incorporation: AZ
 Incorporation Date: 06/08/2016
 Correspondence Address: 8194 W DEER VALLEY ROAD
 #106-266
 PEORIA, AZ 85382
 USA
 Phone: (623)878-0258
 Alt. Phone:
 Email: SANAT@AVANACAPITAL.COM

Officers / Stockholders

Name:	Title:	% Interest:
AMENA HOTELS LLC	Member	100.00
MATTHEW CHRISTOPHER HALLINAN	JOB #	

PRETORIA AVONDALE HOTEL LLC - JOB #

Name: MATTHEW CHRISTOPHER HALLINAN
 Gender: Male
 Correspondence Address: 8194 W DEER VALLEY ROAD
 #106-266
 PEORIA, AZ 85382
 USA
 Phone: (520)440-4750
 Alt. Phone:
 Email: MATT.HALLINAN@LDHG.COM

PRETORIA AVONDALE HOTEL LLC - Member

Name: AMENA HOTELS LLC
 Contact Name: SANAT B PATEL
 Type: LIMITED LIABILITY COMPANY
 AZ CC File Number: State of Incorporation:
 Incorporation Date:
 Correspondence Address: 8194 W DEER VALLEY ROAD
 #106-266
 PEORIA, AZ 85382
 USA
 Phone: (623)878-0258
 Alt. Phone:
 Email: SANAT@AVANACAPITAL.COM

**THE SANAT PATEL FAMILY GIFT TRUST DATED
11/30/12 - Trustee**

**THE TANYA MANSOUR 2012 IRREVOCABLE
TRUST DATED 12/17/12 - TRUSTEE**

Name: SANAT B PATEL
Gender: Male
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

**THE JAGRUTI PATEL 2012 IRREVOCABLE
TRUST DATED 12/17/12 - TRUSTEE
THE SUNDIP PATEL FAMILY GIFT TRUST DATED
12/4/12 - Trustee**

Name: SUNDIP B PATEL
Gender: Male
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)486-0183
Alt. Phone:
Email: SUNDIP@AVANACAPITAL.COM

**THE TANYA MANSOUR 2012 IRREVOCABLE
TRUST DATED 12/17/12 - TRUSTEE**

Name: TANYA MANSOUR
Gender: Female
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)486-0183
Alt. Phone:
Email: SUNDIP@AVANACAPITAL.COM

**THE JAGRUTI PATEL 2012 IRREVOCABLE
TRUST DATED 12/17/12 - TRUSTEE**

Name: JAGRUTI PATEL
Gender: Female
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: JAGUSPATEL5@GMAIL.COM

AMENA HOTELS LLC - Member

Name: THE JAGRUTI PATEL 2012 IRREVOCABLE TRUST DATED 12/17/12
Contact Name: SANAT B PATEL
Type: TRUST
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

AMENA HOTELS LLC - Member

Name: THE TANYA MANSOUR 2012 IRREVOCABLE TRUST DATED 12/17/12
Contact Name: SANAT B PATEL
Type: TRUST
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

AMENA HOTELS LLC - Member

Name: THE SANAT PATEL FAMILY GIFT TRUST DATED 11/30/12
Contact Name: SANAT B PATEL
Type: TRUST
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

AMENA HOTELS LLC - Member

Name: THE SUNDIP PATEL FAMILY GIFT TRUST DATED 12/4/12
Contact Name: SANAT B PATEL
Type: TRUST
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

MANAGERS

Name: SANAT B PATEL
Gender: Male
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)878-0258
Alt. Phone:
Email: SANAT@AVANACAPITAL.COM

Name: SUBDIP B PATEL
Gender: Male
Correspondence Address: 8194 W DEER VALLEY ROAD
#106-266
PEORIA, AZ 85382
USA
Phone: (623)486-0183
Alt. Phone:
Email: SUNDIP@AVANACAPITAL.COM

APPLICATION INFORMATION

Application Number: 156034
Application Type: New Application
Created Date: 07/28/2021

QUESTIONS & ANSWERS

010 Beer and Wine Store

- 1) Are you applying for an Interim Permit (INP)?
No
- 2) Provide name, address, and distance of nearest school and church.
(If less than one (1) mile note footage)
RIO VISTA ELEMENTARY SCHOOL- 3,454 FT
10237 W ENCANTO BLVD AVONDALE, AZ 85392

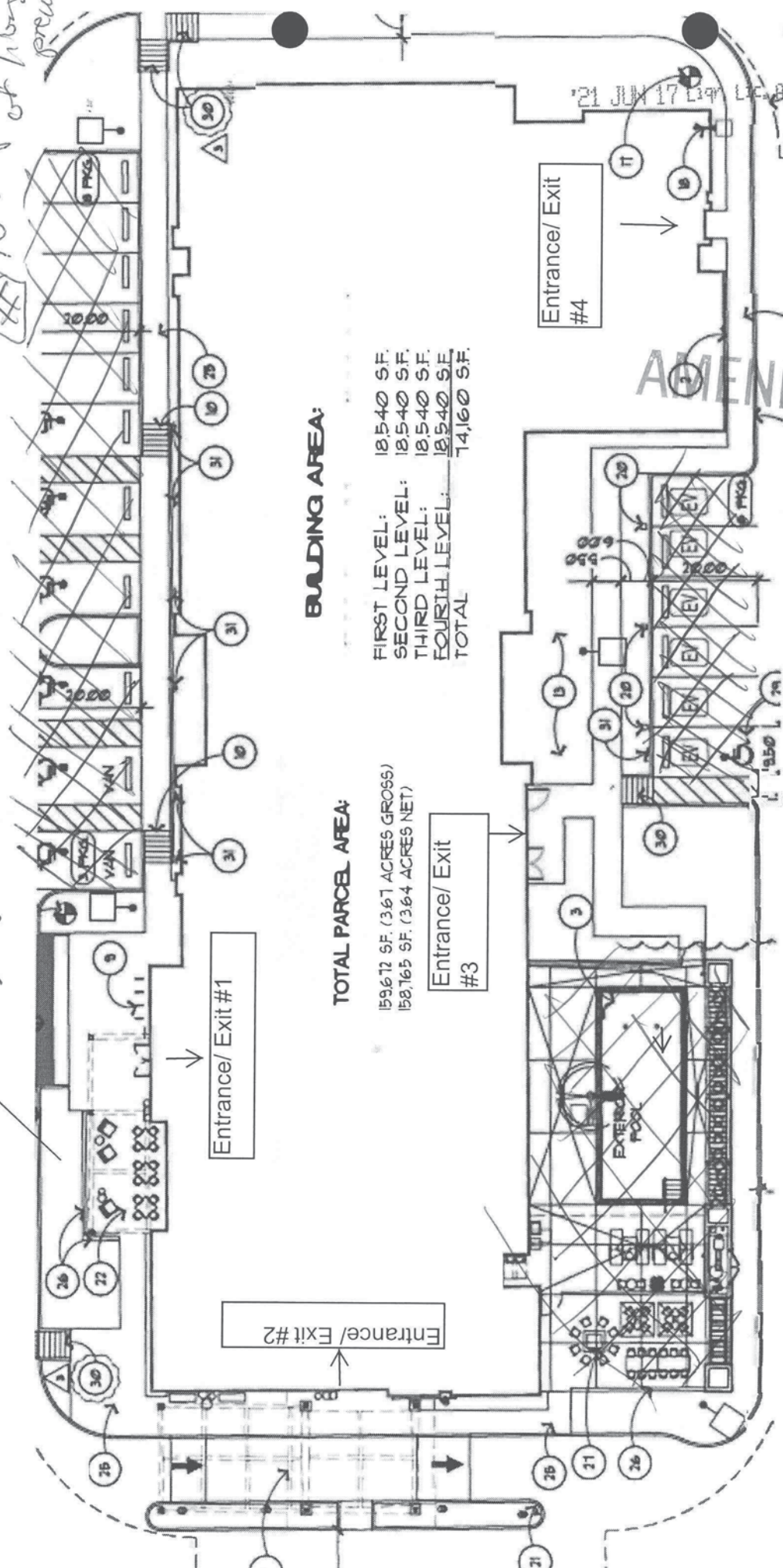
FIRST BAPTIST CHURCH OF GARDEN LAKES- 1.9 MILES
2517 N 107TH AVE AVONDALE, AZ 85392
- 3) Are you one of the following? Please indicate below.
Property Tenant
Subtenant
Property Owner
Property Purchaser
Property Management Company
Property Owner
- 4) Is there a penalty if lease is not fulfilled?
No
- 5) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes
- 6) What is the total money borrowed for the business not including the lease?
Please list each amount owed to lenders/individuals.
TOTAL: \$21,000,000.00

AVANA CAAPITAL LLC- \$21,000,000.00
8194 W DEER VALLEY RD #106-333 PEORIA, AZ 85382
- 7) Is there a drive through window on the premises?
- 8) If there is a patio please indicate contiguous or non-contiguous within 30 feet.
NO PATIO
- 9) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?
Yes
If yes, what is your estimated completion date?
08/01/2021

no patio

~~Contiguous
Patio~~

Not part of house
premises



BUILDING AREA:

FIRST LEVEL:	18,540 SF.
SECOND LEVEL:	18,540 SF.
THIRD LEVEL:	18,540 SF.
FOURTH LEVEL:	18,540 SF.
TOTAL	74,160 SF.

TOTAL PARCEL AREA:

159,612 SF. (3.67 ACRES GROSS)
158,165 SF. (3.64 ACRES NET)

Entrance/Exit
#3

Entrance/Exit #1

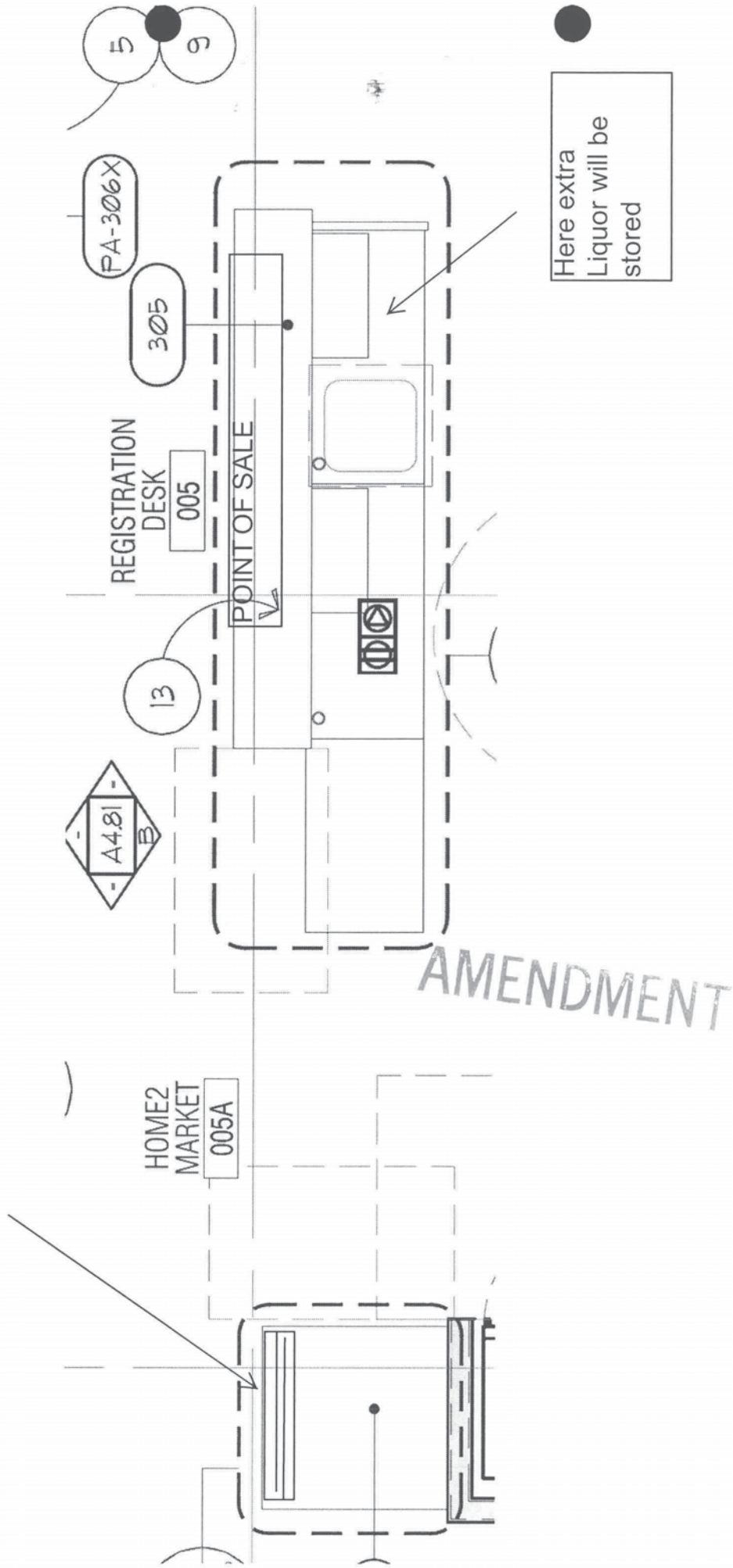
Entrance/Exit #2

Entrance/Exit
#4

* See Attached Blow-up
for total sq ft of liquor storage

Total Square Footage : 220 Square Feet

Here is where Liquor will be stored from display/ sale

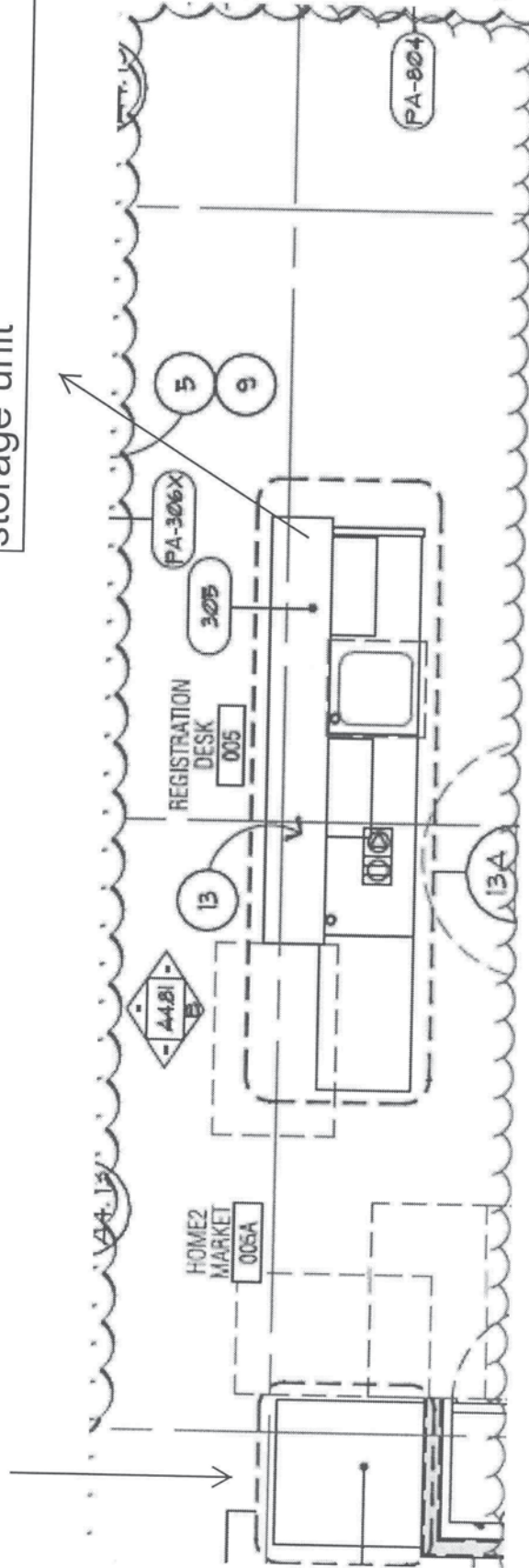


21 JUN 18 14:19:13 PM 431

Blow-up of Liquor Storage on site & total sq ft

This is where liquor will be stored
for sale

Extra liquor bottle will be stored
behind the desk in locked
storage unit



21 JUN 17 Liq. Lic. #M1100

AMENDMENT

ON THE LEGEND

[illegible]

GENERAL NOTES

GENERAL NOTES

Rate by email
6/10/21

AMENDMENT

21 JUN 1964 PM 10:26
LOBBY FFE FLOOR PLAN

PM10:56

Rec'd by email 6/10/12

A1.00

ARCHITECTURAL
SITE PLAN

A NEW HOTEL PROJECT FOR
AMENA AVONDALE LLC
8194 W DEER VALLEY ROAD

LAMB ARCHITECTS
1114 E. WILSON BOULEVARD, SUITE 200
SCOTTSDALE, ARIZONA 85261PRELIMINARY
NOT FOR

PRELIMINARY
SITE PLAN
24111N 16114R. Lic. PM1020

AMENDMENT

PARKING CALCULATIONS

PARKING REQUIRED. Based on full occupancy, including 100
HOTEL PARKING (100 SPACES PER ROOM), 106 SPACES
ACCESSIBLE PARKING (10% ADA)
* SPACES
(NO. 200) (100) (200) (100) (100)

PARKING PROVIDED.

PROJECT INFORMATION

[illegible]

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BUILDING AREA	
PLAN 1.5 m ²	8.5 m ² SF
SECTION 1.5 m ²	8.5 m ² SF
1.5 m ² 1.5 m ²	8.5 m ² SF
FOUR 1.5 m ²	8.5 m ² SF
1.5 m ²	8.5 m ² SF

Occupant Load

FIRE LEVEL	
A OCCUPANCY AREA	1764 SF - 18,000
B OCCUPANCY AREA	1978 SF - 20,000
N-1 OCCUPANCY AREA	1640 SF - 16,000
ACCESSORY AREA	NS SF - 1,000

[illegible]

ACCIDENTARY AREA AND SP. 3 000
NORTH LEVEL
N. OCCUPANCY AREA 14.244 SP. TO 000
ACCIDENTARY AREA AND SP. 3 000
TOTAL OCCUPANT LOSS 407 000

POINTS REQUIRED PROVIDED
BUILDING HEIGHT ALLOWED

TOTAL UNITS	21,925,517 (a-f)
ACCESSIBILITY REGULATIONS	240 ADJ. 8" (2004-2011) NONE ACCESSIBLE 240
ACCESSIBLE UNIT REQUIREMENTS	0.25" 2004-2011 NONE 2012-2014 0.25" 2015-2017 0.25" 2018-2019 0.25" 2020-2021 0.25" 2022-2023 0.25" 2024-2025 0.25" 2026-2027 0.25" 2028-2029 0.25" 2030-2031 0.25" 2032-2033 0.25" 2034-2035 0.25" 2036-2037 0.25" 2038-2039 0.25" 2040-2041 0.25" 2042-2043 0.25" 2044-2045 0.25" 2046-2047 0.25" 2048-2049 0.25" 2050-2051 0.25" 2052-2053 0.25" 2054-2055 0.25" 2056-2057 0.25" 2058-2059 0.25" 2060-2061 0.25" 2062-2063 0.25" 2064-2065 0.25" 2066-2067 0.25" 2068-2069 0.25" 2070-2071 0.25" 2072-2073 0.25" 2074-2075 0.25" 2076-2077 0.25" 2078-2079 0.25" 2080-2081 0.25" 2082-2083 0.25" 2084-2085 0.25" 2086-2087 0.25" 2088-2089 0.25" 2090-2091 0.25" 2092-2093 0.25" 2094-2095 0.25" 2096-2097 0.25" 2098-2099 0.25" 2100-2101 0.25" 2102-2103 0.25" 2104-2105 0.25" 2106-2107 0.25" 2108-2109 0.25" 2110-2111 0.25" 2112-2113 0.25" 2114-2115 0.25" 2116-2117 0.25" 2118-2119 0.25" 2120-2121 0.25" 2122-2123 0.25" 2124-2125 0.25" 2126-2127 0.25" 2128-2129 0.25" 2130-2131 0.25" 2132-2133 0.25" 2134-2135 0.25" 2136-2137 0.25" 2138-2139 0.25" 2140-2141 0.25" 2142-2143 0.25" 2144-2145 0.25" 2146-2147 0.25" 2148-2149 0.25" 2150-2151 0.25" 2152-2153 0.25" 2154-2155 0.25" 2156-2157 0.25" 2158-2159 0.25" 2160-2161 0.25" 2162-2163 0.25" 2164-2165 0.25" 2166-2167 0.25" 2168-2169 0.25" 2170-2171 0.25" 2172-2173 0.25" 2174-2175 0.25" 2176-2177 0.25" 2178-2179 0.25" 2180-2181 0.25" 2182-2183 0.25" 2184-2185 0.25" 2186-2187 0.25" 2188-2189 0.25" 2190-2191 0.25" 2192-2193 0.25" 2194-2195 0.25" 2196-2197 0.25" 2198-2199 0.25" 2200-2201 0.25" 2202-2203 0.25" 2204-2205 0.25" 2206-2207 0.25" 2208-2209 0.25" 2210-2211 0.25" 2212-2213 0.25" 2214-2215 0.25" 2216-2217 0.25" 2218-2219 0.25" 2220-2221 0.25" 2222-2223 0.25" 2224-2225 0.25" 2226-2227 0.25" 2228-2229 0.25" 2230-2231 0.25" 2232-2233 0.25" 2234-2235 0.25" 2236-2237 0.25" 2238-2239 0.25" 2240-2241 0.25" 2242-2243 0.25" 2244-2245 0.25" 2246-2247 0.25" 2248-2249 0.25" 2250-2251 0.25" 2252-2253 0.25" 2254-2255 0.25" 2256-2257 0.25" 2258-2259 0.25" 2260-2261 0.25" 2262-2263 0.25" 2264-2265 0.25" 2266-2267 0.25" 2268-2269 0.25" 2270-2271 0.25" 2272-2273 0.25" 2274-2275 0.25" 2276-2277 0.25" 2278-2279 0.25" 2280-2281 0.25" 2282-2283 0.25" 2284-2285 0.25" 2286-2287 0.25" 2288-2289 0.25" 2290-2291 0.25" 2292-2293 0.25" 2294-2295 0.25" 2296-2297 0.25" 2298-2299 0.25" 2300-2301 0.25" 2302-2303 0.25" 2304-2305 0.25" 2306-2307 0.25" 2308-2309 0.25" 2310-2311 0.25" 2312-2313 0.25" 2314-2315 0.25" 2316-2317 0.25" 2318-2319 0.25" 2320-2321 0.25" 2322-2323 0.25" 2324-2325 0.25" 2326-2327 0.25" 2328-2329 0.25" 2330-2331 0.25" 2332-2333 0.25" 2334-2335 0.25" 2336-2337 0.25" 2338-2339 0.25" 2340-2341 0.25" 2342-2343 0.25" 2344-2345 0.25" 2346-2347 0.25" 2348-2349 0.25" 2350-2351 0.25" 2352-2353 0.25" 2354-2355 0.25" 2356-2357 0.25" 2358-2359 0.25" 2360-2361 0.25" 2362-2363 0.25" 2364-2365 0.25" 2366-2367 0.25" 2368-2369 0.25" 2370-2371 0.25" 2372-2373 0.25" 2374-2375 0.25" 2376-2377 0.25" 2378-2379 0.25" 2380-2381 0.25" 2382-2383 0.25" 2384-2385 0.25" 2386-2387 0.25" 2388-2389 0.25" 2390-2391 0.25" 2392-2393 0.25" 2394-2395 0.25" 2396-2397 0.25" 2398-2399 0.25" 2400-2401 0.25" 2402-2403 0.25" 2404-2405 0.25" 2406-2407 0.25" 2408-2409 0.25" 2410-2411 0.25" 2412-2413 0.25" 2414-2415 0.25" 2416-2417 0.25" 2418-2419 0.25" 2420-2421 0.25" 2422-2423 0.25" 2424-2425 0.25" 2426-2427 0.25" 2428-2429 0.25" 2430-2431 0.25" 2432-2433 0.25" 2434-2435 0.25" 2436-2437 0.25" 2438-2439 0.25" 2440-2441 0.25" 2442-2443 0.25" 2444-2445 0.25" 2446-2447 0.25" 2448-2449 0.25" 2450-2451 0.25" 2452-2453 0.25" 2454-2455 0.25" 2456-2457 0.25" 2458-2459 0.25" 2460-2461 0.25" 2462-2463 0.25" 2464-2465 0.25" 2466-2467 0.25" 2468-2469 0.25" 2470-2471 0.25" 2472-2473 0.25" 2474-2475 0.25" 2476-2477 0.25" 2478-2479 0.25" 2480-2481 0.25" 2482-2483 0.25" 2484-2485 0.25" 2486-2487 0.25" 2488-2489 0.25" 2490-2491 0.25" 2492-2493 0.25" 2494-2495 0.25" 2496-2497 0.25" 2498-2499 0.25" 2500-2501 0.25" 2502-2503 0.25" 2504-2505 0.25" 2506-2507 0.25" 2508-2509 0.25" 2510

COERCIBLE UNITS PROVIDED

2001 ROOMS 270 ROOMS TO BE ADDED
2001 ROOMS 270 ROOMS TO BE ADDED

INDICATE AREA REQUIRED

2001 ROOMS 270 ROOMS TO BE ADDED

DATE OF SITE VISIT: 08/24/2011
 N/A

LANDSCAPE AREA PROVIDED:
 LOW LANDSCAPE REQUIRED

SITE PLAN GENERAL NOTES

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 02-07-2001 BY 60322 UCBAW

^aValues are means ± SD.

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SITE PLAN KEY NOTES

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2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2

COUNTY OF LOS ANGELES
 DEPARTMENT OF PUBLIC WORKS
 DIVISION OF PUBLIC UTILITIES
 1200 N. GARDEN STREET, SUITE 200
 LOS ANGELES, CALIFORNIA 90012
 TEL: (213) 875-1000 FAX: (213) 875-1001
 WWW: WWW.LAPWD.COM

[illegible]

SELECTABLE CARBON
A CONCRETE SURFACE COMPACTED AROUND
A "HOT" PISTON, COOLING IT TO A TEMPERATURE
BELOW THE MELTING POINT OF THE CARBON
AND LEAVING IT IN PLACE FOR A FEW DAYS
BEFORE REMOVING IT. THE CARBON IS
REMOVED BY A SPECIAL PROCESS, LEAVING
A SURFACE THAT IS HARDER AND MORE
DURABLE THAN THE ORIGINAL SURFACE.

[illegible][illegible]



REGISTRATION
DESK

005

HOME2
MARKET

005A

WORK
STATIONS

009

MANAGERS
OFFICE

010

ATOR
BBY
11

The Jagruti Patel 2012 Irrevocable Trust, Dated 12/17/12
25%
Jagruti Patel
Sundip Patel, Trustee

The Tanya Mansour 2012 Irrevocable Trust, Dated 12/17/12
25%
Tanya Mansour
Sanat B. Patel, Trustee

The Sanat Patel Family Gift Trust, Dated 11/30/12
25%
Sanat B. Patel, Trustee

The Sundip Patel Family Gift Trust, Dated 12/4/12
25%
Sundip Patel, Trustee

Members

AMENA Hotels LLC
100%
Managing Partners: Sundip Patel & Sanat B Patel

Member

Pretoria Avondale LLC

Certificate of Completion
For
Title 4 **MANAGEMENT** Liquor Law Training

A Certificate of Completion must be on a form provided by the Arizona Department of Liquor. Certificates are completed by a state-approved training provider and, when issued, the Certificate is signed by the course participant.

Basic Title 4 training is a prerequisite for MANAGEMENT Title 4 training. A valid Certificate of Completion for BASIC Title 4 training must be on file at the Department of Liquor and satisfactory completion of a State-approved BASIC Title 4 course must be verified by the training provider prior to issuing a Certificate of Completion for MANAGEMENT Title 4 training.

A replacement Certificate of Completion for Title 4 training must be available through the training provider for two years after the training completion date.

Student Information

Matthew Hallinan

Full Name (please print)

Signature

03/18/2021

Training Completion Date

03/17/2024

Certificate Expiration Date
(three years from completion date)

Training Provider Information

360training.com Inc.

Company Name

6801 N Capital of Texas Hwy, Bldg I, Suite 250, Austin, TX 78731

Mailing Address

(877) 881-2235

Daytime Contact Phone Number

I, Samantha Montalbano, certify that the above named individual did successfully complete
Instructor Name (please print)

Title 4 MANAGEMENT Training in accordance with A.R.S. §4-112(G)(2) and Arizona Administrative Code (A.A.C.)R19-1-103 using training course content and materials approved by the Arizona Department of Liquor Licenses and Control. I understand that misuse of this Certificate of Completion can result in the revocation of State-approval for the Title 4 Training Provider named in this section as provided by A.A.C. R19-1-103(E) and (F).

Instructor Signature

03/18/2021

Day Mo Year

Persons required to complete BASIC & MANAGEMENT Title 4 training: 1) owner(s) actively involved in the daily business operations of a liquor-licensed business of a series listed below
2) licensees, agents and managers actively involved in the daily business operations of a liquor-licensed business of a series listed below

In-state Microbrewery (series 3)
Conveyance (series 8)
Restaurant (series 12)

Government (series 5)
Liquor Store (series 9)
In-state Farm Winery (series 13)

Bar (series 6)
Private Club (series 14)

Beer & Wine Bar (series 7)
Hotel/Motel w/restaurant (series 11)
Beer & Wine Store (series 10)

Liquor license applications (initial and renewal) are not complete until valid Certificates of Completion for all required persons have been submitted to the Department of Liquor.

The questionnaire (which designates a manager to a location) and the agent change form (which assigns a new agent to active liquor licenses) are not complete until valid Certificates of Completion for all required persons have been submitted to the Department of Liquor.

Certificate # AZB-ON-0121073

21 MAR 30 AM 11:56 AZDLLC

Certificate of Completion
For
Title 4 **BASIC** Liquor Law Training

☒ On-sale
☐ Off-sale
☐ On- and off-sale

A Certificate of Completion must be on a form provided by the Arizona Department of Liquor. Certificates are completed by a state-approved training provider and, when issued, the Certificate is signed by the course participant.

The State requires BASIC Title 4 training only as a prerequisite for MANAGEMENT Title 4 training or as a result of a liquor law violation. Persons required to have BASIC Title 4 training are listed at the base of this Certificate. Licensees sometimes require BASIC Title 4 Training a condition of employment.

A replacement Certificate of Completion for Title 4 training must be available through the training provider for two years after the training completion date.

Student Information

Matthew Hallinan



Signature

03/18/2021

Training Completion Date

03/17/2024

Certificate Expiration Date
(three years from completion date)

Training Provider Information

360training.com Inc.

Company Name

6801 N Capital of Texas Hwy, Bldg I, Suite 250, Austin, TX 78731

Mailing Address

(877) 881-2235

Daytime Contact Phone Number

I, Samantha Montalbano, certify that the above named individual did successfully complete
Instructor Name (please print)

Title 4 BASIC Training in accordance with A.R.S. §4-112(G)(2) and Arizona Administrative Code (A.A.C.) R19-1-103 using training course content and materials approved by the Arizona Department of Liquor Licenses and Control. I understand that misuse of this Certificate of Completion can result in the revocation of State-approval for the Title 4 Training Provider named in this section as provided by A.A.C. R19-1-103(E) and (F).



Instructor Signature

03/18/2021

Day Mo Year

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LICENSE REVIEW FORM

Type of License	Series 10 - Beer and Wine Store	
Applicant's Name	Sanat B Patel	
Business Name	Home 2 Suites By Hilton	
Business Address	10275 W McDowell Road	
Department Comments		
☒ Police Department ☐ Fire Department ☐ Development Services ☐ Finance Department		
☒ Approved ☐ Denied		
Jonathon Martin E-Signature Jonathon Martin Name		Lieutenant Title 08/09/2021 Date

This license is scheduled for the City Council Meeting on: August 23rd, 2021

Please email form back to the City Clerk's Office by: August 5th, 2021

LICENSE REVIEW FORM

Type of License	Series 10 - Beer and Wine Store
Applicant's Name	Sanat B Patel
Business Name	Home 2 Suites By Hilton
Business Address	10275 W McDowell Road
Department Comments	
No comments	
☐ Police Department	☒ Fire Department
☐ Development Services	☐ Finance Department
☒ Approved	☐ Denied
<i>Jason Napier</i> E-Signature	Fire Marshal Title
Jason Napier Name	8/2/21 Date

This license is scheduled for the City Council Meeting on: August 23rd, 2021

Please email form back to the City Clerk's Office by: August 5th, 2021

LICENSE REVIEW FORM

Type of License	Series 10 - Beer and Wine Store
Applicant's Name	Sanat B Patel
Business Name	Home 2 Suites By Hilton
Business Address	10275 W McDowell Road
Department Comments	
No concerns.	
☐ Police Department ☐ Fire Department	
☐ Development Services ☒ Finance Department	
☒ Approved ☐ Denied	
<i>Daniel Vazquez</i> E-Signature	Accountant/Tax Auditor Title
Daniel Vazquez Name	8/2/21 Date

This license is scheduled for the City Council Meeting on: August 23rd, 2021

Please email form back to the City Clerk's Office by: August 5th, 2021

LICENSE REVIEW FORM

Type of License	Series 10 - Beer and Wine Store
Applicant's Name	Sanat B Patel
Business Name	Home 2 Suites By Hilton
Business Address	10275 W McDowell Road
Department Comments	
See attached memorandum.	
☐ Police Department	☐ Fire Department
☒ Development Services	☐ Finance Department
☒ Approved	☐ Denied
<i>Michelle Simerdla</i> _____ E-Signature	Senior Planner _____ Title
Michelle Simerdla _____ Name	8/5/2021 _____ Date

This license is scheduled for the City Council Meeting on: August 23rd, 2021

Please email form back to the City Clerk's Office by: August 5th, 2021



Development Services & Engineering Department

DATE: August 5, 2021

TO: Marcella Carrillo, City Clerk

PREPARED BY: Michelle Simerdla, Senior Planner (623) 333-4022

SUBJECT: Series 10 (Beer and Wine Store) Liquor License
Home 2 Suites by Hilton

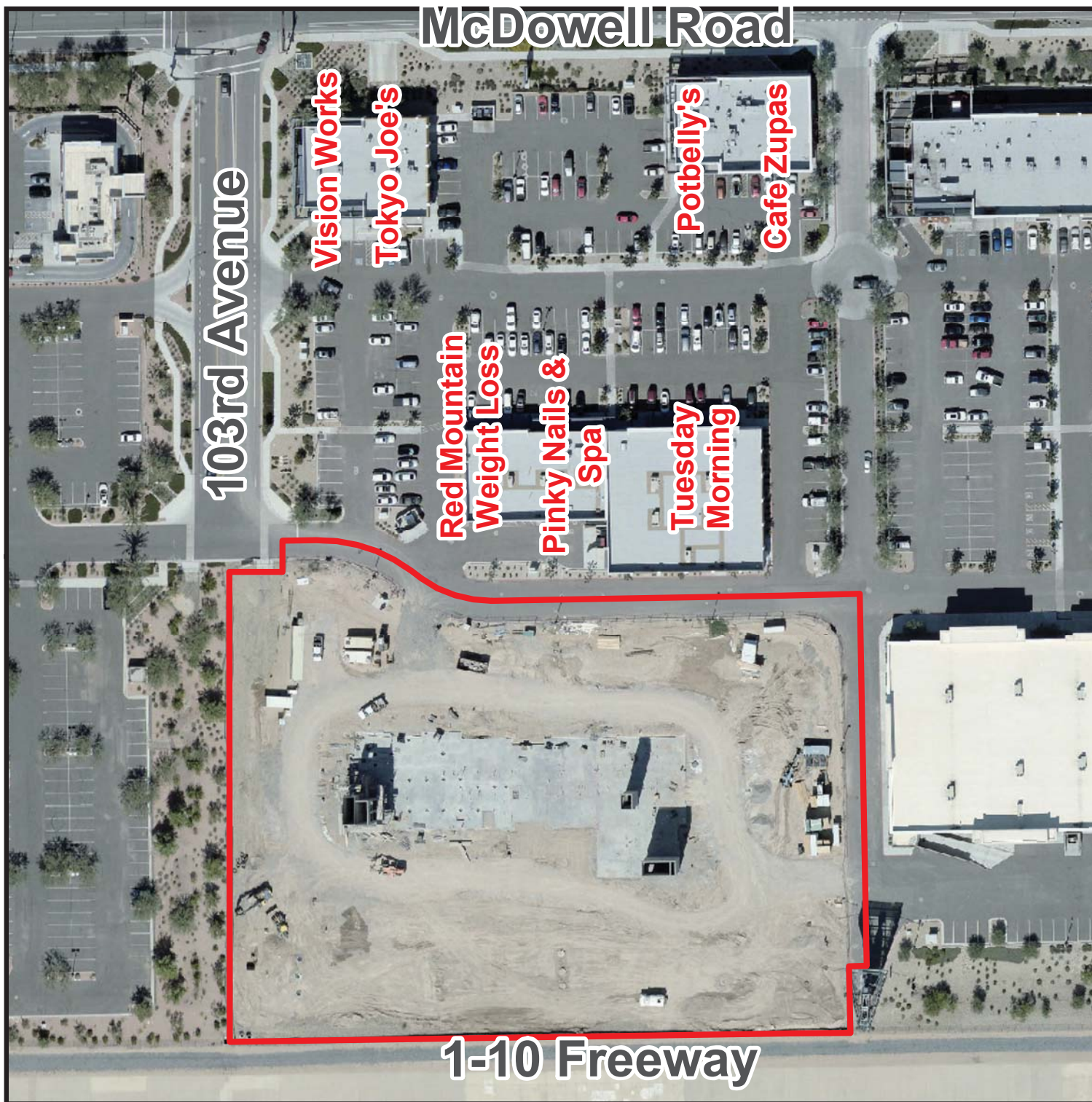
Home 2 Suites by Hilton is a hotel located approximately 386 feet south of the southeast corner of McDowell Road and 103rd Avenue. The hotel will feature a small, 220 square market near the registration desk where guests will be able to purchase food and drink items for consumption in their guestrooms or in the hotel lobby. The requested Series 10 (Beer & Wine Store) license will allow the market to offer beer and wine for sale to hotel guests.

State Statute requires a Series 10 liquor license to be separated a minimum of 300 feet from K-12 schools or church buildings. It also requires 300 feet of separation from fenced recreational areas that are part of a school building. There are no churches, schools, or fenced recreational areas associated with schools located within 300 feet of the Home 2 Suites property.

The General Plan designates the property as Freeway Commercial and the current zoning is Freeway Commercial (C-3). The use of the property as a hotel is compatible with both the General Plan designation and PAD zoning.

Staff recommends approval of this request.

Attachment: Aerial Photograph
Zoning Vicinity Map
300-Foot Separation Map



Aerial Photograph



Project Location





Zoning Vicinity Map

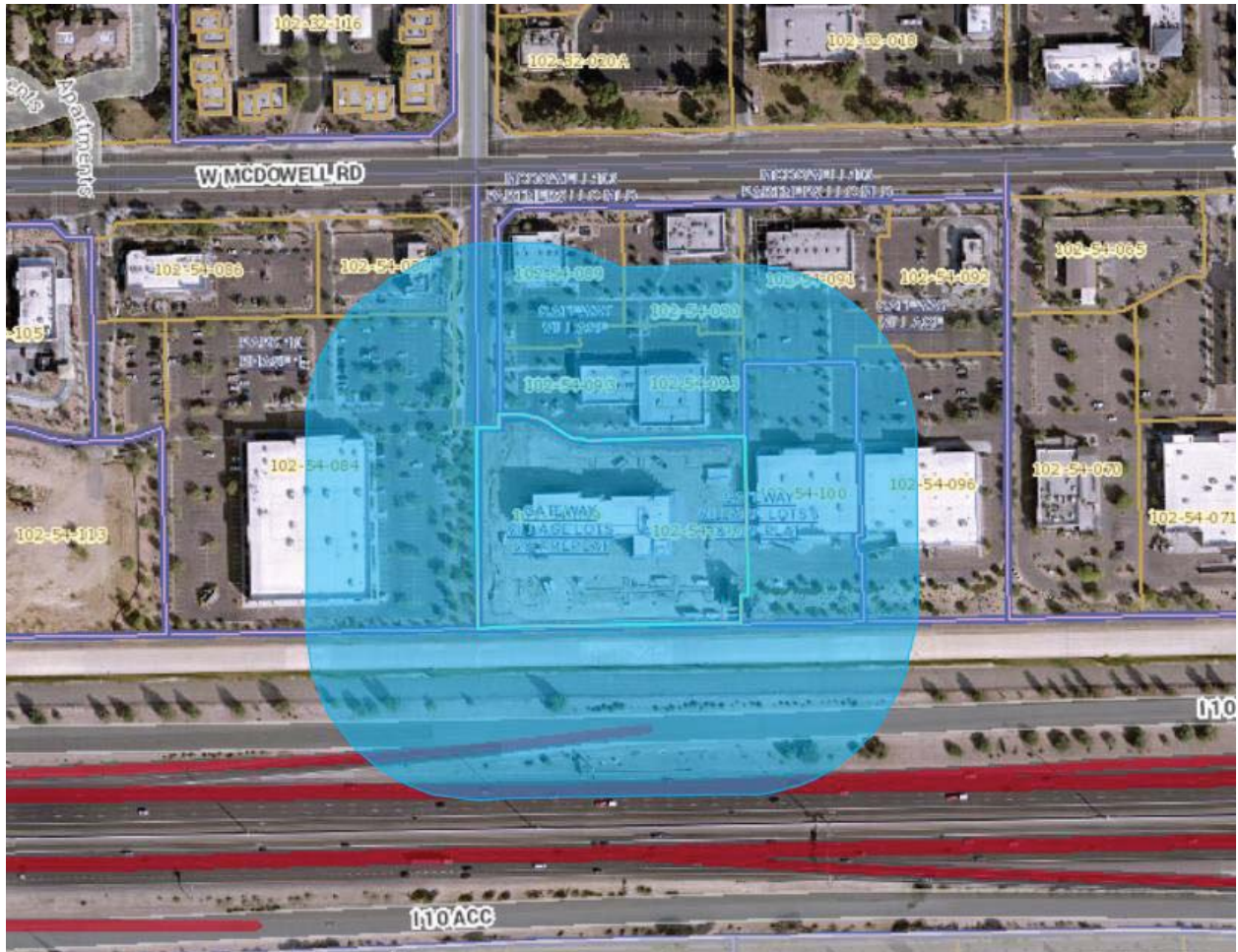


Project Location



300-Foot Separation

The blue shaded area represents a 300-foot buffer around the proposed licensed premises. No schools, churches or fenced recreational yards associated with schools or churches are located within the mandatory buffer area.





HOME 2 SUITES
10275 W MCDOWELL RD
1 Mile Buffer

Legend

PLACES OF WORSHIP

SCHOOLS

Liquor License

SERIES 3

SERIES 4

SERIES 5

SERIES 6

SERIES 7

SERIES 9

SERIES 9S

SERIES 10

SERIES 11

SERIES 12

SERIES 14

SERIES 15

SERIES 16

0 0.05 0.1 0.2 0.3 0.4 0.5
Miles

Avondale GIS Division of Information Technology

NOTICE
APPLICATION TO SELL ALCOHOLIC BEVERAGES
DATE POSTED: AUGUST 2, 2021

APPLICATION TO SELL ALCOHOLIC BEVERAGES
DATE POSTED: AUGUST 2, 2021

A HEARING ON A LIQUOR LICENSE APPLICATION
SHALL BE HELD BEFORE THE AVONDALE CITY COUNCIL

LOCATION:
AVONDALE CITY HALL
CITY COUNCIL CHAMBERS
11465 W CIVIC CENTER DR, AVONDALE
DATE: AUGUST 23, 2021
AT 7:00 PM.
VIA ZOOM

(HEARING DATES SUBJECT TO CHANGE,
TO VERIFY CALL: 623-333-1200)

****SERIES 10: BEER AND WINE STORE ****

THE LOCAL GOVERNING BODY WILL RECOMMEND TO THE STATE LIQUOR BOARD WHETHER THE BOARD SHOULD GRANT OR DENY THE LICENSE. THE STATE LIQUOR BOARD MAY HOLD A HEARING TO CONSIDER THE RECOMMENDATION OF THE LOCAL GOVERNING BODY. ANY PERSON RESIDING OR OWNING OR LEASING PROPERTY WITHIN ONE MILE RADIUS MAY CONTACT THE STATE LIQUOR BOARD IN WRITING TO REGISTER AS A PHOTO ITER, TO REQUEST INFORMATION REGARDING PROCEEDURES BEFORE THE BOARD AND NOTICE OF ANY BOARD HEARING REGARDING

HOME 2 SUITES BY HILTON
10275 W MCDOWELL ROAD
AVONDALE, AZ 85392

THIS APPLICATION CONTACT: STATE LIQUOR BOARD, 800 W. WASHINGTON, 5TH FLOOR, PHOENIX, AZ 85007. STATE LIQUOR DEPT. (602) 542-9789. INDIVIDUALS REQUIRING ADA ACCOMMODATIONS CALL THE CITY CLERK AT 33-333-1000.



CITY COUNCIL REPORT

SUBJECT: Resolution 1059-0821 - Public Art Master Plan

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Pier Simeri, Marketing and PR Director, (623) 333-1600

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

Creative and Sustainable Community Development

PURPOSE:

City Council will consider a request to adopt Resolution 1059-0821, approving an update to the Avondale Public Art Master Plan as recommended by the Avondale Municipal Art Committee and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

First adopted in Dec. 2006, and then updated in 2014, the Avondale Public Art Master Plan (PAMP) seeks to define Avondale's unique sense of place as a community, by promoting art that embraces the City's history and culture, while capturing its present day achievements as a vibrant, innovative, diverse and sustainable community that is building out towards an even brighter future.

The mission of Avondale's Public Art Program is to:

- Provide visual art that complements public buildings, parks and plazas
- Create a sense of place which enhances community identity and promotes Avondale as an art destination
- Improve the design quality of public infrastructure as well as the visual environment for the residents of Avondale
- Pursue funding and resources for public art
- Recommend policies and procedures concerning public art
- Cooperate with existing public and private agencies to develop programs to further development and awareness of art

The Public Art Master Plan is a document that gives creative direction to the City's Public Art Program, and provides the necessary framework from which staff and the AMAC will operate. The Public Art Master Plan:

- It sets out the foundation for public art in Avondale – a vision, mission and overall goals.

- Broadly identify the types of projects the public art program will consider when developing Annual Work Plans.

Recommends policies, procedures and guidelines to incorporate into a revised Public Art Policy or to use as guidelines.

DISCUSSION:

The Public Art Master Plan adopted in 2014 has served as a vital document to guide the City and the Avondale Municipal Art Committee in the implementation of public art for almost a decade. Over the past two decades, guided by the Public Art Master Plan, the city has steadily built up its public art collection.

A great deal of community outreach and engagement took place in the development of the 2014 plan, and much of it remains relevant. However, as a result of the tremendous growth and changes in the City, it is important that the Public Art Master Plan reflects the vision and priorities of the community today, as well as into the future.

Thus, an update to the Public Art Masterplan was undertaken in 2021, which included a public process that sought feedback from the AMAC as well as the community.

The 2021 Public Art Master Plan Update kicked off in March 2021 with a presentation to the Avondale Municipal Art Committee, explaining the impetus for the update and seeking their feedback on direction regarding elements for the new plan and the proposed public process. Staff provided an update on the draft plan to the Avondale Municipal Art Committee in June 2021, where staff presented for feedback the Five Pillars of Public Art and the Implementation Goals associated with each pillar. In July 2021, the Committee convened and unanimously approved the draft of the 2021 Public Art Master Plan.

With regard to community participation, the City held a public meeting on April 14, 2021 to obtain resident feedback. A public art survey was subsequently launched and ran for four weeks from mid-April to mid-May 2021. One hundred and seventeen (117) responses were tabulated from the survey. Since July 2021, a draft of the updated Public Art Master Plan has been shared on the City's AVoice platform, for a final opportunity to comment.

The City informed the public of the process and invited all to participate in the survey through a variety of means, including press releases which were published in local newspapers, Avondale's City Page newsletter, which ran as a paid advertisement in the West Valley View and published online on the city's website as well as postings on the city's many social media platforms, including Facebook, Instagram, and NextDoor.

BUDGET IMPACT:

Any proposed additional funding for the Public Art Program will be brought to Council for consideration.

RECOMMENDATION:

Staff recommends that the City Council adopt the resolution approving the update to the approved Public Art Master Plan.

RESOLUTION NO. 1059-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, ADOPTING THE CITY OF AVONDALE, ARIZONA, PUBLIC
ART MASTER PLAN.

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

SECTION 1. The City of Avondale, Arizona, Public Art Master Plan is hereby adopted in substantially 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 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,
August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1059-0821

[City of Avondale, Arizona, Public Art Master Plan]

See following pages.



Avondale

“One of the things I love about public art is that it tells the story of a city; through it we express our dreams and aspirations; it challenges where we are going and why we’re going there. And sometimes it just provides visual or physical delight. The future of public art will be a lot like its past, except that it will look, sound, feel, and probably smell different—just as tomorrow we will be different from who we are today.”

~Richard McCoy

Director of Landmark Columbus in Columbus, Indiana

ACKNOWLEDGMENTS

Council Members

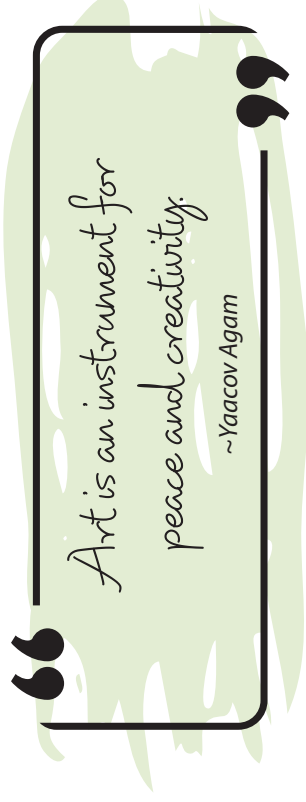
- ▲ Kenneth Weise
Mayor
- ▲ Veronica Malone
Vice Mayor
- ▲ Pat Dennis
Council Member
- ▲ Bryan Kilgore
Council Member
- ▲ Tina Conde
Council Member
- ▲ Mike Pineda
Council Member
- ▲ Curtis Nielson
Council Member

Art Committee Members

- ▲ Jan Graham
Chairperson
- ▲ Jim Painter
- ▲ Israel Rios Fregozo
- ▲ Denise Stanfield
- ▲ Kalila Aragon
- ▲ Gurjit Kaur
- ▲ Jesse Lewis

City Staff

- ▲ Pier Simeri
Marketing & Public Relations
Director
- ▲ Brian Craig
Planning Manager
- ▲ DeAnn Franklin
Digital Media Program
Manager
- ▲ Aaron White
Employment & Business
Development Manager
- ▲ Robert Baer
Budget Manager
- ▲ Anyessa Romo
City Manager Intern
- ▲ Noelene Richards
Graphic Design



*Art is an instrument for
peace and creativity.*

~Yaacov Agam

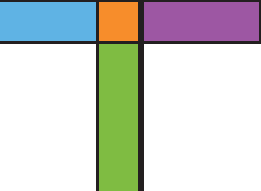


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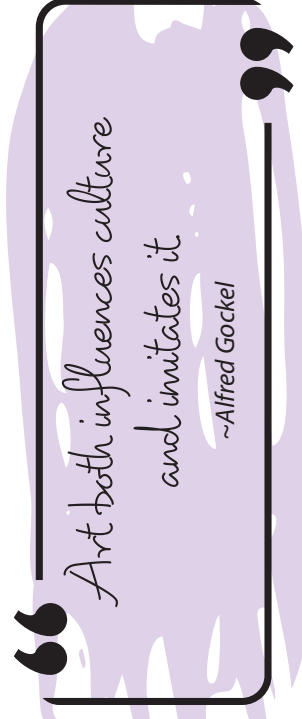
VISION AND MISSION STATEMENT

The Avondale Public Art Master Plan (PAMP) seeks to define Avondale's unique sense of place: a community whose identity celebrates the past and embraces the future. The PAMP seeks to promote art that:

- ▶ Embraces the City's history and culture and celebrates family, community, our Latino and agricultural heritage, and the indomitable spirit of the Southwest
- ▶ Captures its present-day success and achievements as a vibrant, fast-growing, modern, innovative, culturally diverse, environmentally sustainable community that is building out towards an even brighter future

THE MISSION OF AVONDALE'S PUBLIC ART PROGRAM IS TO:

- ▶ Provide visual art that complements public buildings, parks and plazas
- ▶ Create a sense of place which enhances community identity and promotes Avondale as an art destination
- ▶ Improve the design quality of public infrastructure as well as the visual environment for the residents of Avondale
- ▶ Pursue funding and resources for public art
- ▶ Recommend policies and procedures concerning public art
- ▶ Cooperate with existing public and private agencies to develop programs for the further development and awareness of art in Avondale



INTRODUCTION

Public Art reflects the character and quality of life in a community. In many ways, a community's image and people's perceptions of it are conveyed by its network of public spaces—how are they designed, what are they used for, how do they look, and are they safe and well maintained. Across the country, communities have leveraged the talents of artists to bring art to under-utilized public spaces as economically viable venues for their creative expressions. Often these spaces are associated with older areas of a city where artists, and the art world, have provided the impetus for creating vibrant communities -- with a unique, cultural focus -- leading to their revitalization and economic growth.

In addition to the economic benefits, perhaps the greatest value public art contributes to a community is its role in creating a "sense of place." While each community's sense of place is unique, it is created by the level of attachment people who live, work, and frequent the community have for its natural and cultural characteristics and social interactions.

Avondale's sense of place has emerged from its deep roots and the key role it has played in the settling of the West Valley and the agricultural Southwest. Avondale is a community where people share a deep sense of pride in what has been accomplished and what the City has become today. In Avondale, there is strong belief that the blending of a broad spectrum of cultures comes from a true sense of harmony throughout the community, and not mere rhetoric about diversity as people and businesses are welcomed with open arms and supported in a way that

exemplifies a progressive, intelligent and driven City. Avondale's rise to prominence began as families from the Dust Bowl era began to travel west to escape climatic and economic ruin. Settlement near one of the largest sources of water in the Southwest (the Agua Fria River) led to the development of vast croplands. In the early part of the 20th century, thousands of migrant farm workers from Mexico came to work the fields. Over the past three decades, Avondale has experienced tremendous growth. As one of Metro Phoenix's fastest growing communities, Avondale offers a wide range of housing opportunities, has attracted large and small employers, and built up a healthcare corridor providing quality jobs -- factors that have made Avondale an attractive community for new residents seeking to plant roots. The City's past and its current pace of growth have brought a rich blending of diverse cultures that is the basis for the vibrant community Avondale is today.

There is a sense of optimism in Avondale that translates to young families and others finding a place that gives them confidence to achieve greatness. What sets Avondale apart is the way people believe it is their City and their home that stimulates this achievement. Avondale provides the foundation for those who call it home to set and reach their goals and aspirations. Avondale is a City of possibilities with unified leaders in the private and public sector who are dedicated to continuing the smart growth of the past decade.



PUBLIC ART IN AVONDALE

Incorporated in December 1946, Avondale is a relatively young City compared to cities across the country, and as such, public art in Avondale is comparatively new to the city landscape. Early City leaders focused on the basic services – infrastructure, public safety, and quality of life amenities. As the City entered its growth and maturation phases, Avondale's leadership began to place greater emphasis on the role of public art as an economic and tourism driver creating a unique sense of place, identity, character and community pride.

The Avondale City Council established the Municipal Public Art Program in 2005 to help create a more beautiful and vibrant city. Over the past two decades, the City has steadily built up its public art collection – with significant-sized sculptures at the Avondale Civic Center (*Family at Play*) and Friendship Park (*The Family*) and smaller sculptures tucked in gathering spaces (*Hands On* at Sernas Plaza and *Leap of Faith* at Doc Rhodes Park); colorful mosaics on public buildings (*Mosaic Avondale* at Civic Center Library), and functional art such as murals on traffic utility boxes around the City.

Public art has played an important role in depicting the history and culture of Avondale's migrant farm laborers. At the Goodyear Farms Historic Cemetery in Avondale, a mural by artist Victor Caldee captures the simple, everyday life of pioneer families, while a metal sculpture over the gate at the cemetery entrance, *Algodon*, is rich with symbolism of the cotton crop.

Several of Avondale's art installations have resulted from its successful collaboration with the West Valley Arts Council's *Gallery 37* student art apprentice program. Examples include: *A Bugs Eye View* at Festival Fields, *Astral Projections* at the former City Hall building, *Chelonia* at Friendship Park splash pad, and *Solar Continuum* at the Civic Center Library.

In the past decade, private development has contributed to the public art inventory, such as *Flow* at Coldwater Depot, *The 5 C's* at the Avondale Logistic Center, the *Tree of Life* at AKOS Medical Campus, and *Solterra* at Bridgewater Living Facility, while new master planned communities such as Alamar have incorporated art as a quality of life attraction for new residents.

Public art in Avondale has also flourished organically. A drive or stroll along Western Avenue in Old Town Avondale will reveal that one of the most prominent features of the streetscape is the colorful murals on the buildings of local businesses. Ranging from whimsical and abstract to cultural, these murals add to the unique character of the area.

More recently, public art is becoming a regular feature as part of the City's capital improvement projects. As new buildings, facilities and parks develop, the City seeks ways to incorporate public art features and artistic elements to enhance these capital projects – for instance, *Al Querido*, a mixed media heart sculpture installed as part of median improvements along Avondale Boulevard.





ECONOMIC IMPACT OF THE ARTS

One way to understand public art's impact is through analyzing the economic factors of an art event. When patrons attend an arts event, they may pay for parking, eat dinner at a restaurant, shop in local retail stores, and have dessert on the way home.

According to a 2012 study by the Americans for the Arts, the typical arts attendee spends \$24.60 per person, per event, beyond the cost of admission.

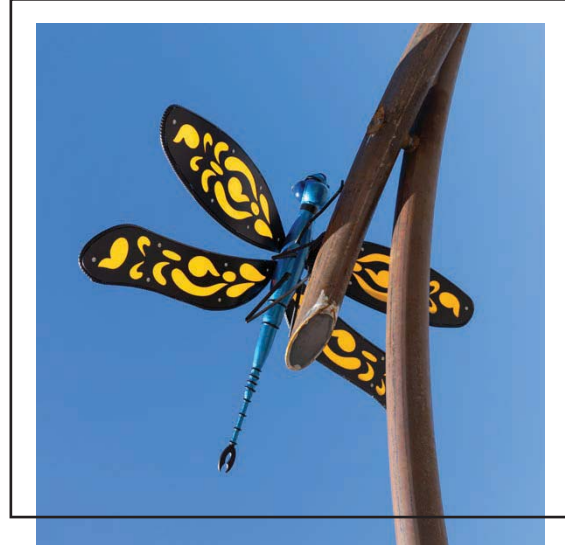
If an art event can draw tourists, the economic impact becomes greater. Communities that draw cultural tourists experience an additional boost of economic activity. Tourism industry research repeatedly demonstrates that arts tourists stay longer and spend more than the average traveler.

Arts & Economic Prosperity V reflects those findings: 34.1 percent of attendees traveled from outside of the county in which the event took

place (nonlocal), and 65.9 percent of attendees resided within the county (local). Nonlocal attendees had twice as much event-related spending as their local counterparts (\$47.57 vs. \$23.44). (Americans for the Arts, 2016).

Beyond revenue generated, the arts also generate job growth and contributes to local household income. Nonprofit arts and cultural organizations and their audiences in the United States are a \$166.3 billion industry—one that supports 4.6 million full-time equivalent jobs and generates \$27.5 billion in government revenue.

Public arts' impact on economic growth is an important role in driving tourism for communities. Public art not only improves a community's quality of life but also improves the City's economic health.





IMPETUS FOR THE PUBLIC ART MASTER PLAN UPDATE

Avondale has experienced tremendous growth over the past decade, and this growth is expected to continue into the next decade. Avondale has established itself as a City that is booming in the housing, retail, manufacturing and healthcare sectors. The impetus for the Public Art Master Plan is to reflect the significant changes that the City has undergone since the adoption of the previous plan. It is important that the art plan reflect the community growth, highlighting the culture of the community and its residents of today along with the City's ambitious plans for the future as it progresses towards build-out.

In 2019, the City adopted The BLVD Specific Plan, a visionary yet achievable plan, to kickstart development on 356 acres in the heart of Avondale. The City has invested in major infrastructure, from median beautification along Avondale Boulevard to the construction of lakes and water features at The BLVD. The area is primed for new public art opportunities, such as the colorful heart sculpture, *Al Querido* – building upon existing art installations at The BLVD, namely *Avondale Birds* and *Tres Rios*.

Avondale is a fast-growing visitor destination. In 2020, Avondale took steps to become its own Destination Marketing Organization (DMO), placing an increased focus on tourism and marketing Avondale as a visitor destination. In 2020, 2021 and 2022, NASCAR selected the Phoenix Raceway in Avondale to host the NASCAR Championship Weekend. To highlight Avondale as a racing destination and home of NASCAR, Avondale has added artistic elements to streets in the form of checkered crosswalks at major intersections along Avondale Boulevard and other locations in the City. A mural reflecting the City's connection to NASCAR, commissioned by Phoenix Raceway, can be found on a wall at the Boys & Girls Club in Old Town Avondale.



In addition to The BLVD Specific Plan mentioned on the previous page, this Public Art Master Plan is influenced by and relates to many other plans and ordinances in the City. These documents may be accessed via the links below on the City's website:

Avondale Strategic Five-Year Plan – Adopted in 2021, the Strategic Plan outlines seven (7) Strategic Outcome Areas, which includes enhancing the City's diverse recreation and entertainment opportunities among other related objectives that feature and promote public art.

Specific Area Plan for Old Town, Cashion, Las Ligas/Rio Vista –

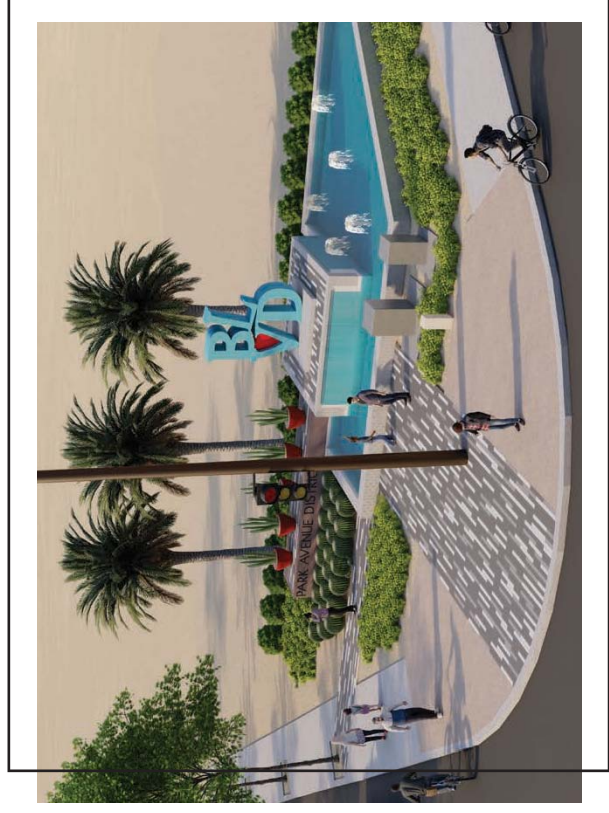
Adopted in 2021, the Old Town Specific Area Plan's objective is to spur development, redevelopment and revitalization in historic areas of Avondale, including public investments in infrastructure and amenities such as public art in its various forms. The vision for the Specific Plan includes cultivating and expanding Avondale's vibrant sense of place and locating artist studios in live/work areas of the community. Adaptive reuse ideas include art galleries in historic store fronts.

General Plan 2030 – Avondale's 2030 General Plan was adopted in 2012 to serve as a vision to guide growth and development and is currently being reviewed for minor amendments. The current General Plan and planned update include an Art and Heritage Element denoting these as essential to the quality of life for City residents.

The BLVD Specific Plan – The BLVD Specific Plan is aimed towards cultivating a rich entertainment district in Avondale and being a premier destination in the West Valley. The BLVD will develop as a walkable, livable, district with restaurants, live entertainment, shops, and recreation. Art, including water features, and community events will feature prominently in The BLVD.

North Avondale Specific Plan – The North Avondale Specific Plan, originally adopted in 1992 and most recently amended in 2013, seeks to encourage and guide development and land use in Avondale generally north of McDowell Road. The North Avondale Specific Plan identifies art in combination with landscaping as key to branding Avondale and creating a sense of identity and arrival for the community.

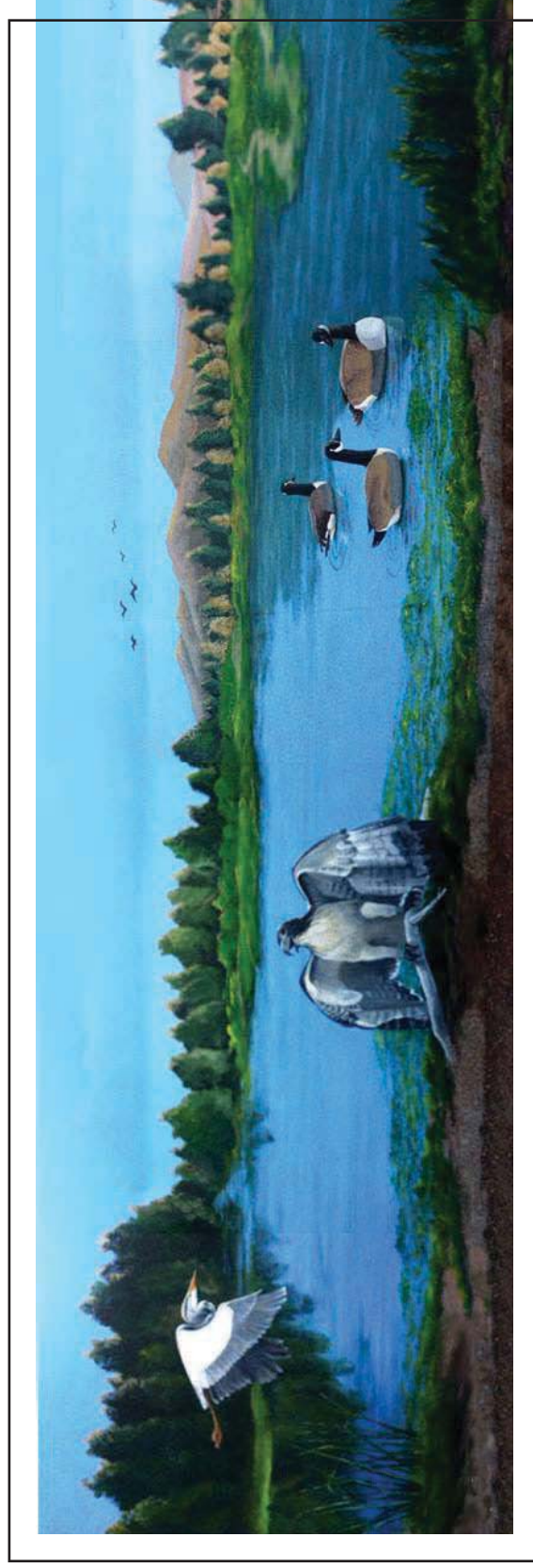
Wayfinding Master Plan – The Avondale Way Finding Master Plan identifies branding and communication strategies to highlight Avondale's unique brand and to ensure the City capitalizes on opportunities to direct vehicles and pedestrians to community resources and amenities in a fun and identifiable way. The plan identifies a variety of specific monumentation, color schemes, signs and banners that make the City more navigable based on three core principles: 1) connect places, 2) be predictable, and 3) keep it simple.



El Rio Design Guidelines and Planning Standards – The El Rio Guidelines and Planning Standards (“The El Rio Plan”) is concerned with land use and implementation of a Master Plan for portions of the Gila River and Agua Fria River corridors in Avondale and elsewhere in the West Valley. While aimed at protecting and preserving the river corridors, the El Rio Plan is also concerned with integrating multi-use activities and recognizing potential economic and recreation benefits. The El Rio corridor presents an opportunity to expand nature-based art and education with landscape and natural environment as the centerpiece.

Freeway Corridor Specific Plan – Similar to the North Avondale Specific Plan, the Freeway Corridor Specific Plan details the City’s intent for land use and development. The Freeway Corridor Specific Plan encourages the areas along the I-10 and Loop 101 Freeways to develop with pedestrian friendly, walkable urban developments. These areas are intended for a mix of retail, commercial, residential and employment land uses. Objective #5 of the Freeway Corridor Specific Plan encourages a cultivation of a sense of place through aesthetic treatments to include public art adjacent to streets and accessible via the pedestrian sidewalks and trails, which will make the corridor more vibrant and active for shoppers and residents.

Avondale Zoning Ordinance – While the above plans outline goals and objectives for development, including the thoughtful inclusion of public art, the Avondale Zoning Ordinance is an implementation tool. The Zoning Ordinance identifies, in Section 11, required public art contributions by development. The Ordinance requires developments to contribute public art as considered and approved by the Public Art Committee or fees in lieu to be dedicated to future public art installations. As discussed later in this Plan, art and fees contributed by development through this requirement is a critical source of art inventory and revenue that sustains the public art program in Avondale.



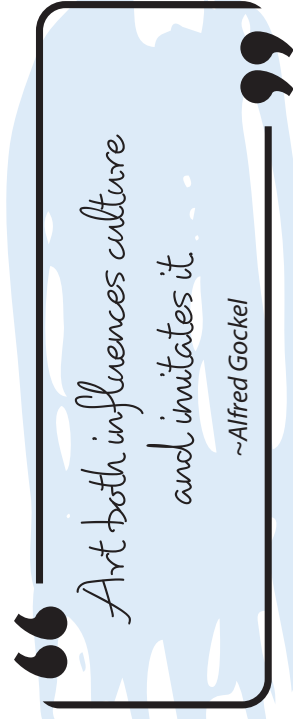
PUBLIC ART IN ACTION

THE ART COMMITTEE

Each year staff works with the Avondale Municipal Art Committee to develop the annual Public Art Action Plan that identifies public art projects in all areas of Avondale that offer the greatest opportunity for artist involvement and public accessibility. The total budget for each project includes funds to contract for design, fabrication, installation and project administration.

In most cases, artists are recommended for projects through a competitive procurement process that involves a Call to Artists, wherein submissions are reviewed by staff and proposals are discussed and selected through the Avondale Municipal Art Committee (AMAC). The selection is based on recommendations on the quality of the artists' works, their suitability for the project, and their ability to work well with the community and other design professionals.

There are three main documents that, together, set out the governance of the Public Art Program: 1) The Public Art Master Plan, 2) the Public Art Policy and 3) Development Requirements Relating to Public Art.



PUBLIC ART MASTER PLAN

The Public Art Master Plan is a document that gives creative direction to the Public Art Program and contains governance and operational components that should be incorporated into the Public Art Policy and used as guidelines by the AMAC. The Public Art Master Plan:

- ▶ Sets out the foundation for public art in Avondale – a vision, mission and overall goals.
- ▶ Broadly identifies the types of projects the Program will consider when developing Annual Work Plans. These are described within targeted "Creative Zones" of near-term focus that meet the long-term goals of the Public Art Program.
- ▶ Recommends policies, procedures and guidelines to incorporate into a revised Public Art Policy or to use as guidelines.



PUBLIC ART POLICY AND GUIDING PRINCIPLES

The Public Art Master Plan would not be complete without the Public Art Policy and Guiding Principles. (Please see Appendix A). This policy is the reference guide for staff and the AMAC on a range of topics that facilitates the Public Art Program and ensures smooth operations for implementation.

This document describes the City's Public Art Program, the makeup of the Avondale Municipal Art Committee, its mission, function and duties, and how the role of City staff will interact with the committee to achieve its goals.

Additionally, the policy provides guidelines for selection of public art, selection process and criteria, and discusses the ways that public art is acquired and funded. The policy also suggests ways in which the community can get involved with public art.

The Public Art Policy provides an application process to answer fundamental questions about the art's decoration, function, environment and interactivity, etc.

The Public Art Policy and Guidelines serves as an important document that by necessity can be fluid -- updated and revised as necessary to accommodate the internal processes that keep the Public Art Program in motion.

DEVELOPMENT REQUIREMENTS RELATING TO PUBLIC ART

This City ordinance, adopted into the City Zoning Ordinance, requires certain new private developments to either provide public art on site or to pay a fee in lieu for public art.

The City of Avondale currently requires a fee for art as a part of commercial developments of a certain size. The ordinance can be found on the City of Avondale Planning website in the Zoning Ordinance. The purpose of the ordinance is to beautify the community with a wide

range of artistic elements. Currently, non-residential commercial, office, and employment developments in excess of 50,000 square feet are required to contribute towards public art. Developers can elect to install approved public art or pay an in-lieu fee to the City. The art must be valued at or above one-quarter (0.25) percent of total project valuation as calculated by City Staff; the in-lieu fee is invoiced at the same rate, up to the project cap as outlined in the ordinance. In addition to projects under the threshold of 50,000 square feet, industrially zoned property and residential developments are exempt from contributing to this program. However, the City could consider lowering the project size threshold and include industrial projects, in addition to requiring new residential subdivisions of a minimum lot count to contribute a fee for public art. Certainly, additional project valuation caps and other exceptions may need to be included in any such expansion of the program.

As the City continues to grow and expand so too does the need to plan for future public art as standalone pieces, but also as a component of public infrastructure and public buildings such as fire stations, public services, bridges, and community gateways. Significant art pieces and related installation costs that meet the requirements of the City's Capital Improvement Plan (CIP) should be considered as specific projects within the annually updated CIP and evaluated for timing and availability of funding sources alongside other planned capital improvements. Additionally, non-utility projects should endeavor to incorporate art or artistic qualities in the final design.

Donations and gifts are encouraged and may be accepted by the City from individuals, businesses, and public and private entities to help provide public art for the City of Avondale.

PUBLIC INPUT AND THE MASTER PLAN UPDATE

The Public Art Master Plan adopted in 2014 has served as a vital document to guide the City and the Avondale Municipal Art Committee in the implementation of public art for almost a decade. A great deal of community outreach and engagement took place in the development of the 2014 plan, and much of it remains relevant. It serves as a guiding template for the 2021 Public Art Master Plan update, incorporating key elements, while ensuring that the vision of present day and future Avondale is captured.

The 2021 Public Art Master Plan Update kicked off in March 2021 with a presentation to the Avondale Municipal Art Committee, explaining the impetus for the update and seeking their feedback on direction regarding elements for the new plan and the proposed public process.

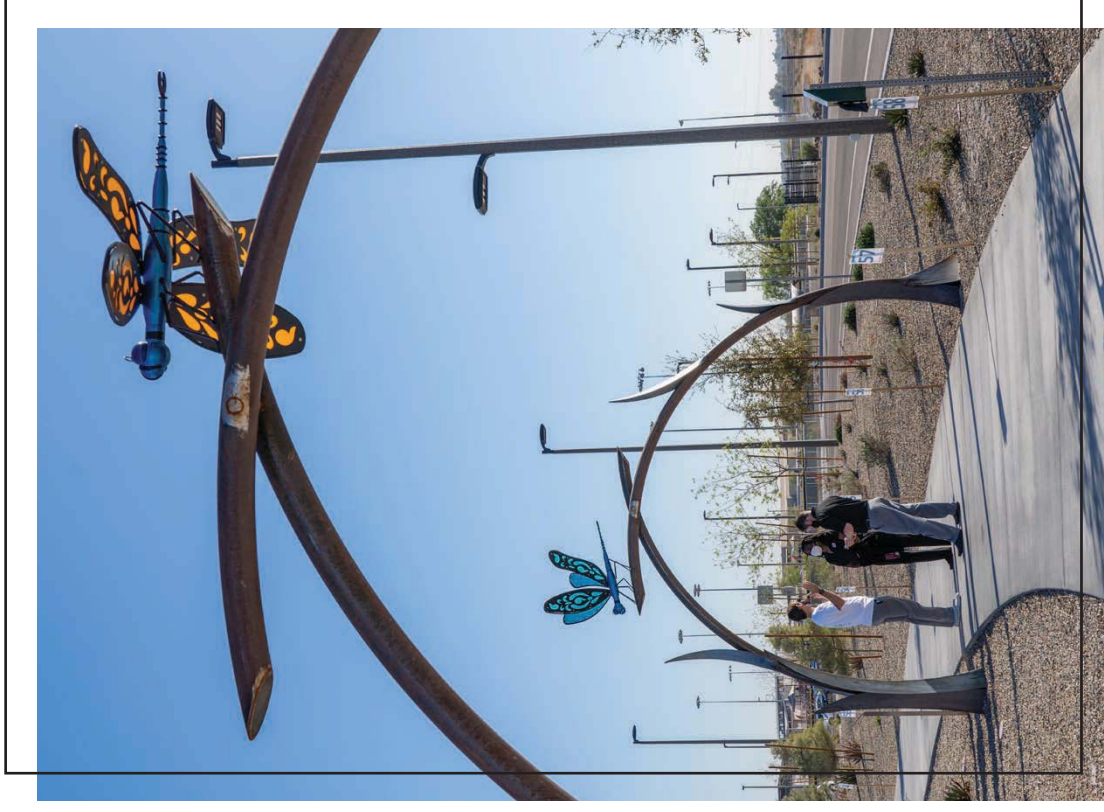
The City held a public meeting on April 14, 2021 to obtain resident feedback. (See Appendix for meeting notes.)

A public art survey was subsequently launched and ran for four weeks from mid-April to mid-May 2021. (See appendix for Survey Results.)

The City informed the public of the meeting and invited all to participate in the survey through a variety of means, including press releases which were published in local newspapers, Avondale's City Page newsletter, which ran as a paid advertisement in the West Valley View and published online on the City's website as well as postings on the City's many social media platforms, including Facebook, Instagram, and Nextdoor.

Staff provided an update to the Avondale Municipal Art Committee in June 2021, where staff presented for feedback the Five Pillars of Public Art and the Implementation Goals associated with each pillar.

In July 2021, the Committee convened to approve the draft of the 2021 Public Art Master Plan.



SUMMARY OF SURVEY FINDINGS

The survey clearly demonstrates that the Avondale community recognizes public art as an asset. From the murals on Western Avenue, the colorful traffic boxes scattered throughout the City, to the permanent sculpture installations, residents noted they are aware of the pleasing aesthetics around the community. When asked to describe Avondale, respondents overwhelmingly used words like DIVERSE, GROWING, BEAUTIFUL, YOUNG, FAMILY, and COMMUNITY.

Most survey respondents (more than half) self-identified as an “art appreciator,” while a over one-quarter said they were artists or in the business of art.

When asked what type of art “speaks to you,” art about nature and trails, culturally inspired art, historical and street art ranked highest. Respondents overwhelmingly favored seeing art in parks and open spaces, while vehicle gateways into the City and historical neighborhoods, alleys and sidewalks were also desired places for public art. The survey results highlighted that natural landscapes, water features and interactive murals are additional aspects of art that residents desire to see around Avondale. (See Appendix B for Survey Results.)



“Balance, peace, and joy are the fruit of a successful life. It starts with recognizing your talents and finding ways to serve others by using them.”
~Thomas Kinkade

PILLARS OF PUBLIC ART

The Five Pillars of Public Art provide the framework for attainable goals within each. These goals will assist the Avondale Municipal Art Committee and City staff in developing both long range and short-range strategies towards implementing public art, as well guide them in the development of the Annual Action Plan for public art. The goals are intended to be broad; specificity regarding projects and initiatives will be developed within the Annual Action Plan.

PILLAR 1 GOALS: ESTABLISH CREATIVE ZONES

Goal 1: Create and implement unique brands for historic neighborhoods.

Goal 2: Install public art that creates a theme or destination for each identified creative zone.

Goal 3: As Avondale's growth expands to the south, ensure that public art is incorporated in future developments.

Avondale's unique character is defined by different themes, such as its proud history and culture, the natural environment, and NASCAR, to name a few. These themes come into focus in naturally occurring zones throughout the City, including:

THE BLVD

The BLVD is the West Valley's premier live, work and play destination. Located immediately south of I-10 on Avondale Boulevard, the area is home to the American Sports Center, hotels, restaurants and more while serving as the gateway to the Phoenix Raceway and the Civic Center Complex. Public and private investments are realizing the vision of this area, with the addition of new residences, median enhancements, and a new lake. Art in this area should include interactive and functional art that can create a buzz on social media and will enhance tourist appeal.

HISTORIC NEIGHBORHOODS

Avondale is home to three recognized historic neighborhoods: Old Town, Las Ligas/Rio Vista and Cashion. Each neighborhood has its own distinctive heritage and story that should be celebrated. Old Town is the long-time commercial hub of the community that continues to attract residents and visitors to its unique restaurants, shops and businesses along Western Avenue, Central Avenue, Main Street and Dysart Road. Las Ligas is a largely residential area with excellent views of the Estrella Mountains at Lower Buckeye Road and El Mirage Road. Cashion's proud history creates a community within the community along Buckeye Road between 107th Avenue and Avondale Boulevard. Art in historic neighborhoods should be organic and encourage street art that tells the story of the area while enhancing community pride and sense of place, in honor of the City's rich cultural heritage and history.



GATEWAY INTERSECTIONS

Gateway art serves both an aesthetic and functional purpose, signaling when an individual arrives in Avondale while instantly communicating a message about the community. Gateway signs are located at many intersections across Avondale, but survey respondents mentioned that they would like to see additional gateway signage. Gateway signage should continue the pattern of existing gateway signs. Key gateway intersections include:

- ▶ Buckeye Road and 107th Avenue
- ▶ Lower Buckeye Road and 107th Avenue
- ▶ I-10 and Avondale Boulevard
- ▶ I-10 and Dysart Road
- ▶ 99th Avenue and Indian School Road
- ▶ Dysart Road and Indian School Road
- ▶ El Mirage Road and Indian School Road
- ▶ Dysart Road and Thomas Road
- ▶ Van Buren Street and Central Avenue
- ▶ Main Street and Litchfield Road
- ▶ Litchfield Road and Lower Buckeye Road

RACING AND NASCAR

Avondale is the home of Phoenix Raceway, which has been a part of Avondale since 1964. In recent years, the partnership between Phoenix Raceway and Avondale has flourished, and the City recognizes the importance of Phoenix Raceway and its thousands of visitors annually. In 2020, NASCAR designated Phoenix Raceway as home of the NASCAR Championship Weekend, and again in 2021 and 2022. The NASCAR theme transcends geographic boundaries and is celebrated throughout Avondale. The NASCAR mural at the Boys and Girls Club and checker flag theme crosswalks are current examples. Public art should elevate the NASCAR experience that guests enjoy when visiting Avondale.

HEALTHCARE CORRIDOR

The Healthcare Corridor encompasses McDowell Road from 99th Avenue to Dysart Road and is home to scores of healthcare businesses. The area continues to grow with new healthcare development and unique quality of life amenities and destinations, such as new restaurants, hotels and entertainment venues. Recent additions include Bio Life Plasma, AKOS Medical Campus, Clear Sky Health, and the expansion of the Phoenix Children's Hospital Southwest Valley campus. Healthcare related art in this corridor includes traffic box wraps. Art in this area should highlight the social and economic impact of quality healthcare in the community.

TRES RIOS

South Avondale is home to the unique Tres Rios and Base and Meridian wildlife area, the confluence of the Salt, Agua Fria and Gila Rivers. The area is popular with bird watchers, kayakers, fishers, and others looking for outdoor recreation. The Phoenix Raceway is also located in this area. Art in this area should accentuate nature and the natural beauty in the area like birds, wildlife, mountains, etc. Art can also celebrate NASCAR.

TRAILS

Avondale is investing in pedestrian trails and walkways throughout the community, particularly the Agua Fria trail and the Van Buren Trail. Art can enhance the pedestrian experience and make the trails a regional attraction. Art along the trails should be pedestrian-oriented and celebrate the natural area.

PILLAR 2 GOALS: CELEBRATE CULTURE AND HISTORY

Goal 1: Document existing inventory of cultural and historic art and create a medium for the public to be able to appreciate and interact with it.

Goal 2: Create a neighborhood beautification program to preserve and add to existing, organic community art.

Many physical examples of Avondale's heritage are evident throughout the City. Monument Hill, the initial survey point for the state of Arizona, is located to the east of Phoenix Raceway and serves as the point of reference for most of the public land surveys conducted in Arizona and as the basis for patents issued by the US government. The City has long range plans to develop a trail system to access this important feature. Another key piece of Avondale heritage is the Goodyear Farms Historic Cemetery located on Santa Fe Trail. Avondale is committed to preserving this historic asset by restoring the beloved *Cementerio Mural* by artist Victor Caldee. In addition, Avondale dramatically enhanced this City's jewel with a grand entryway gate that was designed to pay tribute to the migrant cotton farm workers contributions to the community. Titled *Algodon*, West Valley artist Joe Tyler created a metal arch decorated with "cotton blooms," representing the hard work and sacrifice of the migrant farm workers who worked the cotton fields of the Southwest Valley during the early part of the last century.



AVONDALE PUBLIC ART MASTER PLAN

The source of Avondale's history and roots as a farming community started with its life source, water. The Tres Rios Nature Festival pays homage to Avondale's ecological history with an annual two-day event, the Tres Rios Nature Festival. Each year the art commission funds activities that are designed to foster the preservation of natural resources. In 2017 river rocks were collected by the youth who added messages that were installed in the gabion cage style sculpture called *Tres Rios* that is currently located near the Randall McDaniel Sports Complex on The BLVD.

New public art installations should continue the trend of telling the story of Avondale's culture and history, including the Native American tribes, original pioneers, hardworking migrants and today's exciting diversity of people from across the world that choose to call Avondale home.



PILLAR 3 GOALS: ENCOURAGE COMMUNITY INVOLVEMENT

Goal 1: Explore ways to increase engagement with the regional artist community to create a unique artist driven destination or development.

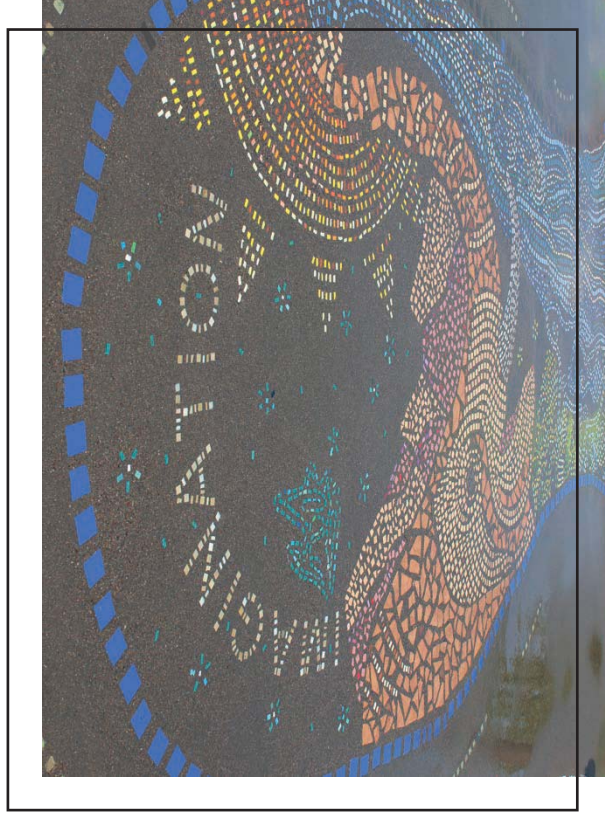
Goal 2: Create unique connections and opportunities with education and non-profit art agencies to highlight local artist work on a regular basis.

Avondale's Public Art Program seeks to encourage community involvement at all levels. Youth are especially encouraged to be involved and to pursue art education. Since 2001, Avondale has participated in *Gallery 37*, West Valley Arts' award-winning youth arts apprenticeship program for teens. An expert team of master artists lead the six-week program and provide all necessary training and support in each phase of the art project. *Gallery 37* projects can be found all around the City. In 2016 *Chelonia* the turtle came to life through a litho-mosaic technique designed as a splash pad as part of the improvements to Friendship Park. In 2020 Avondale collaborated in its ninth *Gallery 37* project to bring to life a *Bugs Eye View* at the newly remodeled Festival Fields Park.

The culture of Avondale, its character and identity, is defined not only by its history and customs, but by its fabricated and familiar surroundings. The City implemented several programs that support arts education and enrichment, such as the annual art contest that provides scholarship funds to further the education of high school seniors, particularly in the field of art. In 2016 the City initiated a sponsorship program to disburse grants to non-profit educational activities that directly benefit citizens of Avondale. The Hometown Heroes Banner Program created by the Avondale Municipal Art Committee, serves to pay tribute to the Veterans of Avondale.

Art involvement at City events have been a part of Avondale's culture, with partnerships with local non-profit agencies. One such public outreach initiative includes the WHAM bus at special events, offering children the opportunity to partake in creative expression and to raise awareness of Avondale's public art program. Looking towards the future there are several ways that community involvement can come into play. Art festivals will be considered to inspire the artistic community to collaborate. Tours of Avondale's public art collection, including the creation of an interactive "Art Walk" map, may bring the community together to enjoy art. Art exhibitions and "Meet the Artists" events may be organized. Colorful murals, open spaces, sidewalks, and alleys could lead to inspiring community involvement and beautification projects. The BLVD parking garage can house a temporary mural project as a seasonal exhibit.

New public art installations should actively pursue creative ways to encourage artists of all ages to get involved. Special care should be taken to identify artists in the community that are not currently involved or are from underrepresented populations and urge them to find methods to use their skills to enhance Avondale's unique sense of community.



PILLAR 4 GOALS: CURATE INTERACTIVE ART ELEMENTS

Goal 1: Create an interactive public art destination at major visitor destinations, such as Old Town/Western Avenue, Tres Rios, The BLVD, and Phoenix Raceway.

Goal 2: Explore ways to enhance new and current art installations with social media and evolving new media.

Emphasis on beauty, aesthetics, human comfort, and creating a sense of place with special induction of civic uses and sites within community is key. The BLVD is envisioned as Avondale's trendy urban-designed development that exemplifies a high quality of life, and creates places that enrich, uplift, and inspire the human spirit. In the age of digital media, the "photogenic moment" is an artistic trend that keeps growing. With the advancements in digital media technology, leveraging social media and collaborating with the digital audience through user-generated content is the future of digital media engagement. Avondale can leverage social media and user-generated content to capture the beauty of the City from the point of view of the beholder. Today's digital tools can elevate Avondale as an arts destination, with mobile applications that bring art to life. As an example, virtual art tours can allow citizens to interact with public art by augmenting physical and virtual reality. Public art can be showcased using a variety of interactive tools such as virtual art to location-based arts.

New public art installations should enhance user interactivity and help augment the tourist offerings found throughout Avondale.

PILLAR 5 GOALS: ENSURE LONG-TERM ART SUSTAINABILITY

Goal 1: Explore additional opportunities for public art and the inclusion of additional project types as required by the zoning ordinance.

Goal 2: Ensure public art is a component of major construction and infrastructure projects where appropriate.

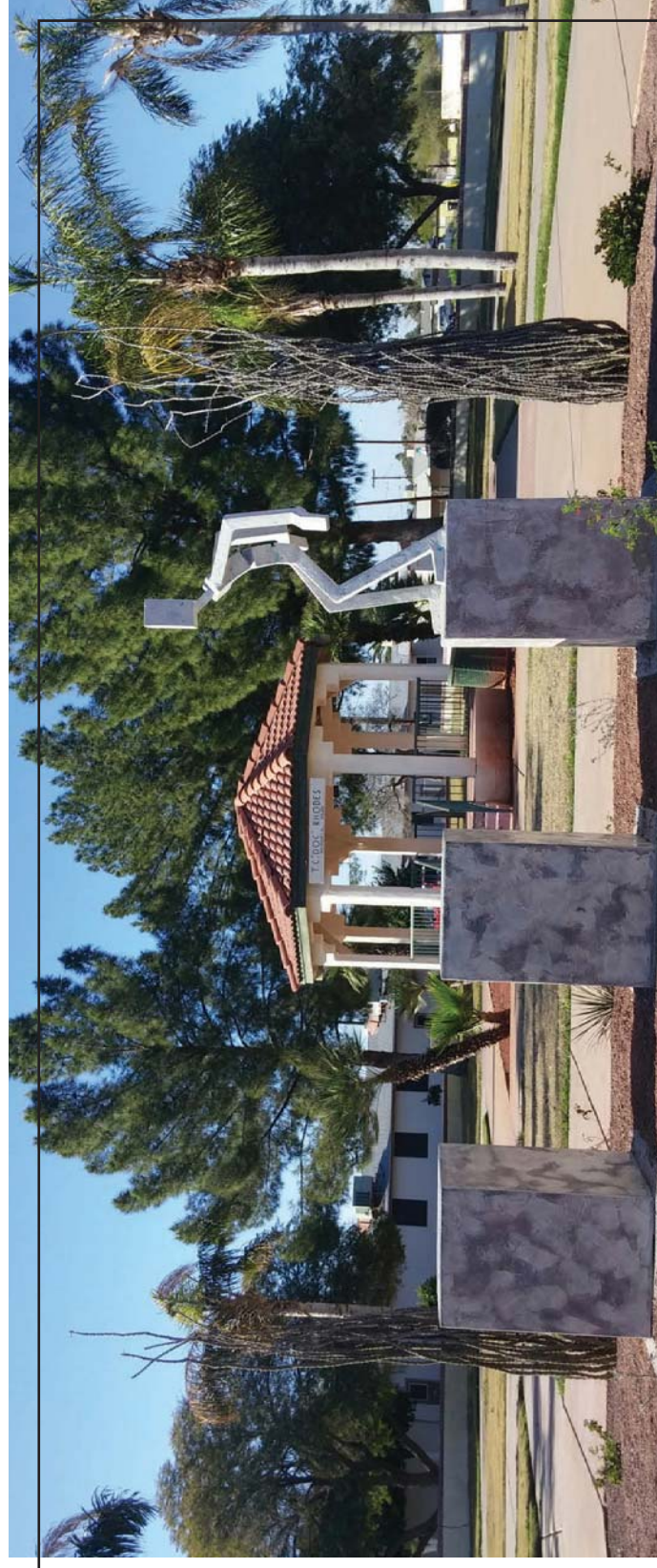
Goal 3: Major art installations should be included in the City Capital Improvement Plan (CIP).

Funding will play a key role in shaping the future of public art in Avondale. To sustain and expand upon the Public Art Program, it will be necessary to evaluate the current funding options, and seek out other fiscal and collaborative opportunities to continue to develop a strong public art program to enhance the quality of life and culture in Avondale.

THE FUTURE OF PUBLIC ART IN AVONDALE

Just as the City itself is ever-changing, so has Avondale's Public Art Master Plan evolved over the past two decades. This document is not intended to be prescriptive, rather it brings to light the guiding principles within which the City will approach public art. The 2021 Public Art Master Plan is relevant to the community as it is today and will likely remain so for the next decade. It is important to acknowledge that shifting social issues and social trends, advances in technology, City priorities, and other factors can have an impact on the direction that public art takes in the community.

The excitement, enthusiasm, and vision for public art in Avondale is accelerating the pace of public art projects and initiatives in the community, and it is incumbent upon City leadership and staff to seize upon the myriad of opportunities that are present for infusing this dynamic and growing City with creative and artistic expressions of its ever-changing landscape, economy, people and culture.



APPENDIX A
PUBLIC ART POLICY
GUIDING PRINCIPLES

THE PUBLIC ART PROGRAM

The Public Art Program (PAP) was established in 2005 to enhance the visual and aesthetic quality of the community, as well as enhance property values and residents' quality of life. The PAP is a broad-based program that incorporates the Public Art Policy which outlines roles and responsibilities of the City, the Avondale Municipal Art Committee (AMAC), and private development; the type, placement, and criteria of public art; and the selection and administration of the City's public art collection.

THE AVONDALE MUNICIPAL ART COMMITTEE

The Municipal Art Committee (AMAC) was first formed in January 2006 and was charged with oversight of the PAP with staff support, recommending projects, design concepts or specific purchases, as well as placement of the public art.

The AMAC consists of ten (10) members – seven (7) regular, one (1) alternate member and two (2) ex-officio members representing arts and education organizations. The AMAC is responsible for making recommendations to City Council concerning the accession, maintenance, conservation, and deaccession of Avondale's Public Art Collection.

The mission of the AMAC as prescribed by the City Council is to:

- ▶ Provide visual art that complement public buildings, parks and plazas
- ▶ Create a sense of place which enhances community identity
- ▶ Improve the design quality of public infrastructure as well as the visual environment for the residents of Avondale
- ▶ Pursue funding and resources for public art
- ▶ Recommend policies and procedures concerning public art
- ▶ Cooperate with existing public and private agencies to develop programs to further development and awareness of art.

To ensure that public art reflects the character, aspirations and sensibilities of Avondale, AMAC will at various times seek community input from residents, neighborhood associations, civic leaders, business leaders, and other community leaders.

It is the intent of the AMAC to identify and implement public art works that provide opportunities for memorable places, objects, spaces, and experiences. In keeping with existing city planning goals, Avondale's art policy calls for the following:

- ▶ Provide public art in buildings and public spaces;
- ▶ Promote Avondale as an arts destination and a part of the larger West Valley through public art
- ▶ Provide a structured process to acquire public art through donations of money, or direct donations of works of art;
- ▶ Provide for maintenance of public art throughout the city; and
- ▶ Educate the citizens of Avondale and visitors about local culture and history through art.

FUNDING FOR PUBLIC ART

On August 18, 2008, the Avondale City Council passed a Percent for the Arts Ordinance number 1324-808 relating to public art. The purpose of the ordinance is to beautify the community with a wide range of artistic elements. The ordinance can be found on the City of Avondale Planning website in the Zoning Ordinance.

The Marketing & Public Relations Department will manage the budget of the public arts program. Annual funding for public arts will be included in the annual adopted budget approved by the City Council. Additional funds from grants, foundations, or other sources will be pursued to further art in the city.

The following are options that may be considered to expand the opportunities for financial resources to support public art in the City of Avondale. Possibilities include:

- ▶ Grant and foundation funding;
- ▶ Public/private partnerships;
- ▶ Private business development required to pay a percentage of project cost to a Public Art Fund
- ▶ Donations and gifts of money and/or works of art;
- ▶ Including a public arts component in future parks, building, and other public facing capital projects
- ▶ Direct appropriation of city resources through the annual budget process

GUIDELINES OF SELECTING PUBLIC ART

When selecting public art, AMAC will consider the following objectives as guides to the identification and selection of artists and the process and implementation of artworks.

- ▶ Create and enhance the image of Avondale;
- ▶ Educate citizens about local culture and history, and provide a means to expand the boundaries of artistic endeavor in keeping with Avondale's history of creativity and exploration;
- ▶ Reflect and express the core community values including cultural and other diversities, community heritage, and history;
- ▶ Integrate into all aspects of the community;
- ▶ Include thoughtful and inclusive community participation;
- ▶ Ensure that the addition of public artworks to the urban landscape be flexible, timely and relevant in context to the sites, and audiences they address;
- ▶ Showcase regional, national, and international artists;
- ▶ Integrate the work and thoughts of Avondale's design professionals and artists into the planning, design, and development;
- ▶ Create distinct places, spaces, and objects, and further Avondale's unique sense of place;
- ▶ Embrace and further Avondale's image as a city to visit, explore, and enjoy as well as a highly desirable place to live; and
- ▶ Recognize that public art is an economic tool as well as a cultural one

ROLE OF CITY STAFF

Recognizing that the AMAC is comprised of volunteer members who bring varying degrees of expertise or knowledge in public art, Avondale city staff play a key role in helping to manage and implement the vision, policies and annual action plan of the AMAC. The AMAC is staffed by city professionals who assist with the coordination of their regular meetings, and perform a myriad of tasks related to public art administration, while other experts from City departments – engineers, planners, procurement and accounting, facilities management, parks and recreation etc. – are critical to the success of the Public Art Program.

PUBLIC ART TYPOLOGIES AND CRITERIA

Public art generally falls within one of two categories:

- ▶ Permanent/Long Term Art; or
- ▶ Temporary/Rotating Art

PERMANENT/LONG TERM PUBLIC ART

Permanent/Long Term Public Art generally refers to works of art that remain in the City's collection longer than 18 months and may have a permanent placement or be rotated to different locations if it is not site specific. If they are site specific, they should be integrated into the site's architecture or other development component as approved by the City and AMAC and shall involve artists in the design, construction, and installation of the permanent work of art. Purchasing or otherwise acquiring existing pieces of public art are also possible.

When the City of Avondale provides funds for permanent art—ownership, management, and maintenance of the art shall be clearly established prior to the release of funds. This is especially important to consider when utilizing partnerships where funds for a piece of art are derived from multiple sources.

Works of art will be acquired by the City in accordance with a predetermined selection process and will become a part of its collection.

Temporary/Short Term Public Art refers to works of art that remain in the City's collection for 18 months or less and may be owned by the City or on loan from another collection. These works of art are generally those that are nonpermanent in intent and application, and are most likely not site specific, however they shall be approved by the City and AMAC prior to installation. Therefore, the artist(s) are not involved with development or capital improvement projects as a design team member. However, temporary/short term art must take into consideration the existing and/or proposed setting of its location to ensure specific physical and environmental conditions and constraints are compatible with the work of art, and to ensure it will be protected in its existing condition for the duration of its exhibition.

If the AMAC pays a fee for the temporary/short term work of art and it is constructed in a way that allows for it to be displayed permanently, the AMAC may recommend the work of art be added to the City's permanent public art collection. Any fees previously paid to the artist for the temporary/short term work of art shall be applied to the purchase price of the work.

Examples of temporary/short term public art may be works of art commissioned to be displayed in vacant store windows, with permission from the owner; until such time that the building becomes occupied.

PUBLIC ART CRITERIA

Site locations for permanent/long term and temporary/short term will be selected based on suitability; visibility; and their ability to protect, accept, and adequately showcase the specific work of art. Both outdoor and indoor settings will be included. The AMAC will identify potential sites throughout the city for staff's and City Council's evaluation. Interpretative information about the artist, artwork, project duration, and an artist statement will be included at each site.

Each piece of public art will have documentation that describes the access, lighting, identification, public information, publications and other materials necessary for the public to enjoy and embrace the work of art.

The City of Avondale and AMAC have a responsibility to see that a minimum level of interpretation relating to all artworks owned by the City is conveyed to the public. Interpretation refers to the manner and methods by which information about the artwork is shared. This includes:

- ▶ **Physical and Visual Access** – The artwork must be in a location that is easily accessible to the public. Public buildings, shrubbery, signs, or other natural or man-made features or structures must be maintained and must not impede access physically or visually to the artwork.
- ▶ **Lighting** – As appropriate, the artwork shall be illuminated so that it can be seen at night.
- ▶ **Identification** – The artwork should be clearly identified in writing, including title, artist, date, donor (if applicable), and any other information deemed appropriate. A label, plaque, sign, or other means of communicating such information should be installed near the artwork, though its design must be sensitive so that it does not detract from the artwork itself.
- ▶ **Public Access to Information** – Accurate and up-to-date records on all artworks will be maintained by the Community Relations & Public Affairs Department. Such records will be available to the public. Whenever possible, information about artworks will be posted on relevant websites, databases, and/or art industry online forums and email exchanges.

The scale, application, and venue of these projects will vary, but in general will fall into four categories of scale and seven categories of application as discussed below.

PUBLIC ART SCALE CATEGORIES

- ▶ **Intimate** – provides moments for discovery, surprise, or personal interaction. These works of art may not be immediately recognizable but happened upon or engaging the viewer in an intimate conversation. Examples might include words, poetry, or pictographs inlaid in functional elements or places, as well as sound and visual experiences that create moments of pause, reflection, and serenity.
- ▶ **Pedestrian** – engages at a pedestrian scale. This includes all types of media and experiences that function for and interact with walkers, strollers, cyclists, roller bladders, and other pedestrian activities.
- ▶ **Vehicular** – engages at the vehicular scale. This includes all types, media, and experiences that function for or interact with auto, motorcyclists, and transit riders.
- ▶ **Monumental** – is grand in scale and initially engages viewers from a distance. Although these works may also be created to work at an intimate, pedestrian, or vehicular scale, they are generally most effective when viewed from a distance—allowing understanding of their entirety—as illustrated by these signature buildings.

APPLICATION CATEGORIES

- ▶ **Sculptural** – three dimensional and free-standing art elements in either an indoor or outdoor setting. They may be visually engaging, functional, or interactive in nature.
- ▶ **Environmental** – engages or becomes a part of the landscape or environment. Generally, consists of elements of nature (i.e., vegetative or landscape forms, landforms or earthworks, hydrological works, etc.).
- ▶ **Contextual** – seamlessly engages or integrates within the urban and community fabric although artistic in intent and application. Examples include, artist designed floors, paving patterns, lighting designs, or other integrated works.
- ▶ **Functional** – provides function for people or place either through application of existing elements or by becoming functional elements. Examples include, seating components, transit stops, lighting standards, water features, cellular towers, bridges and water towers.

- ▶ **Serial** – are repetitious, sequential, continuing, culminating or way finding experiences. These artworks are viewed as a collection of individual components, or community punctuations that, when applied in a serial manner, create an interactive journey through a particular place. Examples include a series of words on steps that creates a poem or story, or a series of artworks on a path, sidewalk, or road.
- ▶ **Decorative** – are applied to an existing situation or place as add-on components. These artworks embellish or decorate the urban fabric. Examples include artist paintings on already existing furniture or walls, or application of tile, glass, and other media to existing surfaces.
- ▶ **Interactive** – create opportunities for engaging people. Although they may have visual or auditory stimulation at an independent level, these works are created with a specific intention for user participation and are most successful during interaction. Examples include a sound-work that is activated by pedestrian footsteps on a pathway, or a water feature that invites people to play.

COMMUNITY PUBLIC ART CREATION PROJECTS

Community public art creation projects shall provide opportunities for community engagement and participation. Community public art can be created by groups of students or citizens (children and adults) as well as professional artists and shall be approved by the City and AMAC prior to installation. There is no need for exceptional expertise to participate in these projects. Community art projects are dictated by their do-ability and are not so complex that they deter community participation.

- ▶ They may move or be in multiple locations in the city. (As with all art, careful consideration should be given to the installation of the projects to ensure their security during public display.)
- ▶ They may be sold at the end of their public display period.
- ▶ They may be sponsored by businesses, corporations, or organizations and the projects/works could be displayed in the general vicinity of the sponsoring party.
- ▶ Groups outside AMAC can conceptualize and execute community art projects.
- ▶ AMAC will consider stipends for professional artists involved either directly or as supervisors of community art projects.

PUBLIC ART PLACEMENT

Public art placement and locations will be determined by the ability of the site to accommodate art as an improving element. The basic premise of these projects is that they will improve and enhance the appearance of the sites where they are located.

- ▶ As sites are identified, AMAC will solicit project concepts from artists or organizations.
- ▶ These projects should be limited to public space but may be placed in or on privately owned property with permission from the owner.
- ▶ Artists proposing existing site projects may solicit sponsorship from site owners, where appropriate and with permission from the owner.

PUBLIC ART PROJECT TYPES

AMAC has identified seven types of venues for permanent and long-term art concentration. They are:

- ▶ Gateway Projects
- ▶ Streetscape Projects
- ▶ Neighborhood Projects
- ▶ Park and Community Center Projects
- ▶ Community Wide Projects
- ▶ Building Projects
- ▶ Infrastructure Projects

Gateway Projects – welcome people to and identify unique/special areas. Artworks may be used to enhance the character and distinction of an area by either marking or defining boundaries and/or entrances into Avondale, unique/significant districts, and individual neighborhoods. Gateway Projects offer an opportunity to signify and identify places and enhance, enrich, and orient the community's landscape. In addition, Gateway Projects can target key intersections, bike paths, and trail systems. In general, these projects are viewed as larger in scale and broader in application.

- ▶ **Primary Scale Categories:** Vehicular, Monumental and Limited Pedestrian
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, or Serial

Streetscape Projects – connect people to places. They serve to improve the visual character, comfort, and circulation ease of the city through exceptional design in physical amenities such as street furnishings, seating, trash receptacles, lighting, signage, paving patterns, and plantings. Because many of these amenities are considered design standards for urban environments, substituting these amenities as public art projects is neither a mental nor financial leap for decision-makers. Funds set aside to purchase these amenities can instead be used to create more aesthetically pleasing and pedestrian friendly features and places.

- ▶ **Primary Scale Categories:** Pedestrian, Limited Vehicular and Intimate
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Functional, Serial, Decorative, or Interactive

Neighborhood Projects – bring people together. These projects will enhance shared experiences, celebrate community diversity, record community history, identify unique flavor and authenticity, and create neighborhood distinction. Neighborhood signage is an example of celebrating a district and designating a neighborhood's boundary.

- ▶ **Primary Scale Categories:** Pedestrian, Limited Vehicular and Intimate
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Functional, Serial, Decorative, or Interactive

Park and Community Center Projects – engage people. Artworks for parks and community centers will recognize the leisure activities accommodated at individual sites. Park sites are envisioned as opportunities for artworks that offer tactile experiences, invite interaction or participation, establish resting places or focal points, or respond to natural elements or landscape features of the site.

- ▶ **Primary Scale Categories:** Monumental, Pedestrian, Limited Vehicular and Intimate
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Functional, Serial, or Interactive

Community-Wide Projects – orient people. These artworks will promote the city's history, present and future, make beautiful places, ease circulation and way finding, celebrate cultural diversity and expression, foster community pride, and most importantly create memorable places and experiences. Memorable places and experiences provide recollection, further city identity, and orient both residents and visitors to a sense of place.

- ▶ **Primary Scale Categories:** Monumental, Vehicular, Pedestrian, and Intimate

- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Functional, Serial, Decorative, or Interactive

Building Projects – attract people. Distinctive and aesthetically designed buildings are more desirable and user-friendly spaces. Where possible, public artworks addressing this area will be included in capital budgets at conception and will include AMAC as part of the collaborative design team. In general, artworks will be site specific and may be signature buildings or integrated into the building and built at the same time as the building.

- ▶ **Primary Scale Categories:** Monumental, Intimate, and Pedestrian
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Functional, Serial, Decorative, or Interactive

Infrastructure Projects – instill pride in and enhance living conditions for people. While infrastructure commonly refers to public work projects such as roads, power and water systems, and public transportation, AMAC encourages a wider definition of the word to include a cultural infrastructure. Infrastructure elements, components, and projects can be designed so the value of specific service elements such as storm sewers, water distribution mains, freeway overpasses, and solid waste transfer stations become pleasing public symbols of community pride.

- ▶ **Primary Scale Categories:** Vehicular, Limited Monumental and Pedestrian
- ▶ **Primary Application Categories:** Sculptural, Environmental, Contextual, Serial, or Decorative

PUBLIC ART SELECTION PROCESS

The following criteria will be used as the City's standard for all public artists and artworks considered for inclusion in Avondale's public art collection.

SELECTION CRITERIA

Collaboration – Projects should promote collaboration between the selected artist and the City as well as with any other design professionals involved in the process. This collaboration shall occur from the beginning of the design process.

Visibility – Artworks should be located in areas where residents and visitors live and congregate or be highly visible to as many of Avondale's citizens and visitors as possible.

Accessibility – Artworks shall be accessible to all. Access shall comply with provisions of the Americans with Disabilities Act as well as local and state laws.

Quality – Project materials and design shall be of the highest quality to ensure the enduring character of the artwork and eliminate the need for unusual maintenance. Artwork deliberately designed to oxidize, change texture color or shape as part of its original concept and design should have it noted as such in writing and presented to AMAC as part of the artist's original proposal.

Appropriateness to Site – Artworks should reflect the uniqueness of Avondale and be designed with respect to scale, material, and character of the site. The artwork should take into consideration the immediate host structure or space, and as appropriate, the surrounding built and natural environment. In addition, vistas, history of the site and community, social dynamics of the site, and any future planned neighboring structures and uses should be considered. The artwork must meet City standards for encroachment on public rights-of-way.

Safety – Artworks shall be designed and installed to comply with all local, state, and national building codes (including the International Building Codes); and as required by the City's approved standards and policies; to protect the health, safety, and welfare of the public.

ACQUISITION TYPES

AMAC is responsible for making decisions as to the management, accession, maintenance, conservation, deaccession, and interpretation of the works designated as part of the Public Art Collection. Management, maintenance, conservation, deaccession are discussed in Section 4.6, Public Art Collection Administration. Acquisition and interpretation are discussed below.

Commission – refers to the contracting of an artist to create a new original artwork for a specific site or project that becomes part of the Public Art Collection. Artist Review Panels may be appointed by the AMAC to evaluate and recommend artists for a commission. In addition to members of AMAC, the panel may include City of Avondale staff members, the community at large, artists, and members of the community.

Open Competition – or a "Call to Artists" for a specific project may be used in conjunction with a review panel or in lieu of a review panel. Artists will be asked to submit evidence of past work, credentials and/or proposals. Calls for entries for open competition will be sufficiently detailed to permit artists to determine whether their work is appropriate to the project under consideration.

Limited or Invitational Competition – may also be used for a specific project. Artists shall be invited based on their past work and exhibited abilities to meet the goals for a specific project.

Direct Selection – by AMAC may also be used for a specific project.

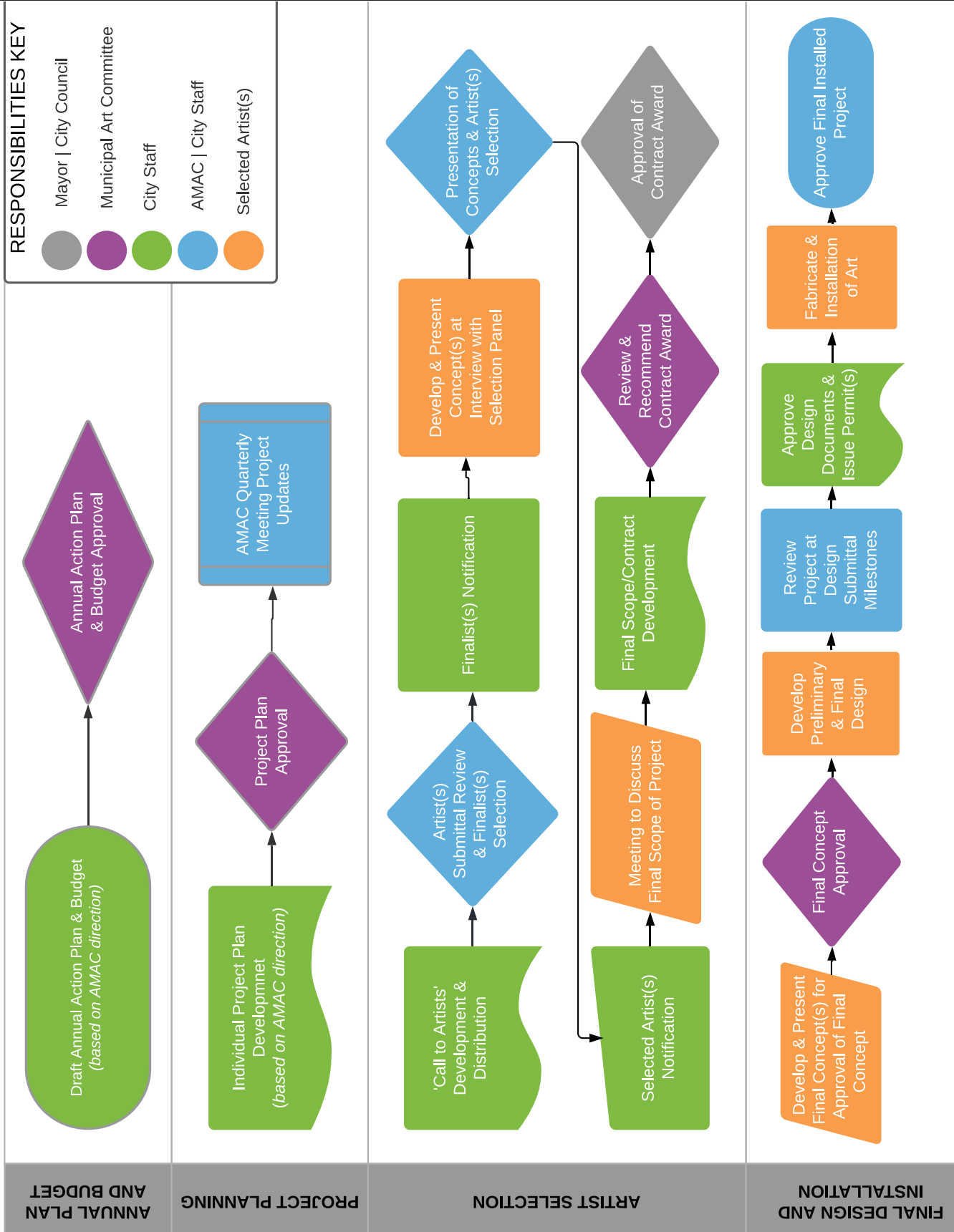
Purchase – of an existing artwork for a project or site may be used in lieu of commissioned artwork, when such a piece meets the goals and objectives for the site and is available for purchase. Such purchases will be as deliberative as those for commissioned works of public art.

Loan – works of art may be placed at an Avondale site on loan from another collection. The artwork would remain the property of the owner or artist. A loan agreement would be executed that would specify the details regarding the cost of packing, transporting, installation, insurance and maintenance of the artwork. The loan agreement shall state a specific term of the loan and the donor must complete a loan form.

Gift/Donation – artwork offered to the City of Avondale without direct financial obligation in assuming legal title will be considered a gift. The City will develop guidelines and procedures for accepting such gifts. The donor must complete a Deed of Gift which stipulates the conditions under which the artwork is transferred to the ownership of the City. The City and AMAC will select the appropriate location for the artwork and consider the liability issues associated with the artwork, including susceptibility to damage, danger to the public, or other special considerations. Consideration shall be given to the cost of installation and to the care and maintenance of the artwork. Not all gifts or donations may be accepted.

A typical public art project planning and selection process is outlined in the flow diagram on the opposite page, Figure 1.1, Annual Planning and Selection Process.

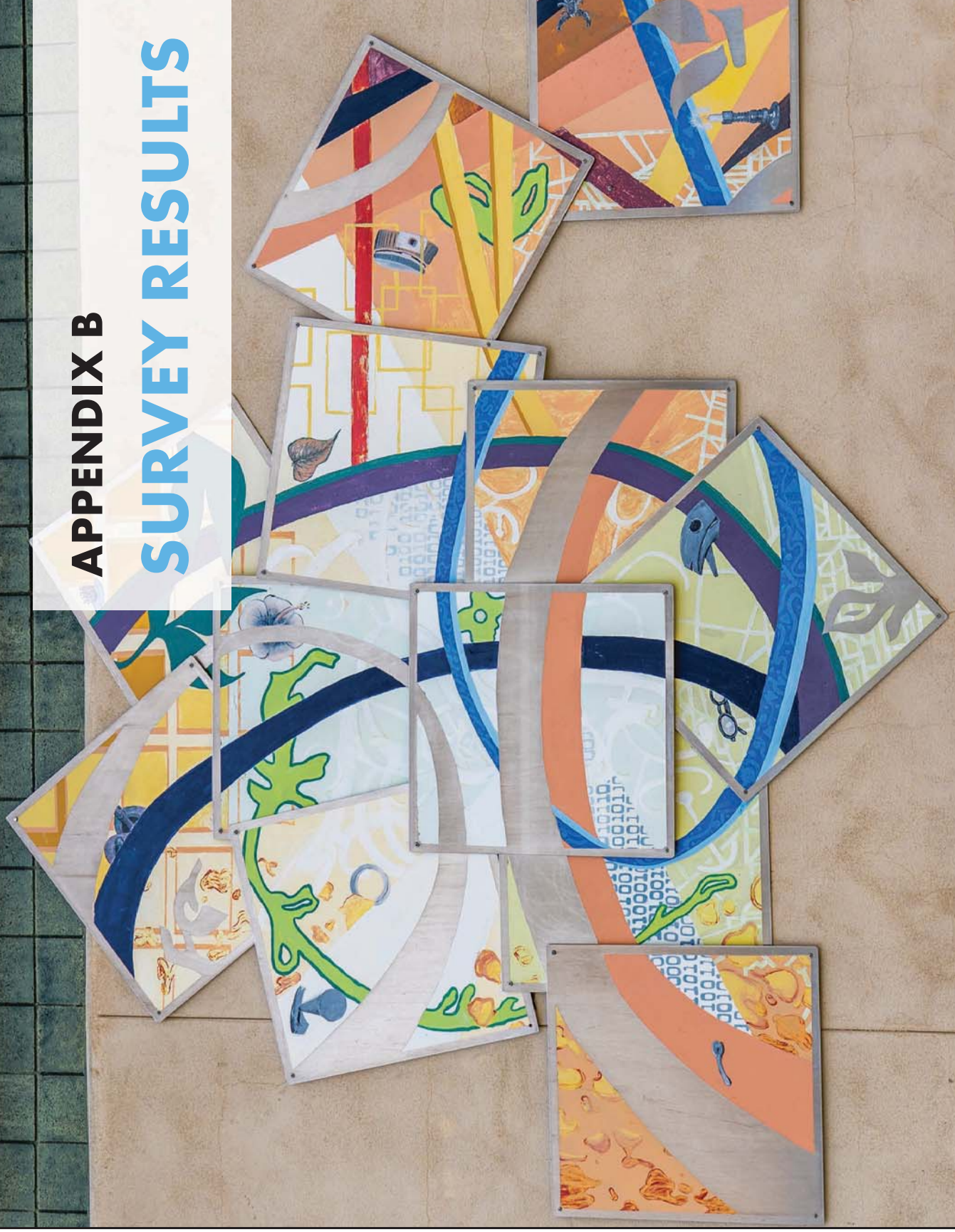
FIGURE 1.1, ANNUAL PLANNING AND SELECTION PROCESS





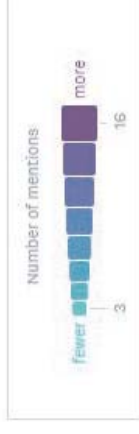
APPENDIX B

SURVEY RESULTS

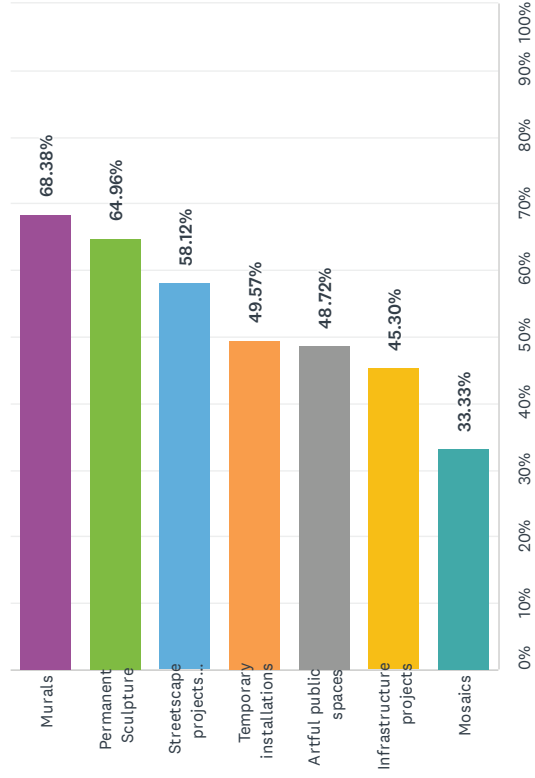


What three words would you use to describe Avondale?

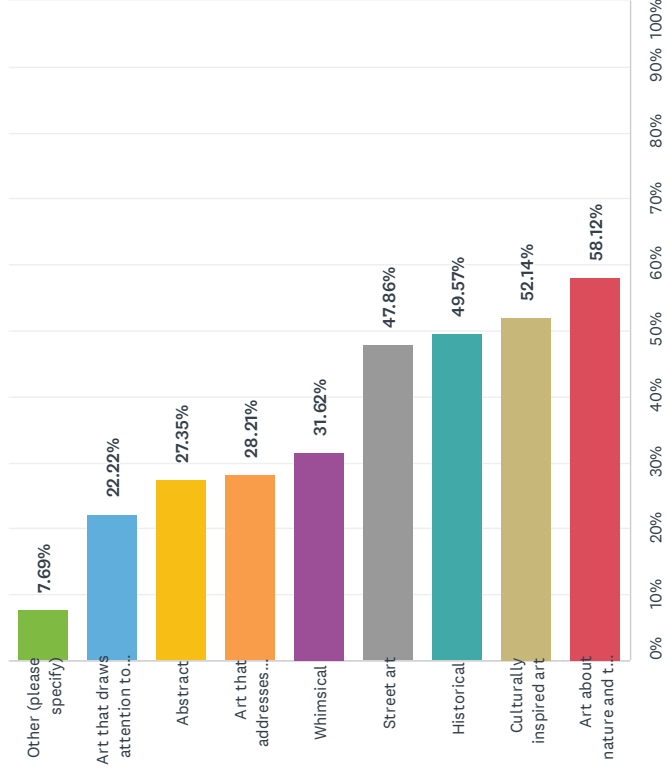
Growth eclectic Beautiful great proud small Young clean
friendly city community progressive Growing
Historic Family quiet Diverse Mountains Fun Quaint Home



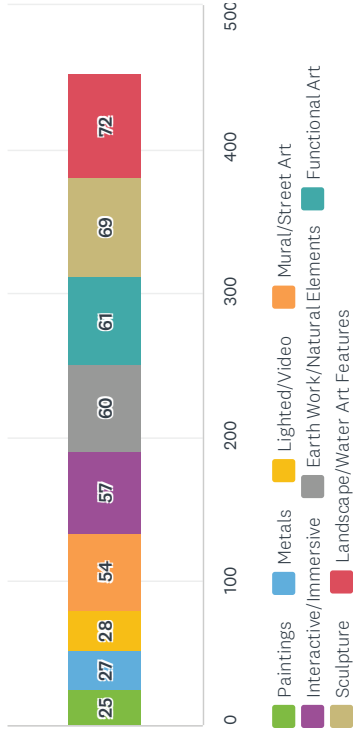
What kind of public art have you seen in Avondale?



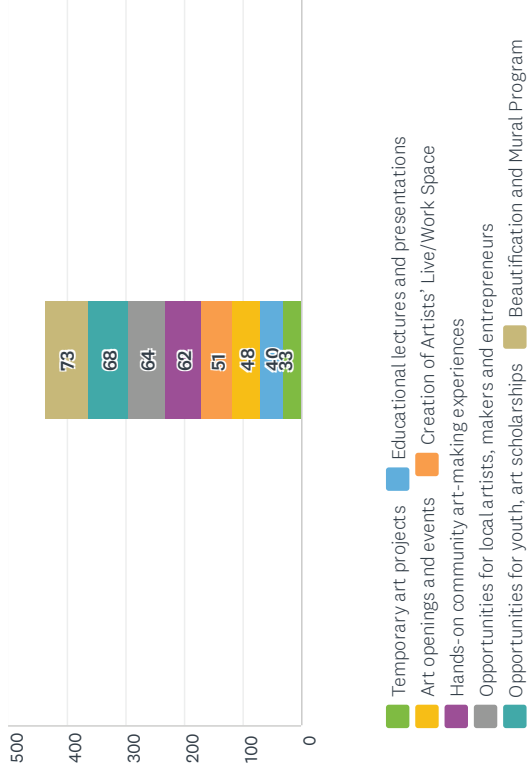
What type of art speaks to you?



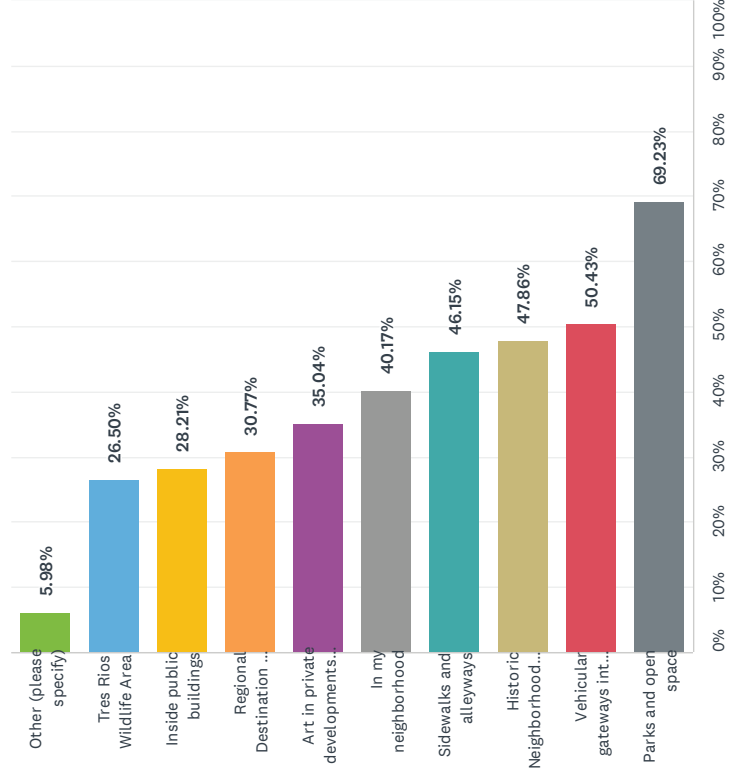
What type of public art media would you most enjoy?



What public art opportunities are important for Avondale?



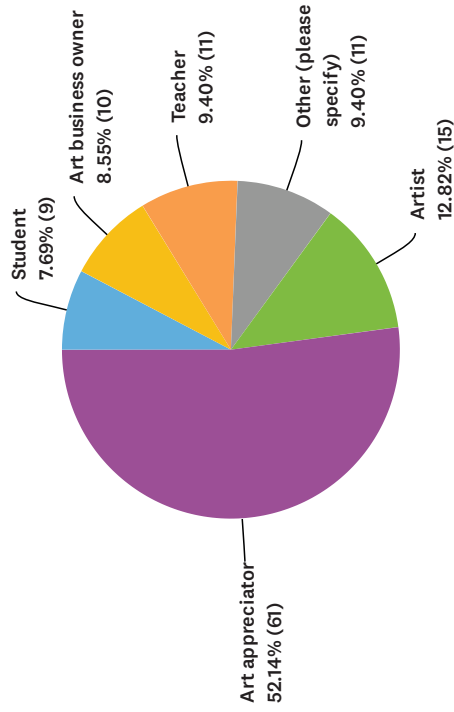
Where would you like to see art in Avondale?



Where do you go to enjoy art in the Valley?



What best describes your relationship to the arts?

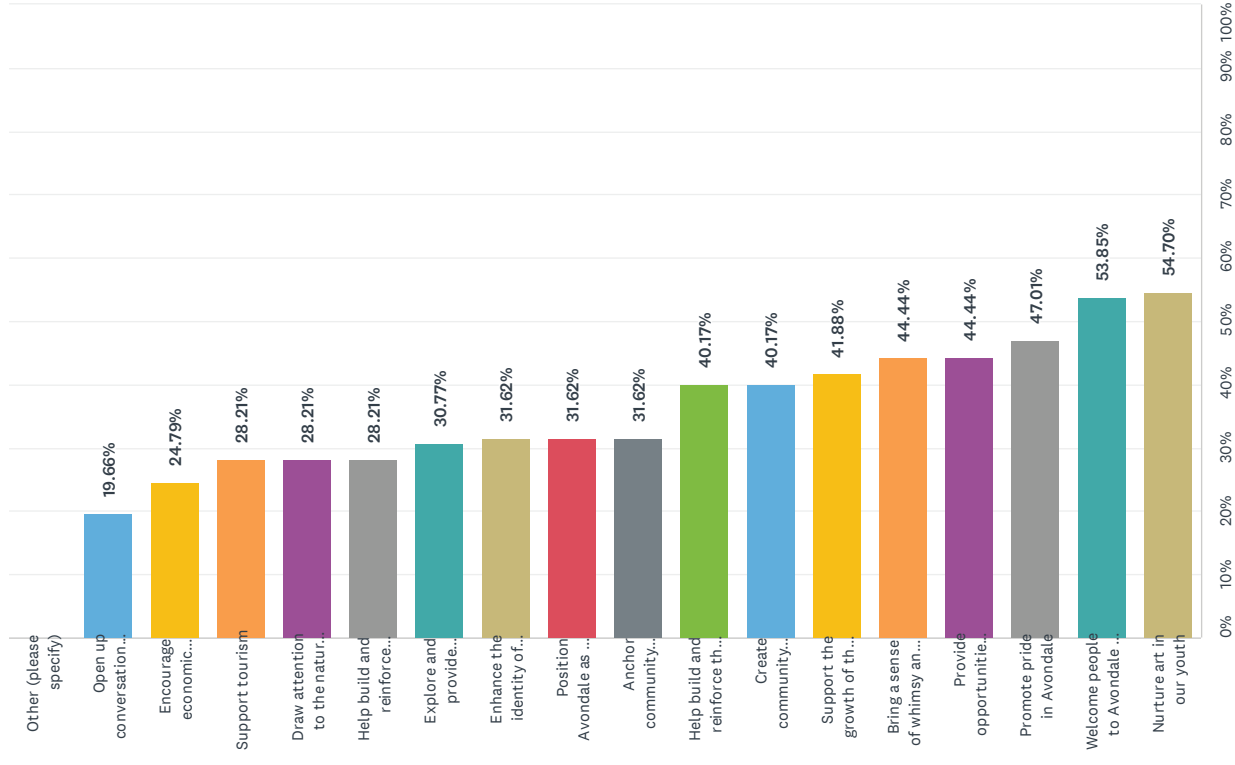


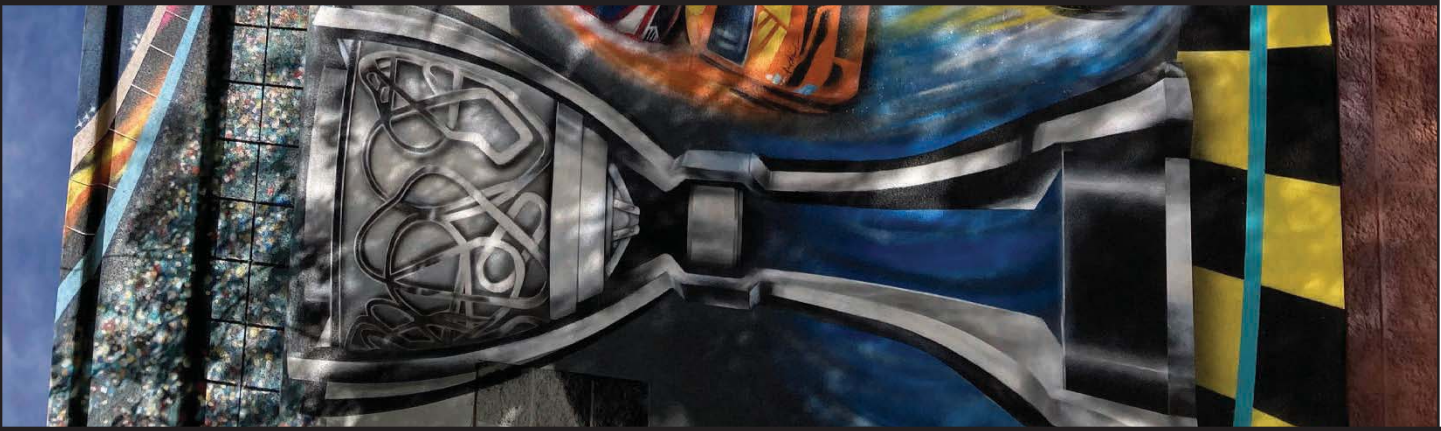
In what area or neighborhood of Avondale do you live?

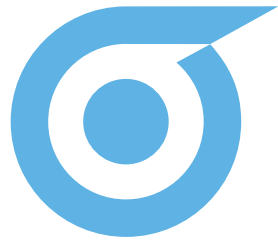
Garden Lakes LIVE Old town Roosevelt park Avondale
 Crystal Gardens sorry Las Ligas Rancho Santa Fe cashion
 Coldwater Springs work Phoenix



What ways are best to support the art community?







Avondale

Aspiring. Achieving. Accelerating.

PUBLIC ART MASTER PLAN

seeks to define Avondale as a unique sense of place, with a community identity that celebrates the past and embraces the future as a rich and vibrant arts and entertainment center celebrating the talents and culture of the people who live here.

City of Avondale, Arizona
www.AvondaleAZ.gov/art

CITY COUNCIL REPORT

SUBJECT: Resolution 1060-0821 - Updating the Sanitation (Solid Waste) Fee Schedule

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Keith Fallstrom, Interim Finance & Budget Director, (623) 333-2016

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Areas:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government. The proposed rates simplify the rate structure, which allows for improved understanding, easier maintenance, and the ability to use the latest utility billing software.
 - Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources. The proposed rates help ensure continued access to safe and secure solid waste services, which is vital to public health and safety.
 - Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning. Recycling, green waste, and other services provided by solid waste are vital to ensuring the preservation of the city's natural resources and open spaces.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1060-0821, approving a sanitation (solid waste) rate schedule and setting an effective date, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The adoption of the resolution is the final legal step in adopting revised Solid Waste rates. Work sessions on utility rates were held with City Council on May 3, May 17, and June 7 and public outreach meetings were held on May 12, May 18, and May 26. Required public notices and a report documenting the changes for Solid Waste rates was posted to the City of Avondale website, per ARS 9-499.15.

DISCUSSION:

The Solid Waste utility offers services for residents, but not commercial customers. The vast majority of customers pay \$20.00 a month, which covers once-a-week trash service, once-a-week recycling service, once-a-month bulk waste collection, and once-a-month green waste service. The last rate increase was implemented in January 2009.

Since the last rate increase, the Solid Waste utility has seen escalating costs related to personnel, fuel and fleet charges, landfill fees, and recycling. Since 2010, personnel costs (both compensation and additional staff) and landfill fees have increased by 50%. Additionally, recycling services 10 years ago netted the city approximately \$150,000 in revenue. With the changes in the recycling market, recycling disposal currently costs the City approximately \$150,000.

Considering these additional costs and looking at the long range fiscal sustainability of the Solid Waste Fund, staff recommends a \$2.00 increase effective October 1, 2021 and a \$2.00 increase effective July 1, 2022 for the one refuse container service. For the two refuse container service, staff recommends a \$3.00 increase effective October 1, 2021 and a \$3.00 increase effective July 1, 2022. Staff recommends removing the twice a week refuse service, as no customers are currently receiving this service.

BUDGET IMPACT:

The proposed rates will help ensure the solid waste utility remain fiscally sustainable and can continue to make strategic investments in infrastructure and operations.

RECOMMENDATION:

Staff recommends the Mayor and Council adopt a resolution for the proposed solid waste rates.

RESOLUTION NO. 1060-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, REPEALING RESOLUTION 2788-1208, APPROVING A SANITATION (SOLID WASTE) RATE SCHEDULE AND SETTING AN EFFECTIVE DATE

WHEREAS, the City of Avondale Municipal Code, Chapter 11, Sanitation Code, provides that fees for collection of refuse and recyclables may be adopted by a resolution of the Council of the City of Avondale (the “City Council”); and

WHEREAS, the City Council passed and adopted Resolution No. 2788-1208 on December 1, 2008, adopting fees for collection of refuse and recyclables; and

WHEREAS, the City provided (i) the schedule of the proposed increased fees, (ii) a written report supporting the proposed increased fees and (iii) written notice of the proposed increased fees by posting a Notice of Intent to increase Sanitation (Solid Waste) Fees (the “Notice of Intent”) containing the substance, and according to process, required by ARIZ. REV. STAT. § 9-499.15; and

WHEREAS, the Notice of Intent was posted and distributed as required by ARIZ. REV. STAT. § 9-499.15 on August 8, 2021; and

WHEREAS, the City Council desires to repeal Resolution 2788-1208 and adopt a new sanitation (solid waste) rate schedule.

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

SECTION 1. Resolution 2788-1208 is hereby repealed.

SECTION 2. The new fees for collection of refuse and recyclables shall be charged in accordance with the sanitation rate schedule attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. 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.

SECTION 4. This Resolution shall take effect at 12:01 a.m. on for billing cycles beginning subsequent to October 1, 2021 for the year one rates and July 1, 2022 for the year two rates.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1060-0821

[Sanitation (Solid Waste) Rate Schedule]

See following page.

EXHIBIT A

City of Avondale, Arizona
Sanitation Rate Schedule
Effective October 2021 and July 2022

Residential Refuse & Recyclable Collection	October 1, 2021	July 1, 2022
Option 1 – One refuse container, one recycling container	\$22.00	\$24.00
Option 2 – Two refuse containers and one recycling container	\$35.00	\$38.00

CITY COUNCIL REPORT

SUBJECT: Resolution 1061-0821 - Adoption of Fee Schedule for Facility Rentals

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Keith Fallstrom, Interim Finance & Budget Director, (623) 333-2016

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government. The proposed fees allow the city to recover the costs of providing facility rentals, ensuring the city has the resources to innovate and provide high quality service to residents, businesses, and visitors.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1061-0821, approving a fee schedule for the Avondale Visitor and Conference Center, which is scheduled to open in January 2022, and the recently opened Arizona Complete Health Avondale Resource Center and authorizing the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Avondale Visitor and Conference Center consists of two suites, the North Conference Center and the South Conference Center. The North Conference will be approximately 1,181 square feet, whereas the South Conference center is approximately 1,150 square feet. The two suites are separated by an operable wall, which can be retracted to open both suites into a full conference floorplan of approximately 2,331 square feet. In addition, the Conference Center will include a warming kitchen (approximately 219 square feet), storage area (146 square feet), and an exterior covered patio area (approximately 543 square feet). The Arizona Complete Health Avondale Resource Center has six (6) community spaces available for use. The rooms range from 500 to 3,000 square feet, including an outdoor space of 3,600 square feet.

As required by A.R.S. §9-499.15, written notice of the proposed fee changes and a written report that supports the new or increased fees was posted on the City's website for at least sixty days before Council action on the fees and a notice of intent to establish or increase fees, which included the date, time, and place of the meeting in which the Council will take action of said fees was posted on the City's website and social media accounts at least fifteen days before Council action.

DISCUSSION:

The proposed rental fees will recover staff hours for room set up, breakdown, and cleaning associated with facility rentals. Four (4) hour Rentals include setup and strike. Setup and strike includes essential cleaning services, trash disposal, and one (1) table and chair placement per preapproved floor plan. The City maintains the ability to charge additional fees to users for cleaning, damages, or added rental-related costs.

Proposed Rental Fees				Hourly Fee	Deposit	Final Payment
Half Conference Center Rental (four-hour minimum)				\$ 85.00	50%	30-days prior
Half Resource Center Agua Fria Room Rental (four-hour minimum)						
Full Conference Center Rental (four-hour minimum)				\$ 150.00	50%	30-days prior
Full Resource Center Agua Fria Room Rental (four-hour minimum)						
Resource Center Salado Room Rental (four-hour minimum)				\$ 128.00	50%	30-days prior
Resource Center Gila Room Rental				\$ 40.00	50%	30-days prior
Resource Center Verde Room Rental				\$ 40.00	50%	30-days prior
Resource Center Outdoor Space (four-hour minimum)				\$ 150.00	50%	30-days prior

With the proposed schedule, the user is obligated to pay a deposit equaling at least 50% of the Rental Fee within ten (10) business days of the execution of this agreement. The remaining Rental Fees must be paid thirty (30) business days prior to the event.

ADDITIONAL FEES

Staffing needs and the number of employees from each department will depend on each event's specific requirements. Holidays, weekends, and operations outside of normal business hours are subject to additional fees.

Setup and strike includes essential cleaning services and trash disposal. However, if additional staff hours are required to clean the space due to user activities, the proposed schedule allows the city to charge additional fees to the user for cleanup based on the schedule below and the hours required to complete the project.

The City retains the right to charge the user after the event for any damage to city property or equipment/property leased by the City to facilitate the user's event. The user's charge will be equal to the cost of repair or replacement of the damaged property/equipment, along with a 5% administration fee.

Facility Rentals - Additional Fees	Fee	Unit of Measure
Security Staff (four-hour minimum)	30.00	-per hour
	60.00	
Facilities Staff Support	50.00	per hour
IT Support	75.00	per hour
Professional Cleaning fee	50.00	per hour
Coordinator / Staff Support	60.00	per hour
AV Access (sound, wireless mic, screen)	25.00	flat fee
Catering Kitchen Access	200.00	per rental
Administrative Fee (catering or supply orders)	5%	surcharge
Holiday, Weekend, After-Hour	20%	surcharge
Surcharges		

REFUNDS AND CANCELLATIONS

Conference Center

The City will have the discretion to cancel the contract if the user defaults on either deposit deadline. Should the user cancel an event, no refund of the deposit shall be made.

Resource Center

The user is obligated to pay a deposit equaling at least 50% of the Rental Fee within ten (10) business days of the execution of the contract. The remaining rental fees must be paid thirty (30) business days prior to the event.

The City will have the discretion to cancel the contract if the user defaults on either deposit deadline. Should the user cancel an event, cancellations must be submitted in writing via email or letter signed by the user. Cancellations must be made 30 days in advance of the scheduled date to receive a 100% refund. Cancellations received less than 30 days in advance will receive a 50% refund. Cancellations with 14 days or less notice are not eligible for a refund.

DISCOUNTED RATES

The proposed fee schedule would allow discounts on all or partial conference center services for users/entities that fulfill any of the following criteria:

Discount	Discount Rate	Criteria
Non-Profit	10%	Proof of 501c3 required at booking
Full Center Rental - Multi Day	10%	Rental more than two (2) consecutive days
Return Customer - Multi Event	15%	Book (5) five or more rentals in the same calendar year
Hotel Group	25%	120+ room nights in Avondale Hotels. Proof required 30-days prior to event.

BUDGET IMPACT:

Staff expects these fees to generate additional revenues to offset the cost of providing facility rentals.

RECOMMENDATION:

Staff recommends the Mayor and Council adopt a resolution for the proposed facility rental fees. All fees and charges for services included in the current fee schedule that were previously adopted and not amended or increased by this resolution shall remain in effect.

RESOLUTION NO. 1061-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE FACILITY USE FEES FOR THE CITY OF AVONDALE CONFERENCE AND VISITOR'S CENTER AND THE CITY OF ARIZONA COMPLETE HEALTH AVONDALE RESOURCE CENTER; AND AMENDING THE CITY OF AVONDALE SCHEDULE OF FEES AND CHARGES.

WHEREAS, the Arizona Complete Health Avondale Resource Center opened in 2020 (the "Resource Center"); and

WHEREAS, the City is currently constructing the City of Avondale Conference and Visitor's Center ("Conference Center"), which is scheduled to open in January of 2022; and

WHEREAS, the Resource Center and the Conference Center both contain facilities ("the Facilities") that will be available for use by the public; and

WHEREAS, the City Council desires to establish fees for the use of the Facilities; and

WHEREAS, the City provided (i) the schedule of the proposed new fees, (ii) a written report supporting the proposed new fees and (iii) written notice of the proposed new fees by posting a Notice of Intent to establish the Facilities use fees (the "Notice of Intent") containing the substance, and according to process, required by ARIZ. REV. STAT. § 9-499.15; and

WHEREAS, the Notice of Intent was posted and distributed as required by ARIZ. REV. STAT. § 9-499.15.

WHEREAS, the City Council desires to amend the City of Avondale Fee Schedule to include the new facility use fees.

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 facility use fees for the Conference Center and the Resource Center as set forth in the fee schedule attached hereto as Exhibit A and incorporated herein by reference are hereby approved (the "Facility Use Fees").

SECTION 3. The City of Avondale Fee Schedule is hereby amended to add the Facility Use Fees.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1061-0821

[Facility Use Fees Schedule]

See following page.

City of Avondale
Schedule of Facility Use Fees

	Current Fee	Current Unit of Measure	Fee	Proposed Unit of Measure
Facility Rentals				
HALF CONFERENCE CENTER RENTAL (FOUR-HOUR MINIMUM)			\$85.00	PER HOUR
HALF RESOURCE CENTER AGUA FRIA ROOM RENTAL (FOUR-HOUR MINIMUM)			\$85.00	PER HOUR
FULL CONFERENCE CENTER RENTAL (FOUR- HOUR MINIMUM)			\$150.00	PER HOUR
FULL RESOURCE CENTER AGUA FRIA ROOM RENTAL (FOUR-HOUR MINIMUM)			\$150.00	PER HOUR
RESOURCE CENTER SALADO ROOM RENTAL (FOUR-HOUR MINIMUM)			\$128.00	PER HOUR
RESOURCE CENTER GILA ROOM RENTAL			\$40.00	PER HOUR
RESOURCE CENTER VERDE ROOM RENTAL			\$40.00	PER HOUR
RESOURCE CENTER OUTDOOR SPACE (FOUR-HOUR MINIMUM)			\$150.00	PER HOUR
Facility Rentals - Additional Fees				
SECURITY STAFF (FOUR-HOUR MINIMUM)			\$30.00 - 60.00	PER HOUR
FACILITIES STAFF SUPPORT			\$50.00	PER HOUR
IT SUPPORT			\$75.00	PER HOUR
PROFESSIONAL CLEANING FEE			\$50.00	PER HOUR
COORDINATOR / STAFF SUPPORT			\$60.00	PER HOUR
AV ACCESS (SOUND, WIRELESS MIC, SCREEN)			\$25.00	FLAT FEE
CATERING KITCHEN ACCESS			\$200.00	PER RENTAL
ADMINISTRATIVE FEE (CATERING OR SUPPLY ORDERS)			\$0.05	SURCHARGE
HOLIDAY, WEEKEND, AFTER-HOUR SURCHARGES			\$0.20	SURCHARGE
Facility Rental Discounts				
Non-Profit (Proof of 501c3 required at booking)			10% DISCOUNT	
FULL CENTER RENTAL - MULTIPLE DAY			10% DISCOUNT	
RETURN CUSTOMER - MULTIPLE EVENT			15% DISCOUNT	
HOTEL GROUP			25% DISCOUNT	

CITY COUNCIL REPORT

SUBJECT: Resolution 1062-0821 – Intergovernmental Agreement with Agua Fria Union High School District #216 for a School Resource Officer

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police 623-333-7207

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
-

PURPOSE:

City Council will consider a request to adopt resolution 1062-0821 authorizing an Intergovernmental Agreement between the Agua Fria Union High School District #216 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

School safety issues in Avondale continue to be a priority for our city and schools and the need to maintain an SRO in the high schools located in Avondale is a benefit for all involved. The Avondale Police Department has partnered with the Agua Fria Union High School District since 1991, to provide a School Resource Officer at the school.

The police department enjoys the benefit of having an SRO assigned to these schools who can field most calls for service that would normally be handled by a patrol officer. Further, the SRO conducts follow up on criminal investigations involving the students attending Agua Fria High School, which provides relief to officers who would otherwise handle these follow up investigations.

DISCUSSION:

The proposed IGA establishes a funding agreement for the school year running from August 2, 2021 through May 20, 2022, for Agua Fria High School which provides direction, supervision, and management of the assigned SRO. The SRO will work with the school staff to coordinate a variety of law enforcement related

topics including criminal law, traffic law and constitutional law. The SRO will provide a positive police role model for students as well as serving as a security advisor to school administrators.

BUDGET IMPACT:

The Agua Fria Union High School District has committed financially to fund one-half of the assigned SRO's salary, benefits, and school related overtime during the school year at Agua Fria Union High School.

The District shall pay the City:

- One-half of the assigned SRO's salary and benefits for 10 months of the 2021-2022 school year
- An additional one month of summer school, if required
- All school-related overtime

The City is responsible for 100% of SRO's costs during the two-month summer break, week-long school breaks, vacation, and sick leave.

RECOMMENDATION:

Staff recommends City Council adopt a resolution authorizing an Intergovernmental Agreement between the Agua Fria Union High School District #216 and the City of Avondale.

RESOLUTION NO. 1062-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH AGUA FRIA UNION HIGH SCHOOL DISTRICT NO. 216 RELATING TO SCHOOL RESOURCE OFFICER SERVICES FOR AGUA FRIA HIGH SCHOOL.

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

SECTION 1. The Intergovernmental Agreement with Agua Fria Union High School District No. 216 relating to school resource officer services at Agua Fria High School for fiscal year 2021-2022 (the “Agreement”) is hereby approved in substantially 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 take all steps necessary to cause the execution of the Agreement and to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1062-0821

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
AGUA FRIA UNION HIGH SCHOOL DISTRICT NO. 216
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of August 1, 2021, between the City of Avondale, an Arizona municipal corporation (the "City") and the Agua Fria Union High School District No. 216, an Arizona school district (the "District").

RECITALS

A. The District has funding available through its maintenance and operations budget to fund school resource officer services ("SRO Services") for Agua Fria Union High School.

B. The City has funding available through its operating budget to provide the District with trained, certified police officers capable of performing the SRO Services for the District.

C. The City and the District desire to enter into an agreement whereby the City will provide sworn, certified police officers to serve as school resource officers (each, an "SRO") to provide SRO Services at Agua Fria Union High School.

D. The District is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 15-342 and 11-952.

E. The City is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952 and the Avondale City Charter, Article I, Section 3.

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 are hereby acknowledged, the parties hereby agree as follows:

SECTION I – OBLIGATIONS OF THE CITY

1.1 Services to be Provided.

A. The City shall provide SRO Services to the District at Agua Fria Union High School on an hourly basis, as required by the Dean of Students, but not to exceed 40 hours per week.

B. The Avondale Police Officer performing SRO Services shall fulfill his or her duties as a sworn law enforcement officer for the State of Arizona. The SRO may be

temporarily assigned to duties other than SRO Services during school times when deemed necessary by the Avondale Police Chief, in his sole discretion.

C. The SRO will assist the Dean of Students with preparation of an annual performance evaluation based upon requirements of the Arizona Department of Education (the "ADE") and the District. The SRO shall also provide a monthly recap of law-related education (as more fully described in the Avondale Police Department SRO Program, attached hereto as Exhibit A and incorporated herein by reference), law enforcement activity and time on campus to the Dean of Students.

D. When school is not in session, including all breaks, school-observed holidays, and school vacations, the City shall have full discretion to assign the SRO various City responsibilities; provided, however, that the City shall be responsible for 100% of the SRO's costs when so assigned.

E. In addition to the provisions of Section 3.18, the City shall, within ten business days upon request by the District, provide verification to the District of SRO's successful criminal records check, e.g., a copy of current fingerprint clearance card, copy of successful criminal records report, etc.

F. The rôles and responsibilities of the City and the District with respect to the SRO Services shall be as set forth in the Avondale Police Department SRO Program, attached hereto as Exhibit A.

1.2 Accounting and Documentation. The SRO's salary and employer-paid benefits rate shall be used to calculate the amount due from the District for SRO Services. Supporting documentation of these actual amounts must be on file with the District's Grants Office prior to payment of any invoice to the City.

SECTION II - OBLIGATIONS OF THE DISTRICT

2.1 Reimbursement to City – Monthly. The District shall reimburse the City monthly for the services it provides pursuant to Section I above.

A. The District shall pay 50% of the costs associated with SRO Services received on an hourly, per diem (hourly pay rate plus actual cost of employer-paid benefits) basis for the ten- month period covering the school year; the City shall pay 100% of the SRO's costs during the two- month summer break and any other school breaks or school observed holidays or vacations during which the City assigns the SRO to City-related duties. The SRO's time spent at Agua Fria Union High School, including all overtime, must be substantiated by timecards and approved by the high school's Dean of Students. The District shall pay 100% of any SRO overtime worked on school-related investigations. The SRO must seek approval from the appropriate Avondale Police Department supervisor before working on school-related overtime. The District will not pay for any SRO Services for week-long school breaks in October, December, January and March, nor for any personal vacations taken by an SRO nor for any sick leave incurred by an SRO.

B. The District shall pay invoices from the City within 30 days of receipt, assuming proper documentation is on file to support the charges.

2.2 Office Space. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office provided shall include the necessary equipment for the SRO to effectively perform his or her duties, including, without limitation, a telephone, desk, chair and filing cabinet.

2.3 SRO-Related Training. The District shall pay \$500.00 during the term of this Agreement toward the annual conference costs for each of the SROs that provide SRO Services to receive and maintain certification by the National Association of School Resource Organizations.

2.4 Non-Interference by District. No District or Agua Fria Union High School administrator shall interfere with an SRO's sworn law enforcement duties.

SECTION III - GENERAL TERMS AND CONDITIONS

3.1 Indemnification. To the extent permitted by law each party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents for, from and against 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 departments, officers, employees or agents.

3.2 Term. The term of this Agreement shall be for one year from July 1, 2021 until June 30, 2022, unless sooner terminated by the parties hereto pursuant to subsection 3.6 below.

3.3 Personnel. The City represents that the SRO performing the SRO Services required in Section I of this Agreement shall be a sworn Avondale Police Officer.

3.4 Independent Contractor. The City acknowledges and agrees that the SRO Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the District, except as provided in Section 3.13 below. City, its employees, and subcontractors are not entitled to worker's compensation benefits from The District. The District does not have the authority to supervise or control the actual work of City, its employees or subcontractors. The City, and not the District, shall determine the time of its performance of the SRO Services provided under this Agreement so long as City meets the requirements of its agreed scope of work as set forth in Section I above. The District and the City do not intend to nor will they combine business operations under this Agreement.

3.5 Records. Both parties shall maintain the records required in this Agreement for a period of two years after the termination of this Agreement.

3.6 Termination. Either party may terminate this Agreement upon 30 days' written notice to the other party at the addresses indicated below. The City may terminate this Agreement by giving ten days' written notice to the District for failure to make reimbursements upon the dates as required in this Agreement and the District's failure to make such payments within five days of

such notice. In any event, this Agreement shall be deemed terminated no later than the effective date of any resolution adopted by the City to withdraw from this Agreement. At the time of termination, the City shall invoice the District for all SRO Services provided to that date, which the District shall pay invoices within 30 days thereafter. The District has the right to terminate this Agreement immediately should the ADE state funding not be appropriated for any reason.

3.7 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 Drive
Avondale, Arizona 85323
Attn: Charles Montoya, City Manager

With a copy to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Nicholle Harris, City Attorney

If to the District: Agua Fria Union High School District
1481 North Eliseo Felix Jr. Way, Suite 110
Avondale, Arizona 85323
Attn: Mark Yslas, Superintendent

With a copy to: Udall Shumway, PLC
1138 North Alma School Road, Suite 101
Mesa, Arizona 85201
Attn: Jessica S. Sanchez, Esq.

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.

3.8 Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the parties.

3.9 Program Continuation Subject to Appropriation. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the City fully informed as to the availability of funds for its program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Governing Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement.

3.10 Entire Agreement. This Agreement comprises the entire agreement of the parties and supersedes any and all other agreements or understandings, oral and written, whether previous, to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the parties to this Agreement.

3.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

3.12 Cancellation. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

3.13 Workers' 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."

3.14 FERPA Compliance. Both parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

3.15 Non-Discrimination. Both parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4, which is incorporated herein by reference, mandating non-discrimination

and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.

3.16 Disposition of Property upon Termination of the Agreement. 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.

3.17 E-Verify. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). The party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching party may terminate this Agreement. The parties retain the legal right to inspect the papers of the other party to ensure that the party is complying with the above-mentioned warranty under this Agreement.

3.18 Fingerprinting Requirements. The parties shall comply with the fingerprinting requirements of ARIZ. REV. STAT. § 15-512 unless otherwise exempted.

3.19 Coordination of Student Misconduct. The parties shall work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

[SIGNATURES ON FOLLOWING PAGE]

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

"City"

CITY OF AVONDALE, an Arizona
municipal corporation

By: Kenneth N. Weise, Mayor

Date: _____

ATTEST:

Marcella Carrillo, City Clerk

"District"

AGUA FRIA UNION HIGH SCHOOL
DISTRICT NO. 216, an Arizona School
District

By: Mark Yslas, Superintendent

Date: 8/3/21

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (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

Jessica S. Sanchez, Attorney for the District

Nicholle Harris, City Attorney

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
AGUA FRIA UNION HIGH SCHOOL DISTRICT NO. 216
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES
[Avondale Police Department SRO Program]

See following pages.

AVONDALE POLICE DEPARTMENT SRO PROGRAM

I. Introduction.

The mission of the Avondale Police SRO Program is to contribute to an orderly, purposeful atmosphere, which promotes the feeling of safety conducive to teaching and learning on school campuses in the City of Avondale. This is accomplished by assigning the same Police Officer to the same campus for an extended period of time. The SRO will first and foremost perform the duties of a police officer to include, criminal investigations, interviews, interrogations, case follow-up and arrests when necessary. The SRO will establish trusting lines of communication with students, parents and teachers. The SRO will serve as a positive role model to instill good moral standards, good judgment, respect for others, and sincere concern for the school community. The SRO will promote citizen awareness of the law to enable students to become better-informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law. The SRO will serve as a confidential resource for administrators, teachers, and students concerning problems they face on the campus as well as providing information on community resources available to them.

II. Mission and Values.

Avondale Police SROs will follow the established mission and values of the Avondale Police Department in the course of their duties at Avondale schools. These mission and values set the tone and direction for Avondale Police employees to follow:

A. Mission - "Serving with Honor": The Mission Statement is the essence of how the organization reaches the vision. It defines the path all members must take in order to make the vision a reality. By asking ourselves the question, "Are we serving with honor," every time we interact with members of our community, our fellow employees, and other City employees, we have, in fact, moved closer to our vision.

B. Values:

1. **Accountability:** All members of the Avondale Police Department are accountable for their actions in accordance with the mission.
2. **Customer Service:** We strive to exceed the expectations of our internal and external customers. This is accomplished, in part, through timely follow-up, courteous service, and having mutual respect and compassion for all those with whom we interact.
3. **Diversity:** We support an organization that contains employees from various backgrounds which helps to improve how we relate to the various cultures in our community. Most importantly, we look for the strength of diversity in the employees we hire which goes beyond exterior diversity and includes the ability to look past our differences and recognize being different is actually a strength.
4. **Employee Involvement:** When appropriate, employees are encouraged and expected to be involved in organizational decision-making and research. We recognize the benefits

of creating an environment where employees feel comfortable providing their input without retribution.

5. **Fairness:** All decisions and actions taken by the Avondale Police Department are to be based on a fair and objective process. Transfers, promotions, training attendance and other career opportunities are based on the needs of the organization and the performance history of those involved, nothing more.

6. **Integrity:** Providing police services require the trust of those we serve. Whether responding to a request regarding your actions in a specific situation, or providing any police service, employees are expected to be truthful to maintain the credibility of the department.

7. **Open Communication:** We work to create a work environment where employees at all levels can provide input, receive feedback and ask questions. This creates an employee group that is informed and while they may not agree with every decision, they are entitled to an explanation provided it does not compromise the integrity of the situation.

8. **Professionalism:** Not only are we striving to make the organization more professional, we recognize the importance of providing services in a professional manner. The manner in which we interact with others is professional, the work product is professional, and our appearance is professional.

9. **Teamwork:** The Avondale Police Department is successful due to the synergy created when all areas of the Department work together towards mission accomplishment. There is not one work area more important than another. There is no difference in terms of organizational importance regarding "sworn" or "professional staff" positions and each Bureau Manager is expected to recognize and endorse the philosophy that teamwork is critical to a successful police department.

III. Goals.

A. To reduce incidents of school violence:

1. Enforce city code and state laws.
2. ZERO tolerance for drug offenses, weapons offenses, violent acts leading to serious injury and threats towards students, staff or parents.
3. High visibility during peak times such as morning, lunch, assemblies and after school.

B. Reduction of criminal offenses committed by students.

1. Provide counseling to students and parents to educate them regarding the law and consequences of violating the law.

C. Establish positive rapport with students and parents.

1. Be honest and professional in all interactions with parents and students.
2. Provide LRE counseling to students and parents to inform them of the law, theirs rights, expectations as citizens and consequences for violating the law.

3. Attend extra-curricular student activities when feasible.

D. Establish positive rapport with teachers, staff and administrators.

1. Be honest and professional in all interactions with teachers, staff and administrators.
2. Provide guidance and support on law-related problems occurring on the campus.
3. Be responsive to questions and requests from school administrators when feasible and within the parameters of the law.

IV. Organizational Structure.

A. Supervision: The day-to-day operation and administrative control of the SRO program will be the responsibility of the Avondale Police Department. Responsibility for the conduct and performance of the SRO shall remain with the Avondale Police Department. The City of Avondale will provide supervisory personnel to oversee the program.

B. SRO Accountability: The Agua Fria Union High School Principal or designees will provide a written evaluation of the SRO performance relating to the goals established in this Agreement once a semester. School staff shall contact the SRO Supervisor to report performance or conduct-related complaints involving SROs as soon as they become aware of it. It will be the responsibility of the Avondale Police Department to investigate any misconduct allegations against an SRO.

V. Procedures.

The City of Avondale SRO program shall utilize procedures in accordance with State Law, The Arizona School Safety Program Manual, and in accordance with Avondale Police Department policies and procedures.

- SROs are first and foremost police officers and shall be responsible for carrying out all duties and responsibilities of a police officer in the City of Avondale and shall at all times remain under the command and control of the Avondale Police Department.
- SROs shall not enforce any school or district rules.
- SROs are not disciplinarians and shall not assume this role under any circumstances.
- SROs report directly to an Avondale Police Supervisor for all activities.
- SROs will not involve themselves with Agua Fria Union High School administrative matters that are not criminal offenses.
- SROs are not formal counselors, and will not act as such; however, they are to be used as a law-related resource to assist students, staff and all persons involved with Agua Fria Union High School.
- SROs will present varied topics to students to better inform them of their rights and expectations as citizens as well as consequences for violating laws. The SROs are not certified teachers and therefore should present in classrooms with a teacher present at all times.

VI. SRO Selection.

A. Recommended Qualifications:

- Desire to work with students, educators, and parents.
- Willingness to teach law-related education.
- Supportive of prevention strategies.
- Satisfactory employment history with supporting documentation.
- Demonstrated effectiveness in working with youth.
- Oral and written communication skills.
- Ability to effectively interact and communicate with diverse sets of individuals.
- Supportive of the philosophy of the SRO program.
- Willingness to attend law-related education training to implement and maintain LRE programs to meet the needs of the students.
- AZPOST certified general instructor.

B. SRO Duties Include:

- Establish liaison with school administrators, staff, students, and parents.
- Inform students of their rights and responsibilities as lawful citizens through presentation of law-related education in the classroom.
- Network with community agencies that may or do provide services to the school.
- Act as a resource in the investigation of school related criminal activities
- Participate in the Parent-Teacher Association as requested.
- Participate in campus activities, student organizations, and athletic events when feasible and appropriate.
- Provide a visible deterrence to crime while presenting a positive impression of a law enforcement officer.
- Investigate criminal offenses occurring on campus.
- Conduct follow-up of assigned criminal cases.
- Conduct interviews, interrogations and make arrests when necessary.
- Provide information when requested to students, parents, and staff in law-related situations.
- Maintain tracking system of statistical information required by supervisor and school administration.

VII. SRO Role.

The School Resource Officer has three basic roles:

A. Law Enforcement Officer:

1. The SRO is, first of all, a sworn law-enforcement officer. When necessary the SRO has the authority to intervene as a law-enforcement officer. This includes the investigation of criminal offenses, conducting interviews and interrogations, following up on assigned cases and making necessary arrests.

2. Administrators should take the lead on school policy violations. The SRO should be involved when a student's conduct violates a law.

3. As partners in school safety, SRO and administrators shall work together to develop procedures for ongoing communication to ensure timely and uniform reporting of criminal activities.

4. An SRO assigned to a school with a juvenile probation officer (PO) is expected to work as a team. The SRO should know the role of the PO.

5. The SRO should serve on the School Safety Committee and collaborate on the development of the safe school plan.

6. The SRO should build a relationship with students, parents and staff that promotes a positive image of law enforcement.

B. Law-Related Educator:

1. The SRO should collaborate with classroom teachers to engage teachers to integrate law-related education into their curriculum. The teacher must be present in the classroom during LRE instruction.

2. The SRO must keep an activity log that tracks LRE classroom instruction hours and law enforcement or probation activity. Situations that take an officer off their assigned campus must be logged. This data must be shared with the school administrator and agency supervisor. The following data will be tracked and provided to the Agua Fria Union High School Principal or designee:

- a. Total hours of LRE classroom instruction
- b. LRE topic and law enforcement
- c. Teacher name and subject of each class where an LRE lesson is taught
- d. Total hours of Law Enforcement/ Probation activity
- e. Time spent per LRE lesson
- f. Total time spent off campus

C. Positive Role Model:

1. The SRO should set limits being clear about what is acceptable and what is not; letting students know the consequences of unacceptable behavior and the rewards of acceptable behavior.

2. The SRO should set an example by modeling how to handle stress, resolve conflicts, celebrate successes, and how to be a friend.

3. The SRO should be honest by providing accurate information.

4. The SRO should be consistent with students, staff and parents in applying rules and regulations.

5. The SRO should encourage responsibility by helping students think through options and consequences of decisions, set personal goals, and develop plans to make desired changes.

6. The SRO should show respect by treating students with respect and expressing high expectations for them.

7. The SRO should always strive to be a positive role model because students learn from every observation of or interaction with the SRO.

VIII. SRO Supervisor Role:

The SRO Supervisor's responsibilities include, but may not be limited to:

- Communicate to staff and carry out the philosophy and goal of the City of Avondale SRO program.
- Attend SRO program management training for supervisors.
- Conduct on-going visits to schools under their supervision.
- Ensures the SRO keeps an activity log that tracks LRE classroom instruction hours, the topic of each LRE class, and law enforcement or probation activity and situations that take an officer off their assigned campus.
- Motivate officers and provide positive reinforcement recognizing excellent performance.
- Review all investigations by assigned SRO for accuracy, thoroughness and proper procedures.
- Supervise and monitor performance of SRO, including confronting performance deficiencies and providing documentation and plan for improvement.
- Thoroughly investigate and document allegations of SRO misconduct.
- Regularly brief their Lieutenant on any unusual incidents at Avondale Schools.
- Ensure SROs conduct timely, professional and thorough investigations of criminal activity on school campuses.
- Conduct one supervisory follow-up of a criminal investigation per SRO per semester. Includes a written evaluation and assessment of the SRO's performance.
- Meet collectively with SROs once a month for training, policy review, and collaboration.
- Provide School principal or designee with a monthly recap of SRO activities to include number of LRE hours, time off campus and law enforcement activity.
- Meet with or talk on the telephone with principal of schools that have SROs, once a month to discuss SRO performance and law enforcement-related issues.

IX. School District Role:

The district administrator, site principal and teachers' support of the SRO program is vital to the program's success.

A. District Level:

1. Supports and communicates the SRO program philosophy to all site staff.
2. Understands the SRO program requirements.
3. Develops and keeps open communication with local law enforcement.

B. Building Level Administration:

1. Supports and communicates the SRO program philosophy to all staff, students and parents on their campus.
2. Promotes the integration of law-related education into the classrooms.
3. Understands and agrees to the SRO program guidelines.

4. Ensures a teacher is present in the classroom at all times during LRE instruction.
5. Introduces the officer to staff and students.
6. Develops a collaborative relationship with the SRO while allowing the officer to function independently. The officer serves as a resource to the students and staff.
7. Meets with the SRO before the first day of duty to review the Service Agreement, operational procedures and specifics of the program on campus.
8. Monitors the program's implementation process and meets with the SRO on a regular schedule.
9. Directs staff development of teachers and SRO involved in the delivery of LRE.
10. Provides a semi-annual evaluation of the SRO relating to their role as an SRO.

C. Teacher:

1. Supports and communicates information about the SRO program in their classrooms to students and parents.
2. Understands and agrees to the program guidelines.
3. Teams with the SRO in planning and delivery of law-related education units in their classroom. A teacher must be present in the classroom at all times during LRE instruction.

X. The Performance Evaluation

A semi-annual performance evaluation shall be conducted by a school administrator and shared with the SRO's supervisor. The evaluation is meant to assist the SRO and his/her supervisor in meeting the intent of the SRO program and carrying out his or her duties. It is not meant to supplant the official evaluation process used by the SRO's department or agency. Only SROs that have performed in a satisfactory manner should be considered for further service in the SRO program. The following are recommended factors to consider:

- Does the officer have a clear sense of his/her role?
- Does the officer understand the operational policies and procedures of the school necessary to perform effectively in the position?
- Has the officer attended or scheduled to take a law-related education class in the current year?
- How does the officer relate to staff, students, and parents?
- Does the officer work well independently?
- Does the officer perform his/her duties effectively?
- How effective is the officer with classroom presentations?

If a problem occurs, it should first be addressed at the site level between the officer and administration. If a resolution is not reached, the grievance should then move through the process as established by the officer's department and school's policy.

XI. Law Related Education (LRE)¹

A. LRE Defined. Law-Related Education is the teaching of rules, laws, and the legal system that actively involves students to prepare them for responsible citizenship. It also provides instructions in legal rights, responsibilities, and the role of the citizen and requires students to practice the application of LRE in potential real-life situations. *(Adopted by the Arizona Center for Law-Related Education from the Virginia Institute for Law and Citizenship Studies.)*

B. Possible Benefits. Law-Related Education is a component of the SRO program because it:

1. Promotes critical, analytical and problem-solving skills.
2. Actively involves students, teachers and the community.
3. Increases students' knowledge base of the law, making them better informed citizens and consumers.
4. Demonstrates constructive ways to resolve conflict and can reduce violence and discipline problems in schools.
5. Discourages delinquent behavior and encourages positive behavior.
6. Promotes positive self-image in students.
7. Encourages students to respect rules, laws, and persons in authority when exposed to a "balanced" view of "democratic" society.

C. Process. The approach consists of high-interest content and interactive instructional strategies designed to provide students at all levels the following opportunities:

1. To explore and reflect on theirs and others' perspectives,
2. To express and defend their views, to listen to the views of others,
3. To develop arguments for both sides of an issue, to mediate, and
4. To formulate decisions and resolutions based on multiple and often conflicting concerns.

In primary grades, students might consider a rule they don't like, explore why it was made, examine the consequence for breaking it, and discover who acts as judge when the rule is broken. They might evaluate existing or hypothetical rules to determine whether or not they are clear, consistent, fair, and enforceable. They could listen to and analyze rules issues in stories, and they could create and enforce their own set of classroom rules. Intermediate students might role-play as a law enforcement officer encountering a criminal dilemma. They might work in cooperative groups to offer solutions to problems that arise when a law is too general or vague. Older students might use the case study method of analysis to examine legal conflicts throughout history. Information from this exercise could then be applied to current dilemmas. Simulations of trials, known as mock trials or moot court, legislative hearings, constitutional conventions, police procedures, role playing, conflict resolution, mediation, formal and informal debate, cooperative group problem-solving, outside speakers, from the legal community typify LRE classes at all levels.

Because rules and laws affect all aspects of life, all subject areas, and all ages, the content of LRE can be as varied as the students and teacher need it to be. The methods, however, are

¹ Modified from "Law-Related Education and Violence Prevention: Making the Connection" By: Robin Haskell McBee.

characteristically open-ended and participatory in nature. Although some LRE instructional materials have been written for specific topics or age groups, there is no single way to teach LRE and no set LRE curriculum. LRE is most commonly used in social studies to promote civic understanding; however, it regularly incorporates the use of reading, writing, and speaking skills. It has the potential for application in literature, math, science, technology, foreign language, physical education, sports, and other subject areas. It need not be limited to a particular grade, subject, or time frame. The LRE approach to instruction is flexible enough to be applied as a system-wide, on-going prevention strategy, and an added benefit of such a strategy is the increased likelihood that students will better understand the rules, laws, and legal processes that govern their lives.

One of the cornerstones of LRE is the use of outside resources: school safety officers, attorneys, and other legal professionals. These resource people visit classrooms regularly, provide insight into how and why the system operates the way it does, and develops on-going positive, non-adversarial relationships with students in the class. Though typically not individualized as in mentoring, these relationships often hold meaning for the students and provide an opportunity for them to develop bonds or attachment with representatives of "the system."

Another feature of LRE is its relevance. It deals with issues that are meaningful to students and their views are valued. LRE provides students the opportunity to get involved and participate. The crux of LRE is problem solving, both as part of a group process and on an individual basis. Social conflict lies at the heart of legal issues. Therefore, all LRE is some form of conflict resolution or problem solving.

The regular inclusion of LRE in the course of instruction will provide steady opportunities to develop and practice the information processing steps that must be developed in aggressive students if they are to acquire non-aggressive social problem-solving skills. Further, the conflicts that characteristically surround rules and laws offer good practice in content that is hypothetical in nature yet directly related to students' lives. While not a panacea for violence prevention, LRE offers a promising strategy for schools to implement as part of their overall prevention plan. If that plan includes closer work with parents and the community, LRE might also be incorporated into after-school programs, community center programs for children and adolescents, and parent programs. In this way the approach lends itself to a close interface with home and community.

WEBSITES

Arizona Department of Education www.ade.az.gov

Provides links to prevention sites, updates on funding opportunities and a calendar of conferences, trainings, and workshops.

Arizona Foundation for Legal Services and Education <http://azflse.org/>

The site will provide up-to-date information about LRE research, links to other LRE related sites, professional development opportunities, publications, and articles.

Law For Kids www.lawforkids.org

Posts youth laws and information in a manner that kids can read quickly and understand easily. Also kids can get homework answers, access other links, listen to other kids' stories, and play computer games.

Arizona Prevention Resource Center (APRC) <http://www.azprevention.org/>

APRC is Arizona's central source for prevention information and materials. It has an expanded section of school safety materials. Materials may be checked out at no cost.

Join Together ONLINE <http://www.drugfree.org/join-together>

National resource center to reduce substance abuse and gun violence. Offers up-to-date information on legislation, funding opportunities, Action Kits, and resources guides.

Keep Schools Safe www.keepschoolssafe.org

A collection of resources to help make schools safer.

National Association of School Resource Officers (NASRO) www.nasro.org

Nonprofit training organization for district personnel and school resource officers. Sponsors an annual training conference as well as regional trainings. Lesson plans are available to download at no charge.

Arizona School Resource Officers Association (ASROA) www.asroa.org

Nonprofit organization formed to promote law-related education. Sponsors an annual conference and various training opportunities.

National Dropout Prevention Center www.dropoutprevention.org

Provides information on dropout prevention programs, educational strategies, technical assistance, training, and resources.

National Resource Center for Safe Schools www.nwrel.org

Center works with schools and communities to create safe learning environments and prevent school violence.

National School Safety Center www.nssc1.org

Clearinghouse for school safety information.

National Youth Gang Center www.iir.com/nygc

Provides information about gangs and effective responses to them.

Office of Juvenile Justice and Delinquency Prevention www.ojjdp.gov

Provides numerous links to juvenile justice-related resources, model programs and funding opportunities.

Constitutional Rights Foundation (CRF) www.crf-usa.org

Offers programs and develops materials on law-related education. Web site contains ready-to-use lessons.

National Law-Related Education Resource Center (NLRC) www.abanet.org

Facts on current model programs, curricula, print, and multimedia materials for all groups and age levels about the law.

Street Law, Inc. www.streetlaw.org

Offers program training and program development in law-related education.

CITY COUNCIL REPORT

SUBJECT: Resolution 1063-0821 – Intergovernmental Agreement with American Charter Schools Foundation, Estrella High School for a School Resource Officer

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police 623-333-7207

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1063-0821 authorizing an Intergovernmental Agreement between the American Charter Schools Foundation and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

School safety issues in Avondale continue to be a priority for our city and schools and the need to maintain an SRO in the high schools located in Avondale is a benefit for all involved. The Avondale Police Department has recently partnered with the American Charter Schools Foundation, to provide a School Resource Officer at Estrella High School.

The police department enjoys the benefit of having an SRO assigned to schools who can field most calls for service that would normally be handled by a patrol officer. Further, the SRO conducts follow-up on criminal investigations involving the students attending Estrella High School, which would provide relief to officers who would otherwise handle these follow-up investigations.

DISCUSSION:

The proposed IGA establishes a funding agreement for the school year from July 27, 2021, through May 27, 2022, for Estrella High School which provides direction, supervision, and management of the assigned SRO. The SRO will work with the school staff to coordinate a variety of law enforcement-related topics including

criminal law, traffic law, and constitutional law. The SRO will provide a positive police role model for students, as well as serving as a security advisor to school administrators.

BUDGET IMPACT:

The American Charter Schools Foundation recently received the School Safety Program Grant which pays 100% of the SRO's salary, up to \$115,013 at Estrella High School, which includes employee related expenses (ERE) for the period of July 27, 2021 – May 28, 2022, and tentatively for one month in June 2022 for summer school. The grant will not pay for overtime. The district will pay 100% for school-related overtime. The cost difference is based on the assigned SRO pay structure.

The cost sharing between the City of Avondale and the American Charter School Foundation is as follows:

Estrella High School

The school shall pay the City:

- Salary and benefits for 10 months of 2021-2022 school year
- An additional one month of summer school, if required
- All school-related overtime
- Amount not to exceed \$115,013

The City is responsible for 100% of SRO's costs during the two-month summer break, week-long school breaks, vacation, and sick leave.

RECOMMENDATION:

Staff recommends City Council adopt a resolution authorizing an Intergovernmental Agreement between the American Charter Schools Foundation and the City of Avondale.

RESOLUTION NO. 1063-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH AMERICAN CHARTER SCHOOLS FOUNDATION RELATING TO SCHOOL RESOURCE OFFICER SERVICES FOR ESTRELLA HIGH SCHOOL.

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

SECTION 1. The Intergovernmental Agreement with American Charter Schools Foundation relating to school resource officer services at Estrella High School for fiscal year 2021-2022 (the “Agreement”) is hereby approved in substantially 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 take all steps necessary to cause the execution of the Agreement and to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1063-0821

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
AMERICAN CHARTER SCHOOLS FOUNDATION
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES

(Estrella High School)**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is entered into this 2nd day of August 2021 between the City of Avondale, an Arizona municipal corporation (the “City”), and the American Charter Schools Foundation dba “Estrella High School”, an Arizona Charter School (“School”).

RECITALS

A. The School has funding available through its School Safety Program Grant to fund the cost for school resource officer services (the “SRO Services”) for Estrella High School located at 210 N. Central Ave, Avondale Arizona 85323

B. The City and the School desire to enter into this Agreement whereby the City will provide sworn, certified police officers to serve as school resource officers (each, an “SRO,” collectively, the “SROs”) to provide the SRO Services at the Schools; and

C. The School is authorized by ARIZ. REV. STAT. § 15-342(13), ARIZ. REV. STAT. § 11-952, and the approval of its governing board to enter into this Agreement; and

D. The City is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952 and the Avondale City Charter, Article I, Section 3.

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 are hereby acknowledged, the parties hereby agree as follows:

SECTION I – OBLIGATIONS OF THE CITY

1.1 Services to be Provided.

The City shall assign one police officer to the School to provide SRO Services at the School on an hourly basis as more particularly set forth herein. The City agrees to involve the School, in the selection process for the SRO, by allowing a School administrator to be on the final selection committee once the Avondale Police Department has identified final candidates for the SRO position. The City will endeavor to ensure that the SROs are assigned to the School for up to 40

hours each week at all times that the School is in session (August 2, 2021 through May 27, 2022) and tentatively for one month in June 2022 for summer school during the term of this Agreement. If feasible, and subject to the sole discretion of the City, the SROs assigned to the Schools will be the same individual during the three-year School Safety Grant Program cycle.

a. The City police officer performing SRO Services shall fulfill his or her duties as a sworn law enforcement officer for the State of Arizona. The SRO will be present and accessible on the assigned School campus as scheduled by the School. Notwithstanding the foregoing, the SRO may be temporarily assigned to duties other than SRO Services during school times as deemed necessary by the City's Police Chief or authorized designee, in his or her sole discretion. If the SRO is called away on police business including, but not limited to, City-mandated training, City-mandated meetings, City-related emergencies, etc., the School shall not be invoiced for that time, and the costs for such time shall be borne by the City. If the SRO is attending an SRO-related training or other activity mandated by the School, the School shall be invoiced as described in Section 2.1.

b. The SROs' activities will be restricted to their assigned School grounds except as otherwise directed by the City's Police Chief or authorized designee as set forth in subsection 1.1(a) above and for:

1. Follow-up home visits when needed as a result of School- related problems.
2. Incentive programs approved by the parties.
3. In response to off-campus, but School-related, criminal activity.
4. Attendance at off-campus events or meetings.
5. Attendance at training at the request of the School.

c. When School is not in session, including all breaks, School-observed holidays, and School vacations, the City shall have full discretion to assign the SRO responsibilities; provided, however, that the City shall be responsible for 100% of the SRO's costs when so assigned.

d. The City represents and warrants that it will ensure that each officer assigned to perform SRO Services on School property pursuant to this Agreement will be sworn City police officers. Each SRO will be fingerprinted and successfully complete a background check performed by the City before such assignment.

e. Where applicable, the roles and responsibilities of the City and the School with respect to the SRO Services shall be as set forth in the Avondale Police Department SRO Program, attached hereto as Exhibit A and incorporated herein by reference. Notwithstanding this subsection, the parties acknowledge that the SRO Services provided at Estrella High School shall include one-hundred and eighty (180) hours of law related education ("LRE"), which shall consist of 80 hours of classroom instruction to ongoing cohort groups of students and 100 hours of universal instruction.

f. Each officer assigned to perform SRO services shall attend annual training required by the Arizona Department of Education.

1.2 Invoices; Salary Rates. The City shall invoice the School quarterly, based upon SRO Services performed and completed to date. The SRO's salary and employer- paid benefits rate shall be used to calculate the amount due from the School for SRO Services. Supporting documentation of these actual amounts must be on file with the School's Office prior to payment of any invoice to the City.

SECTION II- OBLIGATIONS OF THE SCHOOL

2.1 Reimbursement to City - Quarterly. The School shall reimburse the City quarterly for the services it provides pursuant to subsection 1.2 above.

a. The School shall pay the City an amount not to exceed \$138,017 for SRO Services at Estrella High School and \$115,013 for the SROs' benefits and salary for the ten-month 2021-2022 school year, plus one-month summer school in June 2022 if required. The City shall pay 100% of the SROs' costs during the two-month summer break and any other school breaks or school observed holidays or vacations during which the City assigns the SRO to City related duties. The SROs' time spent at Estrella High School must be substantiated by timecards and approved by the high schools' site administrator. The School shall not use any grant funds to pay for overtime costs associated with SRO overtime. The SRO must seek approval from the principal, or the principal's designee, and the appropriate city police department supervisor before working on SRO-related overtime (i.e., those matters pertaining to the School, its students, or its employees). School shall pay one hundred percent (100%) of any SRO overtime worked as the result of SRO-related functions. City shall pay one hundred percent (100%) of any SRO overtime that result from City-related activities (i.e., those matters that do not involve the School, its students, or its employees). The SRO and City shall make every reasonable effort to ensure that the SRO does not incur overtime costs in any given week. The School will not pay for any SRO Services for week-long school breaks in October, November, December, January and March, nor for any personal vacations taken by an SRO nor for any sick leave incurred by an SRO. The Fiscal Year (FY) 2020 School Safety Program application is year one of a three-year grant. Requests for salary and benefits (under purchased professional services) for a continuing officer must be consistent with the FY 2020 approved salary and benefits amount for that officer. Upward adjustments in salary and benefits cannot be accepted. If the actual salary of an officer is less than what was approved in FY 2020, the lesser amount of the two must be requested.

b. The School shall pay invoices from the City within 30 days of receipt, assuming proper documentation is on file to support the charges.

2.2 Office Space. The School shall provide office space that provides privacy for the SRO to conduct confidential business. The office provided shall include the necessary equipment for the SRO to effectively perform his or her duties, including, without limitation, a telephone, desk, chair and filing cabinet.

2.3 Non-Interference by School. No School or School administrator shall interfere with an SRO's sworn law enforcement duties. It is agreed, however, that at such time as an SRO is acting within the role of a sworn law enforcement officer but is also acting outside of or in excess of the School's rules and policies regarding interviewing and searching students and/or use of

appropriate physical force on students, the City shall hold the School harmless from such actions by the SRO. The SRO shall not assist in the School's administrative discipline process unless a definitive danger is perceived by school staff or the student is suspected of criminal activity.

2.4 Removal of SRO. The School may request that an SRO be removed from a School if the School determines that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment or poses a danger to the children at that School or to School employees, provided that the School shall immediately contact the SRO's superior officer and the person designated by the City in Section 3.6 below to describe the situation and to describe the SRO's inappropriate conduct or the School's concern for the safety of the children. In such event, the School shall direct the SRO to return to the Avondale Police Department. The Within seventy-two (72) hours of receipt of notice of the request for removal of an SRO from a School, and in accordance with the City's Police Department's internal policies, the City agrees to assign a replacement SRO to provide the SRO Services to the School under this Agreement if the removal is deemed appropriate by the City's Police Chief or authorized designee, in his or her sole discretion. If a replacement SRO cannot be assigned to the campus, the School shall be credited for each day an SRO is not assigned to the campus. The School, at its sole discretion, may refuse the assignment to the School of any officer who has been removed from the School because of allegations of unprofessional, illegal, or immoral conduct. If the issues cannot be resolved regarding the removal and replacement of a SRO under this section 2.4, the parties agree that the School may terminate this Agreement or the City and the School may mutually agree that the School will no longer have a SRO for the remainder of the school year and the School will not be required to pay for the unfulfilled portion of the SRO's work. The School shall pay the City for work performed by the SRO through the date of removal.

2.5 Status Meetings. By mutual agreement, the parties may meet from time to time for purposes of discussing the status and conduct of the work being performed under this Agreement, and addressing any problems that have come to the parties' attention and their views as to how such problems may be resolved, including amending the terms and conditions of this Agreement.

2.6 Additional Payments. The School shall provide \$100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year. The School shall pay travel-related expenses incurred by the SRO for attending mandatory ADE SRO training, if the grant allocates funding.

2.7 Grant Application. The School shall provide a complete copy of the School Safety Program grant application and aware to each SRO when s/he begins service.

SECTION III - GENERAL TERMS AND CONDITIONS

3.1 Indemnification. To the extent permitted by law each party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents for, from and against 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 departments, officers, employees or agents.

3.2 Term. The term of this Agreement shall be for one year from August 2, 2021 until May 27, 2022, unless sooner terminated by the parties hereto pursuant to subsection 3.5 below. This agreement may be extended to June 30, 2022 as agreed upon in writing by the parties.

3.3 Independent Contractor. The City acknowledges and agrees that the SRO Services provided under this Agreement are being provided as an employee of the City of Avondale, not as an employee or agent of the School, except as provided in Section 3.13 below. City, its employees, and subcontractors are not entitled to worker's compensation benefits from the School. The School does not have the authority to supervise or control the actual work of City, its employees or subcontractors. The City, and not the School, shall determine the time of its performance of the SRO Services provided under this Agreement so long as City meets the requirements of its agreed scope of work as set forth in Section I above. The School and the City do not intend to nor will they combine business operations under this Agreement.

3.4 Records. Both parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.

3.5 Termination. Either party may terminate this Agreement upon 30 days' written notice to the other party at the addresses indicated below. Five (5) days after the School fails to make reimbursements as required by this Agreement, the City may terminate this Agreement by giving ten days' written notice to the School. In any event, this Agreement shall be deemed terminated no later than the effective date of any resolution adopted by the City to withdraw from this Agreement. At the time of termination, the City shall invoice the School for all SRO Services provided to that date which invoices shall be paid within 30 days thereafter. The School has the right to terminate this Agreement immediately should the Grant or other funding become unavailable for any reason. The School also has the right to terminate this Agreement immediately should the City increase the costs of SRO Services beyond those costs that existed in July 2020.

3.6 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 Drive
Avondale, Arizona 85323
Attn: Charles Montoya, City Manager

With a copy to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Nicholle Harris, City Attorney

If to the School: American Charter Schools Foundation
6150 N. 16th Street, Suite A
Phoenix, Arizona 85016
Attn: Patrick Lawrence, Chief Financial Officer

With a copy to: American Charter Schools Foundation
6150 N. 16th Street, Suite A
Phoenix, Arizona 85016
Attn: Jeffery Tanner, SSPG Director

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.

3.7 Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the parties.

3.8 Program Continuation Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. Each party acknowledges and agrees that performance by either party is dependent upon appropriation of funds to or by that party. The provisions of this Agreement for SRO Services shall be effective when funds are appropriated by each party for purposes of this Agreement and are actually available for payment. Each party shall be the sole judge and authority in determining the availability of funds under this Agreement and each party shall keep the other party fully informed as to the availability of funds for the SRO Services. The obligation of the parties to make any payment pursuant to this Agreement is a current expense of each party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either party. If the City Council or School Board fails to appropriate money sufficient to meet the financial obligations as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the School shall be relieved of any subsequent obligation under this Agreement. If the School is denied the School Safety Grant, it may, at its discretion, initiate an Appeal under the School Safety Manual guidelines.

3.9 Entire Agreement. This Agreement comprises the entire agreement of the parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this

Agreement shall be made only in writing and signed by the persons duly authorized to enter into contracts on behalf of the City and the School.

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

3.11 Cancellation. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

3.12 Workers' 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.

3.13 FERPA Compliance. Both parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

3.14 Non-Discrimination. Both parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4 and 2009-09, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.

3.15 Disposition of Property upon Termination of the Agreement. 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.

3.16 Dispute Resolution Process. The parties shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the parties are unable to resolve the dispute or claim through negotiations, upon the written request of either party, the City's Police Chief, or designee, and the Principal, or designee, will attempt to resolve the matter within 10 calendar days of the date the matter was referred to them. If the matter is still not resolved, the matter will be immediately referred to the City Manager, or designee, and the School Superintendent, or designee. If the matter is still not resolved within 10 calendar days, the parties may terminate this Agreement in accordance with Section 3.5 above.

3.17 E-Verify. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). The party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching party may terminate this Agreement. The parties retain the legal right to inspect the papers of the other party to ensure that the party is complying with the above- mentioned warranty under this Agreement.

3.18 Coordination of Student Misconduct. The parties shall work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

3.19 Chain of Command and Channels of Communication. The Principal or the Principal's authorized designee will communicate directly with the SRO Supervisor concerning any issues involving the SROs. If there is an issue that cannot be resolved between the Principal and the SRO Supervisor, the School's Grants and Federal Program Coordinator will communicate with the SRO Supervisor or his or her supervisor, as determined by the City.

[SIGNATURES ON FOLLOWING PAGE]

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

SCHOOL:

AMERICAN CHARTER SCHOOLS FOUNDATION dba
ESTRELLA HIGH SCHOOL, an Arizona charter school

By: Theodore C. Frederick
Its: President

CITY:

CITY OF AVONDALE, ARIZONA, an Arizona municipal
corporation

By: Charles A. Montoya
Its: City Manager

ATTEST:

Marcella Carrillo, City Clerk

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
AMERICAN CHARTER SCHOOLS FOUNDATION
DBA “ESTRELLA HIGH SCHOOL”
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES

[Avondale Police Department SRO Program]

See following pages.

AVONDALE POLICE DEPARTMENT SRO PROGRAM

I. Introduction.

The mission of the Avondale Police SRO Program is to contribute to an orderly, purposeful atmosphere, which promotes the feeling of safety conducive to teaching and learning on school campuses in the City of Avondale. This is accomplished by assigning the same Police Officer to the same campus for an extended period of time. The SRO will first and foremost perform the duties of a police officer to include, criminal investigations, interviews, interrogations, case follow-up and arrests when necessary. The SRO will establish trusting lines of communication with students, parents and teachers. The SRO will serve as a positive role model to instill good moral standards, good judgment, respect for others, and sincere concern for the school community. The SRO will promote citizen awareness of the law to enable students to become better-informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law. The SRO will serve as a confidential resource for administrators, teachers, and students concerning problems they face on the campus as well as providing information on community resources available to them.

II. Mission and Values.

Avondale Police SROs will follow the established mission and values of the Avondale Police Department in the course of their duties at Avondale schools. These mission and values set the tone and direction for Avondale Police employees to follow:

A. Mission - “Serving with Honor”: The Mission Statement is the essence of how the organization reaches the vision. It defines the path all members must take in order to make the vision a reality. By asking ourselves the question, “Are we serving with honor,” every time we interact with members of our community, our fellow employees, and other City employees, we have, in fact, moved closer to our vision.

B. Values:

1. Accountability: All members of the Avondale Police Department are accountable for their actions in accordance with the mission.

2. Customer Service: We strive to exceed the expectations of our internal and external customers. This is accomplished, in part, through timely follow-up, courteous service, and having mutual respect and compassion for all those with whom we interact.

3. Diversity: We support an organization that contains employees from various backgrounds which helps to improve how we relate to the various cultures in our community. Most importantly, we look for the strength of diversity in the employees we hire which goes beyond exterior diversity and includes the ability to look past our differences and recognize being different is actually a strength.

4. Employee Involvement: When appropriate, employees are encouraged and expected to be involved in organizational decision-making and research. We recognize the benefits of creating an environment where employees feel comfortable providing their input without retribution.

5. Fairness: All decisions and actions taken by the Avondale Police Department are to be based on a fair and objective process. Transfers, promotions, training attendance and other career opportunities are based on the needs of the organization and the performance history of those involved, nothing more.

6. Integrity: Providing police services require the trust of those we serve. Whether responding to a request regarding your actions in a specific situation, or providing any police service, employees are expected to be truthful to maintain the credibility of the department.

7. Open Communication: We work to create a work environment where employees at all levels can provide input, receive feedback and ask questions. This creates an employee group that is informed and while they may not agree with every decision, they are entitled to an explanation provided it does not compromise the integrity of the situation.

8. Professionalism: Not only are we striving to make the organization more professional, we recognize the importance of providing services in a professional manner. The manner in which we interact with others is professional, the work product is professional, and our appearance is professional.

9. Teamwork: The Avondale Police Department is successful due to the synergy created when all areas of the Department work together towards mission accomplishment. There is not one work area more important than another. There is no difference in terms of organizational importance regarding “sworn” or “professional staff” positions and each Bureau Manager is expected to recognize and endorse the philosophy that teamwork is critical to a successful police department.

III. Goals.

A. To reduce incidents of school violence:

1. Enforce city code and state laws.
2. ZERO tolerance for drug offenses, weapons offenses, violent acts leading to serious injury and threats towards students, staff or parents.
3. High visibility during peak times such as; morning, lunch, assemblies and after school.

B. Reduction of criminal offenses committed by students.

1. Provide counseling to students and parents to educate them regarding the law and consequences of violating the law.

- C. Establish positive rapport with students and parents.**
1. Be honest and professional in all interactions with parents and students.
 2. Provide LRE counseling to students and parents to inform them of the law, their rights, expectations as citizens and consequences for violating the law.
 3. Attend extra-curricular student activities when feasible.

- D. Establish positive rapport with teachers, staff and administrators.**
1. Be honest and professional in all interactions with teachers, staff and administrators.
 2. Provide guidance and support on law-related problems occurring on the campus.
 3. Be responsive to questions and requests from school administrators when feasible and within the parameters of the law.

IV. Organizational Structure.

A. Supervision: The day-to-day operation and administrative control of the SRO program will be the responsibility of the Avondale Police Department. Responsibility for the conduct and performance of the SRO shall remain with the Avondale Police Department. The City of Avondale will provide supervisory personnel to oversee the program.

B. SRO Accountability: The American Charter Schools Foundation, dba Estrella High School principal or designees will provide a written evaluation of the SRO performance relating to the goals established in this Agreement once a semester. School staff shall contact the SRO Supervisor to report performance or conduct related complaints involving SROs as soon as they become aware of it. It will be the responsibility of the Avondale Police Department to investigate any misconduct allegations against an SRO.

V. Procedures.

The City of Avondale SRO program shall utilize procedures in accordance with State Law, The Arizona School Safety Program Manual, and in accordance with Avondale Police Department policies and procedures.

- SROs are first and foremost police officers and shall be responsible for carrying out all duties and responsibilities of a police officer in the City of Avondale and shall at all times remain under the command and control of the Avondale Police Department.
- SROs shall not enforce any school or district rules.
- SROs are not disciplinarians and shall not assume this role under any circumstances.
- SROs report directly to an Avondale Police Supervisor for all activities.
- SROs will not involve themselves with American Charter Schools Foundation, dba Estrella High School administrative matters that are not criminal offenses.
- SROs are not formal counselors, and will not act as such, however, they are to be used as a law related resource to assist students, staff and all persons involved with American Charter Schools Foundation, dba Estrella High School.

- SROs will present varied topics to students to better inform them of their rights and expectations as citizens as well as consequences for violating laws. The SROs' are not certified teachers and therefore should present in classrooms with a teacher present at all times.

VI. SRO Selection.

A. Recommended Qualifications:

- Desire to work with students, educators, and parents.
- Willingness to teach law-related education.
- Supportive of prevention strategies.
- Satisfactory employment history with supporting documentation.
- Demonstrated effectiveness in working with youth.
- Oral and written communication skills.
- Ability to effectively interact and communicate with diverse sets of individuals.
- Supportive of the philosophy of the SRO program.
- Willingness to attend law-related education training to implement and maintain LRE programs to meet the needs of the students.
- AZPOST certified general instructor.

B. SRO Duties Include:

- Establish liaison with school administrators, staff, students, and parents.
- Inform students of their rights and responsibilities as lawful citizens through presentation of law-related education in the classroom.
- Network with community agencies that may or do provide services to the school.
- Act as a resource in the investigation of school related criminal activities
- Participate in the Parent-Teacher association as requested.
- Participate in campus activities, student organizations, and athletic events when feasible and appropriate.
- Provided a visible deterrence to crime while presenting a positive impression of a law enforcement officer.
- Investigate criminal offenses occurring on campus.
- Conduct follow-up of assigned criminal cases.
- Conduct interviews, interrogations and make arrests when necessary.
- Provide information when requested to students, parents, and staff in law-related situations.
- Maintain tracking system of statistical information required by supervisor and school administration.

VII. SRO Role.

The School Resource Officer has three basic roles:

A. Law Enforcement Officer:

1. The SRO is, first of all, a sworn law-enforcement officer. When necessary the SRO has the authority to intervene as a law-enforcement officer. This includes the investigation of criminal offenses, conducting interviews and interrogations, following up on assigned cases and making necessary arrests.
2. Administrators should take the lead on school policy violations. The SRO should be involved when a student's conduct violates a law.
3. As partners in school safety, SRO and administrators shall work together to develop procedures for ongoing communication to ensure timely and uniform reporting of criminal activities.
4. An SRO assigned to a school with a juvenile probation officer (PO) is expected to work as a team. The SRO should know the role of the PO.
5. The SRO should serve on the School Safety Committee and collaborate on the development of the safe school plan.
6. The SRO should build a relationship with students, parents and staff that promotes a positive image of law enforcement.

B. Law-Related Educator:

1. The SRO should collaborate with classroom teachers to engage teachers to integrate law-related education (LRE) into their curriculum. The teacher must be present in the classroom during LRE instruction.
2. The SRO must keep an activity log that tracks LRE classroom instruction hours and law enforcement or probation activity. Situations that take an officer off their assigned campus must be logged. This data must be shared with the school administrator and agency supervisor. The following data will be tracked and provided to the La Joya Community High School, West Point High School and Westview High School Principal or designee:
 - a. Total hours of LRE classroom instruction
 - b. LRE topic and law enforcement
 - c. Teacher name and subject of each class where an LRE lesson is taught
 - d. Total hours of Law Enforcement/ Probation activity
 - e. Time spent per LRE lesson
 - f. Total time spent off campus

C. Positive Role Model:

1. The SRO should set limits being clear about what is acceptable and what is not; letting students know the consequences of unacceptable behavior and the rewards of acceptable behavior.
2. The SRO should set an example by modeling how to handle stress, resolve conflicts, celebrate successes, and how to be a friend.
3. The SRO should be honest by providing accurate information.
4. The SRO should be consistent with students, staff, and parents in applying rules and regulations.
5. The SRO should encourage responsibility by helping students think through options and consequences of decisions, set personal goals, and develop plans to make desired changes.

6. The SRO should show respect by treating students with respect and expressing high expectations for them.

7. The SRO should always strive to be a positive role model because students learn from every observation of or interaction with the SRO.

VIII. SRO Supervisor Role:

The SRO Supervisor's responsibilities include but may not be limited to:

- Communicate to staff and carry out the philosophy and goal of the City of Avondale SRO program.
- Attend SRO program management training for supervisors.
- Conduct on-going visits to schools under their supervision.
- Ensures the SRO keep an activity log that tracks LRE classroom instruction hours, the topic of each LRE class and law enforcement or probation activity and situations that take an officer off their assigned campus.
- Motivate officers and provide positive reinforcement recognizing excellent performance.
- Review all investigations by assigned SRO for accuracy, thoroughness and proper procedures.
- Supervise and monitor performance of SRO, including confronting performance deficiencies and providing documentation and plan for improvement.
- Thoroughly investigate and document allegations of SRO misconduct.
- Regularly brief their Lieutenant on any unusual incidents at Avondale Schools.
- Ensure SROs conduct timely, professional and thorough investigations of criminal activity on school campuses.
- Conduct one supervisory follow-up of a criminal investigation per SRO per semester. Includes a written evaluation and assessment of the SRO's performance.
- Meet collectively with SROs once a month for training, policy review, and collaboration.
- Provide School principal or designee with a monthly recap of SRO activities to include number of LRE hours, time off campus and law enforcement activity.
- Meet with or talk on the telephone with principal of schools that have SROs, once a month to discuss SRO performance and law enforcement-related issues.

IX. School District Role:

The district administrator, site principal and teachers' support of the SRO program is vital to the program's success.

A. District Level:

1. Supports and communicates the SRO program philosophy to all site staff.
2. Understands the SRO program requirements.
3. Develops and keeps open communication with local law enforcement.

B. Building Level Administration:

1. Supports and communicates the SRO program philosophy to all staff, students and parents on their campus.
2. Promotes the integration of law-related education into the classrooms.
3. Understands and agrees to the SRO program guidelines.
4. Ensures a teacher is present in the classroom at all times during LRE instruction.
5. Introduces the officer to staff and students.
6. Develops a collaborative relationship with the SRO while allowing the officer to function independently. The officer serves as a resource to the students and staff.
7. Meets with the SRO before the first day of duty to review the Service Agreement, operational procedures and specifics of the program on campus.
8. Monitors the program's implementation process and meets with the SRO on a regular schedule.
9. Directs staff development of teachers and SRO involved in the delivery of LRE.
10. Provides a semi-annual evaluation of the SRO relating to their role as an SRO.

C. Teacher:

1. Supports and communicates information about the SRO program in their classrooms to students and parents.
2. Understands and agrees to the program guidelines.
3. Teams with the SRO in planning and delivery of law-related education units in their classroom. A teacher must be present in the classroom at all times during LRE instruction.

X. The Performance Evaluation

A semi-annual performance evaluation shall be conducted by a school administrator and shared with the SRO's supervisor. The evaluation is meant to assist the SRO and his/her supervisor in meeting the intent of the SRO program and carrying out his or her duties. It is not meant to supplant the official evaluation process used by the SRO's department or agency. Only SROs that have performed in a satisfactory manner should be considered for further service in the SRO program. The following are recommended factors to consider:

- Does the officer have a clear sense of his/her role?
- Does the officer understand the operational policies and procedures of the school necessary to perform effectively in the position?
- Has the officer attended or scheduled to take a law-related education class in the current year?
- How does the officer relate to staff, students, and parents?
- Does the officer work well independently?
- Does the officer perform his/her duties effectively?
- How effective is the officer with classroom presentations?

If a problem occurs, it should first be addressed at the site level between the officer and administration. If a resolution is not reached, the grievance should then move through the process as established by the officer's department and school's policy.

XI. Law Related Education (LRE)¹

A. LRE Defined. Law-Related Education is the teaching of rules, laws, and the legal system that actively involves students to prepare them for responsible citizenship. It also provides instructions in legal rights, responsibilities, and the role of the citizen and requires students to practice the application of LRE in potential real-life situations. *(Adopted by the Arizona Center for Law-Related Education from the Virginia Institute for Law and Citizenship Studies.)*

B. Possible Benefits. Law-Related Education is a component of the SRO program because it:

1. Promotes critical, analytical and problem-solving skills.
2. Actively involves students, teachers and the community.
3. Increases students' knowledge base of the law, making them better informed citizens and consumers.
4. Demonstrates constructive ways to resolve conflict and can reduce violence and discipline problems in schools.
5. Discourages delinquent behavior and encourages positive behavior.
6. Promotes positive self-image in students.
7. Encourages students to respect rules, laws, and persons in authority when exposed to a "balanced" view of "democratic" society.

C. Process. The approach consists of high-interest content and interactive instructional strategies designed to provide students at all levels the following opportunities:

1. To explore and reflect on theirs and others' perspectives,
2. To express and defend their views, to listen to the views of others,
3. To develop arguments for both sides of an issue, to mediate, and
4. To formulate decisions and resolutions based on multiple and often conflicting concerns.

In primary grades, students might consider a rule they don't like, explore why it was made, examine, the consequence for breaking it, and discover who acts as judge when the rule is broken. They might evaluate existing or hypothetical rules to determine whether or not they are clear, consistent, fair, and enforceable. They could listen to and analyze rules issues in stories and they could create and enforce their own set of classroom rules. Intermediate students might role-play as a law enforcement officer encountering a criminal dilemma. They might work in cooperative groups to offer solutions to problems that arise when a law is too general or vague. Older students might use the case study method of analysis to examine legal conflicts throughout history.

Information from this exercise could then be applied to current dilemmas. Simulations of trials, known as mock trials or moot court, legislative hearings, constitutional conventions, police

¹ Modified from "Law-Related Education and Violence Prevention: Making the Connection" By: Robin Haskell McBee.

procedures, role playing, conflict resolution, mediation, formal and informal debate, cooperative group problem-solving, outside speakers, from the legal community typify LRE classes at all levels.

Because rules and laws affect all aspects of life, all subject areas, and all ages, the content of LRE can be as varied as the students and teacher need it to be. The methods, however, are characteristically open-ended and participatory in nature. Although some LRE instructional materials have been written for specific topics or age groups, there is no single way to teach LRE and no set LRE curriculum. LRE is most commonly used in social studies to promote civic understanding; however, it regularly incorporates the use of reading, writing, and speaking skills. It has the potential for application in literature, math, science, technology, foreign language, physical education, sports, and other subject areas. It need not be limited to a particular grade, subject, or time frame. The LRE approach to instruction is flexible enough to be applied as a system-wide, on-going prevention strategy, and an added benefit of such a strategy is the increased likelihood that students will better understand the rules, laws, and legal processes that govern their lives.

One of the cornerstones of LRE is the use of outside resources: school safety officers, attorneys, and other legal professionals. These resource people visit classrooms regularly, provide insight into how and why the system operates the way it does, and develops on-going positive, non-adversarial relationships with students in the class. Though typically not individualized as in mentoring, these relationships often hold meaning for the students and provide an opportunity for them to develop bonds or attachment with representatives of “the system.”

Another feature of LRE is its relevance. It deals with issues that are meaningful to students and their views are valued. LRE provides students the opportunity to get involved and participate. The crux of LRE is problem solving, both as part of a group process and on an individual basis. Social conflict lies at the heart of legal issues. Therefore, all LRE is some form of conflict resolution or problem solving.

The regular inclusion of LRE in the course of instruction will provide steady opportunities to develop and practice the information processing steps that must be developed in aggressive students if they are to acquire non-aggressive social problem-solving skills. Further, the conflicts that characteristically surround rules and laws offer good practice in content that is hypothetical in nature yet directly related to students’ lives. While not a panacea for violence prevention, LRE offers a promising strategy for schools to implement as part of their overall prevention plan. If that plan includes closer work with parents and the community, LRE might also be incorporated into after-school programs, community center programs for children and adolescents, and parent programs. In this way the approach lends itself to a close interface with home and community.

WEBSITES

Arizona Department of Education www.ade.az.gov

Provides links to prevention sites, updates on funding opportunities and a calendar of conferences, trainings, and workshops.

Arizona Foundation for Legal Services and Education <http://azflse.org/>

The site will provide up-to-date information about LRE research, links to other LRE related sites, professional development opportunities, publications, and articles.

Law For Kids www.lawforkids.org

Posts youth laws and information in a manner that kids can read quickly and understand easily. Also kids can get homework answers, access other links, listen to other kids' stories, and play computer games.

Arizona Prevention Resource Center (APRC) <http://www.azprevention.org/>

APRC is Arizona's central source for prevention information and materials. It has an expanded section of school safety materials. Materials may be checked out at no cost.

Join Together ONLINE <http://www.drugfree.org/join-together>

National resource center to reduce substance abuse and gun violence. Offers up-to-date information on legislation, funding opportunities, Action Kits, and resources guides.

Keep Schools Safe www.keepschoolssafe.org

A collection of resources to help make schools safer.

National Association of School Resource Officers (NASRO) www.nasro.org

Nonprofit training organization for district personnel and school resource officers. Sponsors an annual training conference as well as regional trainings. Lesson plans are available to download at no charge.

Arizona School Resource Officers Association (ASROA) www.asroa.org

Nonprofit organization formed to promote law-related education. Sponsors an annual conference and various training opportunities.

National Dropout Prevention Center www.dropoutprevention.org

Provides information on dropout prevention programs, educational strategies, technical assistance, training, and resources.

National Resource Center for Safe Schools www.nwrel.org

Center works with schools and communities to create safe learning environments and prevent school violence.

National School Safety Center www.nsscl.org

Clearinghouse for school safety information.

National Youth Gang Center www.iir.com/nygc

Provides information about gangs and effective responses to them.

Office of Juvenile Justice and Delinquency Prevention www.ojjdp.gov

Provides numerous links to juvenile justice-related resources, model programs and funding opportunities.

Constitutional Rights Foundation (CRF) www.crf-usa.org

Offers programs and develops materials on law-related education. Web site contains ready-to-use lessons.

National Law-Related Education Resource Center (NLRC) www.abanet.org

Facts on current model programs, curricula, print, and multimedia materials for all groups and age levels about the law.

Street Law, Inc. www.streetlaw.org

Offers program training and program development in law-related education.

CITY COUNCIL REPORT

SUBJECT: Resolution 1064-0821 – Intergovernmental Agreement with Tolleson Union High School District #216, La Joya/Westview for a School Resource Officer

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police 623-333-7207

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1064-0821, authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

School safety issues in Avondale continue to be a priority for our city and schools and the need to maintain an SRO in the high schools located in Avondale is a benefit for all involved. The Avondale Police Department has partnered with the Tolleson Union High School District since 1994, to provide a School Resource Officer to their schools.

The police department enjoys the benefit of having an SRO assigned to these schools who can field most calls for service that would normally be handled by a patrol officer. Further, the SRO conducts follow up on criminal investigations involving the students attending Westview and La Joya High Schools, which provide relief to officers who would otherwise handle these follow up investigations.

DISCUSSION:

The proposed IGA establishes a funding agreement for the school year running from August 3, 2021 through May 27, 2022, for both Westview and La Joya High Schools which provide direction, supervision and management of the assigned SRO. The SRO will work with the school staff to coordinate a variety of law

enforcement related topics including criminal law, traffic law and constitutional law. The SRO will provide a positive police role model for students as well as serving as a security advisor to school administrators.

BUDGET IMPACT:

The District shall pay the City:

- Salary and benefits for 10 months of 2021-2022 school year
- An additional one month of summer school, if required
- Amount not to exceed \$110,720 for La Joya Community High School SRO
- Amount not to exceed \$113,720 for Westview High School SRO

The City is responsible for 100% of SRO's costs during the two-month summer break, week-long school breaks, vacation, and sick leave. The City and District will share equally the cost of school-related overtime, up to 40 hours annually.

RECOMMENDATION:

Staff recommends City Council adopt a resolution authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale.

RESOLUTION NO. 1064-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 RELATING TO SCHOOL RESOURCE OFFICER SERVICES FOR LA JOYA COMMUNITY HIGH SCHOOL AND WESTVIEW HIGH SCHOOL.

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

SECTION 1. The Intergovernmental Agreement with Tolleson Union High School District No. 214 relating to school resource officer services for La Joya Community High School and Westview High School for fiscal year 2021-2022 (the “Agreement”) is hereby approved in substantially 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 take all steps necessary to cause the execution of the Agreement and to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1064-0821

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES**

(Westview High School and La Joya Community High School)

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into this 3rd day of August 2021 between the City of Avondale, an Arizona municipal corporation (the "City"), and the Tolleson Union High School District No. 214, an Arizona school district (the "District").

RECITALS

A. The District has funding available through its School Safety Program Grant to fund the cost for school resource officer services (the "SRO Services") for La Joya Community High School located at 11650 West Whyman Avenue, Avondale Arizona 85323 and Westview High School located at 10850 West Garden Lakes Parkway, Avondale, Arizona 85392 (each a "School," collectively, the "Schools").

B. The City and the District desire to enter into this Agreement whereby the City will provide sworn, certified police officers to serve as school resource officers (each, an "SRO," collectively, the "SROs") to provide the SRO Services at the Schools; and

C. The District is authorized by ARIZ. REV. STAT. § 15-342(13), ARIZ. REV. STAT. § 11-952, and the approval of its governing board to enter into this Agreement; and

D. The City is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952 and the Avondale City Charter, Article I, Section 3.

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 are hereby acknowledged, the parties hereby agree as follows:

SECTION I – OBLIGATIONS OF THE CITY

1.1 Services to be Provided.

The City shall assign two police officers to the District to provide SRO Services at the Schools on an hourly basis as more particularly set forth herein. The City agrees to involve the District, in the selection process for the SRO, by allowing a School administrator to be on the final selection committee once the Avondale Police Department has identified final candidates for the SRO

position. The City will endeavor to ensure that the SROs are assigned to the School for up to 40 hours each week at all times that the School is in session (July 29, 2021 through May 27, 2022) and tentatively for one month in June 2022 for summer school during the term of this Agreement. If feasible, and subject to the sole discretion of the City, the SROs assigned to the Schools will be the same individual during the three-year School Safety Grant Program cycle.

a. The City police officer performing SRO Services shall fulfill his or her duties as a sworn law enforcement officer for the State of Arizona. The SRO will be present and accessible on the assigned School campus as scheduled by the District. Notwithstanding the foregoing, the SRO may be temporarily assigned to duties other than SRO Services during school times as deemed necessary by the City's Police Chief or authorized designee, in his or her sole discretion. If the SRO is called away on police business including, but not limited to, City-mandated training, City-mandated meetings, City-related emergencies, etc., the District shall not be invoiced for that time, and the costs for such time shall be borne by the City. If the SRO is attending an SRO-related training or other activity mandated by the School, the District shall be invoiced as described in Section 2.1.

b. The SROs' activities will be restricted to their assigned School grounds except as otherwise directed by the City's Police Chief or authorized designee as set forth in subsection 1.1(a) above and for:

1. Follow-up home visits when needed as a result of School-related problems.
2. Incentive programs approved by the parties.
3. In response to off-campus, but School-related, criminal activity.
4. Attendance at off-campus events or meetings.
5. Attendance at training at the request of the District or School.

c. When School is not in session, including all breaks, School-observed holidays, and School vacations, the City shall have full discretion to assign the SRO responsibilities; provided, however, that the City shall be responsible for 100% of the SRO's costs when so assigned.

d. The City represents and warrants that it will ensure that each officer assigned to perform SRO Services on District property pursuant to this Agreement will be sworn City police officers. Each SRO will be fingerprinted and successfully complete a background check performed by the City before such assignment.

e. Where applicable, the roles and responsibilities of the City and the District with respect to the SRO Services shall be as set forth in the Avondale Police Department SRO Program, attached hereto as Exhibit A and incorporated herein by reference.

f. Notwithstanding this subsection, the parties acknowledge that the SRO Services provided at Westview and La Joya Community shall include one-hundred and eighty (180)

hours of law related education (“LRE”), which shall consist of 80 hours of classroom instruction to ongoing cohort groups of students and 100 hours of universal instruction.

g. Each officer assigned to perform SRO services shall attend annual training required by the Arizona Department of Education.

1.2 Invoices; Salary Rates. The City shall invoice the District quarterly, based upon SRO Services performed and completed to date. The SRO’s salary and employer-paid benefits rate shall be used to calculate the amount due from the District for SRO Services. Supporting documentation of these actual amounts must be on file with the District’s Office prior to payment of any invoice to the City.

SECTION II- OBLIGATIONS OF THE DISTRICT

2.1 Reimbursement to City - Quarterly. The District shall reimburse the City quarterly for the services it provides pursuant to subsection 1.2 above.

a. The District shall pay the City an amount not to exceed \$110,720 for SRO Services at La Joya Community High School and \$113,925 for SRO Services at Westview High School for the SROs’ benefits and salary for the ten-month 2021-2022 school year. If an SROs’ is required to cover summer school for one month in June 2022, that will be an additional cost to the District. The City shall pay 100% of the SROs’ costs during the two-month summer break and any other school breaks or school observed holidays or vacations during which the City assigns the SRO to City related duties. The SROs’ time spent at La Joya Community High School and Westview High School, including all overtime, must be substantiated by time cards and approved by the high schools’ Principal. The District and the City shall equally share the cost of any SRO overtime worked on school-related investigations, with each party paying 50% of the cost. The District shall not use any grant funds to pay for overtime costs associated with SRO overtime. The SRO must seek approval from the appropriate Avondale Police Department (the “Department”) supervisor before working on school-related overtime. Overtime payments shall not exceed, under any circumstance, forty (40) hours annually. The District will not pay for any SRO Services for week-long school breaks in October, November, December, January and March, nor for any personal vacations taken by an SRO nor for any sick leave incurred by an SRO. The Fiscal Year (FY) 2021 School Safety Program application is year one of a three year grant. Requests for salary and benefits (under purchased professional services) for a continuing officer must be consistent with the FY 2021 approved salary and benefits amount for that officer. Upward adjustments in salary and benefits cannot be accepted. If the actual salary of an officer is less than what was approved in FY 2021, the lesser amount of the two must be requested.

b. The District shall pay invoices from the City within 30 days of receipt, assuming proper documentation is on file to support the charges.

2.2 Office Space. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office provided shall include the necessary equipment for the SRO to effectively perform his or her duties, including, without limitation, a telephone, desk, chair and filing cabinet.

2.3 Non-Interference by District. No District or School administrator shall interfere with an SRO's sworn law enforcement duties. It is agreed, however, that at such time as an SRO is acting within the role of a sworn law enforcement officer but is also acting outside of or in excess of the District's rules and policies regarding interviewing and searching students and/or use of appropriate physical force on students, the City shall hold the District harmless from such actions by the SRO. The SRO shall not assist in the District's administrative discipline process unless a definitive danger is perceived by school staff or the student is suspected of criminal activity.

2.4 Removal of SRO. The District may request that an SRO be removed from a School if the District determines that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment or poses a danger to the children at that School or to District employees, provided that the District shall immediately contact the SRO's superior officer and the person designated by the City in Section 3.6 below to describe the situation and to describe the SRO's inappropriate conduct or the District's concern for the safety of the children. In such event, the District shall direct the SRO to return to the Avondale Police Department. The Within seventy-two (72) hours of receipt of notice of the request for removal of an SRO from a School, and in accordance with the City's Police Department's internal policies, the City agrees to assign a replacement SRO to provide the SRO Services to the District under this Agreement if the removal is deemed appropriate by the City's Police Chief or authorized designee, in his or her sole discretion. If a replacement SRO cannot be assigned to the campus, the District shall be credited for each day an SRO is not assigned to the campus. The District, at its sole discretion, may refuse the assignment to the District of any officer who has been removed from the District because of allegations of unprofessional, illegal, or immoral conduct. If the issues cannot be resolved regarding the removal and replacement of a SRO under this section 2.4, the parties agree that the District may terminate this Agreement or the City and the District may mutually agree that the School will no longer have a SRO for the remainder of the school year and the District will not be required to pay for the unfulfilled portion of the SRO's work. The District shall pay the City for work performed by the SRO through the date of removal.

2.5 Status Meetings. By mutual agreement, the parties may meet from time to time for purposes of discussing the status and conduct of the work being performed under this Agreement, and addressing any problems that have come to the parties' attention and their views as to how such problems may be resolved, including amending the terms and conditions of this Agreement.

2.6 Additional Payments. The District shall provide \$100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year. The District shall pay travel-related expenses incurred by the SRO for attending mandatory ADE SRO training, if the grant allocates funding.

2.7 Grant Application. The District shall provide a complete copy of the School Safety Program grant application and aware to each SRO when s/he begins service.

SECTION III - GENERAL TERMS AND CONDITIONS

3.1 Indemnification. To the extent permitted by law each party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents for, from

and against 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 departments, officers, employees or agents.

3.2 Term. The term of this Agreement shall be for one year from August 3, 2021 until May 27, 2022, unless sooner terminated by the parties hereto pursuant to subsection 3.5 below. The term may be extended through June 30, 2022 if agreed to by the parties.

3.3 Independent Contractor. The City acknowledges and agrees that the SRO Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the District, except as provided in Section 3.13 below. City, its employees, and subcontractors are not entitled to worker's compensation benefits from the District. The District does not have the authority to supervise or control the actual work of City, its employees or subcontractors. The City, and not the District, shall determine the time of its performance of the SRO Services provided under this Agreement so long as City meets the requirements of its agreed scope of work as set forth in Section I above. The District and the City do not intend to nor will they combine business operations under this Agreement.

3.4 Records. Both parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.

3.5 Termination. Either party may terminate this Agreement upon 30 days' written notice to the other party at the addresses indicated below. Five (5) days after the District fails to make reimbursements as required by this Agreement, the City may terminate this Agreement by giving ten days' written notice to the District. In any event, this Agreement shall be deemed terminated no later than the effective date of any resolution adopted by the City to withdraw from this Agreement. At the time of termination, the City shall invoice the District for all SRO Services provided to that date which invoices shall be paid within 30 days thereafter. The District has the right to terminate this Agreement immediately should the Grant or other funding become unavailable for any reason. The District also has the right to terminate this Agreement immediately should the City increase the costs of SRO Services beyond those costs that existed in July 2021.

3.6 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 Drive
Avondale, Arizona 85323
Attn: Charles Montoya, City Manager

With copy to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Nicholle Harris, City Attorney

If to the District: Tolleson Union High School District
9801 West Van Buren Street
Tolleson, Arizona 85353
Attn: Rosalva Lagunas

With a copy to: Udall Shumway P.L.C.
1138 N. Alma School Road
Mesa, Arizona 85201
Attn: Cathleen M. Dooley, Esq.

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.

3.7 Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the parties.

3.8 Program Continuation Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. Each party acknowledges and agrees that performance by either party is dependent upon appropriation of funds to or by that party. The provisions of this Agreement for SRO Services shall be effective when funds are appropriated by each party for purposes of this Agreement and are actually available for payment. Each party shall be the sole judge and authority in determining the availability of funds under this Agreement and each party shall keep the other party fully informed as to the availability of funds for the SRO Services. The obligation of the parties to make any payment pursuant to this Agreement is a current expense of each party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either party. If the City Council or District Board fails to appropriate money sufficient to meet the financial obligations as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement. If the District is denied the School Safety Grant, it may, at its discretion, initiate an Appeal under the School Safety Manual guidelines.

3.9 Entire Agreement. This Agreement comprises the entire agreement of the parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the persons duly authorized to enter into contracts on behalf of the City and the District.

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

3.11 Cancellation. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

3.12 Workers' 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.

3.13 FERPA Compliance. Both parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

3.14 Non-Discrimination. Both parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4 and 2009-09, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.

3.15 Disposition of Property upon Termination of the Agreement. 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.

3.16 Dispute Resolution Process. The parties shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the parties are unable to resolve the dispute or claim through negotiations, upon the written request of either party, the City's Police Chief, or designee, and the Principal, or designee, will attempt to resolve the matter within 10 calendar days of the date the matter was referred to them. If the matter is still not resolved, the matter will be immediately referred to the City Manager, or designee, and the District Superintendent, or designee. If the matter is still not resolved within 10 calendar days, the parties may terminate this Agreement in accordance with Section 3.5 above.

3.17 E-Verify. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). The party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching

party may terminate this Agreement. The parties retain the legal right to inspect the papers of the other party to ensure that the party is complying with the above- mentioned warranty under this Agreement.

3.18 Coordination of Student Misconduct. The parties shall work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

3.19 Chain of Command and Channels of Communication. The Principal or the Principal's authorized designee will communicate directly with the SRO Supervisor concerning any issues involving the SROs. If there is an issue that cannot be resolved between the Principal and the SRO Supervisor, the District's Grants and Federal Program Coordinator will communicate with the SRO Supervisor or his or her supervisor, as determined by the City.

[SIGNATURES ON FOLLOWING PAGE]

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

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

“District”

TOLLESON UNION HIGH SCHOOL
DISTRICT NO. 214, an Arizona school
district

By: Kenneth N. Weise, Mayor

Date: _____

ATTEST:

Marcella Carrillo, City Clerk



Date: 07/20/21

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (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.

Cathleen M. Dooley, Attorney for the District

Nicholle Harris, Attorney for City of Avondale

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

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

“District”

TOLLESON UNION HIGH SCHOOL
DISTRICT NO. 214, an Arizona school
district

By: Kenneth N. Weise, Mayor

By: Nora Gutierrez, Superintendent

Date: _____

Date: _____

ATTEST:

Marcella Carrillo, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (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.

[Redacted Signature]
Jessica G. Sanchez, Attorney for the District

Nicholle Harris, Attorney for City of Avondale

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES
[Avondale Police Department SRO Program]

See following pages.

AVONDALE POLICE DEPARTMENT SRO PROGRAM

I. Introduction.

The mission of the Avondale Police SRO Program is to contribute to an orderly, purposeful atmosphere, which promotes the feeling of safety conducive to teaching and learning on school campuses in the City of Avondale. This is accomplished by assigning the same Police Officer to the same campus for an extended period of time. The SRO will first and foremost perform the duties of a police officer to include, criminal investigations, interviews, interrogations, case follow-up and arrests when necessary. The SRO will establish trusting lines of communication with students, parents and teachers. The SRO will serve as a positive role model to instill good moral standards, good judgment, respect for others, and sincere concern for the school community. The SRO will promote citizen awareness of the law to enable students to become better-informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law. The SRO will serve as a confidential resource for administrators, teachers, and students concerning problems they face on the campus as well as providing information on community resources available to them.

II. Mission and Values.

Avondale Police SROs will follow the established mission and values of the Avondale Police Department in the course of their duties at Avondale schools. These mission and values set the tone and direction for Avondale Police employees to follow:

A. Mission - "Serving with Honor": The Mission Statement is the essence of how the organization reaches the vision. It defines the path all members must take in order to make the vision a reality. By asking ourselves the question, "Are we serving with honor," every time we interact with members of our community, our fellow employees, and other City employees, we have, in fact, moved closer to our vision.

B. Values:

1. **Accountability:** All members of the Avondale Police Department are accountable for their actions in accordance with the mission.
2. **Customer Service:** We strive to exceed the expectations of our internal and external customers. This is accomplished, in part, through timely follow-up, courteous service, and having mutual respect and compassion for all those with whom we interact.
3. **Diversity:** We support an organization that contains employees from various backgrounds which helps to improve how we relate to the various cultures in our community. Most importantly, we look for the strength of diversity in the employees we hire which goes beyond exterior diversity and includes the ability to look past our differences and recognize being different is actually a strength.
4. **Employee Involvement:** When appropriate, employees are encouraged and expected to be involved in organizational decision-making and research. We recognize the benefits of creating an environment where employees feel comfortable providing their input without retribution.

5. Fairness: All decisions and actions taken by the Avondale Police Department are to be based on a fair and objective process. Transfers, promotions, training attendance and other career opportunities are based on the needs of the organization and the performance history of those involved, nothing more.

6. Integrity: Providing police services require the trust of those we serve. Whether responding to a request regarding your actions in a specific situation, or providing any police service, employees are expected to be truthful to maintain the credibility of the department.

7. Open Communication: We work to create a work environment where employees at all levels can provide input, receive feedback and ask questions. This creates an employee group that is informed and while they may not agree with every decision, they are entitled to an explanation provided it does not compromise the integrity of the situation.

8. Professionalism: Not only are we striving to make the organization more professional, we recognize the importance of providing services in a professional manner. The manner in which we interact with others is professional, the work product is professional, and our appearance is professional.

9. Teamwork: The Avondale Police Department is successful due to the synergy created when all areas of the Department work together towards mission accomplishment. There is not one work area more important than another. There is no difference in terms of organizational importance regarding “sworn” or “professional staff” positions and each Bureau Manager is expected to recognize and endorse the philosophy that teamwork is critical to a successful police department.

III. Goals.

A. To reduce incidents of school violence:

1. Enforce city code and state laws.
2. ZERO tolerance for drug offenses, weapons offenses, violent acts leading to serious injury and threats towards students, staff or parents.
3. High visibility during peak times such as; morning, lunch, assemblies and after school.

B. Reduction of criminal offenses committed by students.

1. Provide counseling to students and parents to educate them regarding the law and consequences of violating the law.

C. Establish positive rapport with students and parents.

1. Be honest and professional in all interactions with parents and students.
2. Provide LRE counseling to students and parents to inform them of the law, their rights, expectations as citizens and consequences for violating the law.
3. Attend extra-curricular student activities when feasible.

D. Establish positive rapport with teachers, staff and administrators.

1. Be honest and professional in all interactions with teachers, staff and administrators.
2. Provide guidance and support on law-related problems occurring on the campus.
3. Be responsive to questions and requests from school administrators when feasible and within the parameters of the law.

IV. Organizational Structure.

A. Supervision: The day-to-day operation and administrative control of the SRO program will be the responsibility of the Avondale Police Department. Responsibility for the conduct and performance of the SRO shall remain with the Avondale Police Department. The City of Avondale will provide supervisory personnel to oversee the program.

B. SRO Accountability: The La Joya Community High School and Westview High School principal or designees will provide a written evaluation of the SRO performance relating to the goals established in this Agreement once a semester. School staff shall contact the SRO Supervisor to report performance or conduct related complaints involving SROs as soon as they become aware of it. It will be the responsibility of the Avondale Police Department to investigate any misconduct allegations against an SRO.

V. Procedures.

The City of Avondale SRO program shall utilize procedures in accordance with State Law, The Arizona School Safety Program Manual, and in accordance with Avondale Police Department policies and procedures.

- SROs are first and foremost police officers and shall be responsible for carrying out all duties and responsibilities of a police officer in the City of Avondale and shall at all times remain under the command and control of the Avondale Police Department.
- SROs shall not enforce any school or district rules.
- SROs are not disciplinarians and shall not assume this role under any circumstances.
- SROs report directly to an Avondale Police Supervisor for all activities.
- SROs will not involve themselves with La Joya Community High School and Westview High School administrative matters that are not criminal offenses.
- SROs are not formal counselors, and will not act as such, however, they are to be used as a law related resource to assist students, staff and all persons involved with La Joya Community High School and Westview High School.
- SROs will present varied topics to students to better inform them of their rights and expectations as citizens as well as consequences for violating laws. The SROs' are not certified teachers and therefore should present in classrooms with a teacher present at all times.

VI. SRO Selection.

A. Recommended Qualifications:

- Desire to work with students, educators, and parents.
- Willingness to teach law-related education.
- Supportive of prevention strategies.
- Satisfactory employment history with supporting documentation.
- Demonstrated effectiveness in working with youth.
- Oral and written communication skills.
- Ability to effectively interact and communicate with diverse sets of individuals.
- Supportive of the philosophy of the SRO program.
- Willingness to attend law-related education training to implement and maintain LRE programs to meet the needs of the students.
- AZPOST certified general instructor.

B. SRO Duties Include:

- Establish liaison with school administrators, staff, students, and parents.
- Inform students of their rights and responsibilities as lawful citizens through presentation of law-related education in the classroom.
- Network with community agencies that may or do provide services to the school.
- Act as a resource in the investigation of school related criminal activities
- Participate in the Parent-Teacher association as requested.
- Participate in campus activities, student organizations, and athletic events when feasible and appropriate.
- Provided a visible deterrence to crime while presenting a positive impression of a law enforcement officer.
- Investigate criminal offenses occurring on campus.
- Conduct follow-up of assigned criminal cases.
- Conduct interviews, interrogations and make arrests when necessary.
- Provide information when requested to students, parents, and staff in law-related situations.
- Maintain tracking system of statistical information required by supervisor and school administration.

VII. SRO Role.

The School Resource Officer has three basic roles:

A. Law Enforcement Officer:

1. The SRO is, first of all, a sworn law-enforcement officer. When necessary the SRO has the authority to intervene as a law-enforcement officer. This includes the investigation of criminal offenses, conducting interviews and interrogations, following up on assigned cases and making necessary arrests.
2. Administrators should take the lead on school policy violations. The SRO should be involved when a student's conduct violates a law.
3. As partners in school safety, SRO and administrators shall work together to develop procedures for ongoing communication to ensure timely and uniform reporting of criminal activities.
4. An SRO assigned to a school with a juvenile probation officer (PO) is expected to work as a team. The SRO should know the role of the PO.
5. The SRO should serve on the School Safety Committee and collaborate on the development of the safe school plan.
6. The SRO should build a relationship with students, parents and staff that promotes a positive image of law enforcement.

B. Law-Related Educator:

1. The SRO should collaborate with classroom teachers to engage teachers to integrate law-related education into their curriculum. The teacher must be present in the classroom during LRE instruction.
2. The SRO must keep an activity log that tracks LRE classroom instruction hours and law enforcement or probation activity. Situations that take an officer off their assigned campus must be logged. This data must be shared with the school administrator and agency supervisor. The following data will be tracked and provided to the La Joya Community High School and Westview High School Principal or designee:
 - a. Total hours of LRE classroom instruction
 - b. LRE topic and law enforcement
 - c. Teacher name and subject of each class where an LRE lesson is taught
 - d. Total hours of Law Enforcement/ Probation activity
 - e. Time spent per LRE lesson
 - f. Total time spent off campus

C. Positive Role Model:

1. The SRO should set limits being clear about what is acceptable and what is not; letting students know the consequences of unacceptable behavior and the rewards of acceptable behavior.
2. The SRO should set an example by modeling how to handle stress, resolve conflicts, celebrate successes, and how to be a friend.
3. The SRO should be honest by providing accurate information.

4. The SRO should be consistent with students, staff, and parents in applying rules and regulations.

5. The SRO should encourage responsibility by helping students think through options and consequences of decisions, set personal goals, and develop plans to make desired changes.

6. The SRO should show respect by treating students with respect and expressing high expectations for them.

7. The SRO should always strive to be a positive role model because students learn from every observation of or interaction with the SRO.

VIII. SRO Supervisor Role:

The SRO Supervisor's responsibilities include but may not be limited to:

- Communicate to staff and carry out the philosophy and goal of the City of Avondale SRO program.
- Attend SRO program management training for supervisors.
- Conduct on-going visits to schools under their supervision.
- Ensures the SRO keep an activity log that tracks LRE classroom instruction hours, the topic of each LRE class and law enforcement or probation activity and situations that take an officer off their assigned campus.
- Motivate officers and provide positive reinforcement recognizing excellent performance.
- Review all investigations by assigned SRO for accuracy, thoroughness and proper procedures.
- Supervise and monitor performance of SRO, including confronting performance deficiencies and providing documentation and plan for improvement.
- Thoroughly investigate and document allegations of SRO misconduct.
- Regularly brief their Lieutenant on any unusual incidents at Avondale Schools.
- Ensure SROs conduct timely, professional and thorough investigations of criminal activity on school campuses.
- Conduct one supervisory follow-up of a criminal investigation per SRO per semester. Includes a written evaluation and assessment of the SRO's performance.
- Meet collectively with SROs once a month for training, policy review, and collaboration.
- Provide School principal or designee with a monthly recap of SRO activities to include number of LRE hours, time off campus and law enforcement activity.
- Meet with or talk on the telephone with principal of schools that have SROs, once a month to discuss SRO performance and law enforcement-related issues.

IX. School District Role:

The district administrator, site principal and teachers' support of the SRO program is vital to the program's success.

A. District Level:

1. Supports and communicates the SRO program philosophy to all site staff.
2. Understands the SRO program requirements.
3. Develops and keeps open communication with local law enforcement.

B. Building Level Administration:

1. Supports and communicates the SRO program philosophy to all staff, students and parents on their campus.
2. Promotes the integration of law-related education into the classrooms.
3. Understands and agrees to the SRO program guidelines.
4. Ensures a teacher is present in the classroom at all times during LRE instruction.
5. Introduces the officer to staff and students.
6. Develops a collaborative relationship with the SRO while allowing the officer to function independently. The officer serves as a resource to the students and staff.
7. Meets with the SRO before the first day of duty to review the Service Agreement, operational procedures and specifics of the program on campus.
8. Monitors the program's implementation process and meets with the SRO on a regular schedule.
9. Directs staff development of teachers and SRO involved in the delivery of LRE.
10. Provides a semi-annual evaluation of the SRO relating to their role as an SRO.

C. Teacher:

1. Supports and communicates information about the SRO program in their classrooms to students and parents.
2. Understands and agrees to the program guidelines.
3. Teams with the SRO in planning and delivery of law-related education units in their classroom. A teacher must be present in the classroom at all times during LRE instruction.

X. The Performance Evaluation

A semi-annual performance evaluation shall be conducted by a school administrator and shared with the SRO's supervisor. The evaluation is meant to assist the SRO and his/her supervisor in meeting the intent of the SRO program and carrying out his or her duties. It is not meant to supplant the official evaluation process used by the SRO's department or agency. Only SROs that have performed in a satisfactory manner should be considered for further service in the SRO program. The following are recommended factors to consider:

- Does the officer have a clear sense of his/her role?
- Does the officer understand the operational policies and procedures of the school necessary to perform effectively in the position?
- Has the officer attended or scheduled to take a law-related education class in the current year?
- How does the officer relate to staff, students, and parents?
- Does the officer work well independently?
- Does the officer perform his/her duties effectively?
- How effective is the officer with classroom presentations?

If a problem occurs, it should first be addressed at the site level between the officer and administration. If a resolution is not reached, the grievance should then move through the process as established by the officer's department and school's policy.

XI. Law Related Education (LRE)¹

A. LRE Defined. Law-Related Education is the teaching of rules, laws, and the legal system that actively involves students to prepare them for responsible citizenship. It also provides instructions in legal rights, responsibilities, and the role of the citizen and requires students to practice the application of LRE in potential real-life situations. *(Adopted by the Arizona Center for Law-Related Education from the Virginia Institute for Law and Citizenship Studies.)*

B. Possible Benefits. Law-Related Education is a component of the SRO program because it:

1. Promotes critical, analytical and problem-solving skills.
2. Actively involves students, teachers and the community.
3. Increases students' knowledge base of the law, making them better informed citizens and consumers.
4. Demonstrates constructive ways to resolve conflict and can reduce violence and discipline problems in schools.
5. Discourages delinquent behavior and encourages positive behavior.
6. Promotes positive self-image in students.

¹ Modified from "Law-Related Education and Violence Prevention: Making the Connection" By: Robin Haskell McBee

7. Encourages students to respect rules, laws, and persons in authority when exposed to a “balanced” view of “democratic” society.

C. Process. The approach consists of high-interest content and interactive instructional strategies designed to provide students at all levels the following opportunities:

1. To explore and reflect on theirs and others’ perspectives,
2. To express and defend their views, to listen to the views of others,
3. To develop arguments for both sides of an issue, to mediate, and
4. To formulate decisions and resolutions based on multiple and often conflicting concerns.

In primary grades, students might consider a rule they don’t like, explore why it was made, examine, the consequence for breaking it, and discover who acts as judge when the rule is broken. They might evaluate existing or hypothetical rules to determine whether or not they are clear, consistent, fair, and enforceable. They could listen to and analyze rules issues in stories, and they could create and enforce their own set of classroom rules. Intermediate students might role-play as a law enforcement officer encountering a criminal dilemma. They might work in cooperative groups to offer solutions to problems that arise when a law is too general or vague. Older students might use the case study method of analysis to examine legal conflicts throughout history. Information from this exercise could then be applied to current dilemmas. Simulations of trials, known as mock trials or moot court, legislative hearings, constitutional conventions, police procedures, role playing, conflict resolution, mediation, formal and informal debate, cooperative group problem-solving, outside speakers, from the legal community typify LRE classes at all levels.

Because rules and laws affect all aspects of life, all subject areas, and all ages, the content of LRE can be as varied as the students and teacher need it to be. The methods, however, are characteristically open-ended and participatory in nature. Although some LRE instructional materials have been written for specific topics or age groups, there is no single way to teach LRE and no set LRE curriculum. LRE is most commonly used in social studies to promote civic understanding; however, it regularly incorporates the use of reading, writing, and speaking skills. It has the potential for application in literature, math, science, technology, foreign language, physical education, sports, and other subject areas. It need not be limited to a particular grade, subject, or time frame. The LRE approach to instruction is flexible enough to be applied as a system-wide, on-going prevention strategy, and an added benefit of such a strategy is the increased likelihood that students will better understand the rules, laws, and legal processes that govern their lives.

One of the cornerstones of LRE is the use of outside resources: school safety officers, attorneys, and other legal professionals. These resource people visit classrooms regularly, provide insight into how and why the system operates the way it does, and develops on-going positive, non-adversarial relationships with students in the class. Though typically not individualized as in mentoring, these relationships often hold meaning for the students and provide an opportunity for them to develop bonds or attachment with representatives of “the system.”

Another feature of LRE is its relevance. It deals with issues that are meaningful to students and their views are valued. LRE provides students the opportunity to get involved and participate. The crux of LRE is problem solving, both as part of a group process and on an individual basis. Social conflict lies at the heart of legal issues. Therefore, all LRE is some form of conflict resolution or problem solving.

The regular inclusion of LRE in the course of instruction will provide steady opportunities to develop and practice the information processing steps that must be developed in aggressive students if they are to acquire non-aggressive social problem-solving skills. Further, the conflicts that characteristically surround rules and laws offer good practice in content that is hypothetical in nature yet directly related to students' lives. While not a panacea for violence prevention, LRE offers a promising strategy for schools to implement as part of their overall prevention plan. If that plan includes closer work with parents and the community, LRE might also be incorporated into after-school programs, community center programs for children and adolescents, and parent programs. In this way the approach lends itself to a close interface with home and community.

WEBSITES

Arizona Department of Education www.ade.az.gov

Provides links to prevention sites, updates on funding opportunities and a calendar of conferences, trainings, and workshops.

Arizona Foundation for Legal Services and Education <http://azflse.org/>

The site will provide up-to-date information about LRE research, links to other LRE related sites, professional development opportunities, publications, and articles.

Law For Kids www.lawforkids.org

Posts youth laws and information in a manner that kids can read quickly and understand easily. Also kids can get homework answers, access other links, listen to other kids' stories, and play computer games.

Arizona Prevention Resource Center (APRC) <http://www.azprevention.org/>

APRC is Arizona's central source for prevention information and materials. It has an expanded section of school safety materials. Materials may be checked out at no cost.

Join Together ONLINE <http://www.drugfree.org/join-together>

National resource center to reduce substance abuse and gun violence. Offers up-to-date information on legislation, funding opportunities, Action Kits, and resources guides.

Keep Schools Safe www.keepschoolssafe.org

A collection of resources to help make schools safer.

National Association of School Resource Officers (NASRO) www.nasro.org

Nonprofit training organization for district personnel and school resource officers. Sponsors an annual training conference as well as regional trainings. Lesson plans are available to download at no charge.

Arizona School Resource Officers Association (ASROA) www.asroa.org

Nonprofit organization formed to promote law-related education. Sponsors an annual conference and various training opportunities.

National Dropout Prevention Center www.dropoutprevention.org

Provides information on dropout prevention programs, educational strategies, technical assistance, training, and resources.

National Resource Center for Safe Schools www.nwrel.org

Center works with schools and communities to create safe learning environments and prevent school violence.

National School Safety Center www.nsscl.org

Clearinghouse for school safety information.

National Youth Gang Center www.iir.com/nygc

Provides information about gangs and effective responses to them.

Office of Juvenile Justice and Delinquency Prevention www.ojjdp.gov

Provides numerous links to juvenile justice-related resources, model programs and funding opportunities.

Constitutional Rights Foundation (CRF) www.crf-usa.org

Offers programs and develops materials on law-related education. Web site contains ready-to-use lessons.

National Law-Related Education Resource Center (NLRC) www.abanet.org

Facts on current model programs, curricula, print, and multimedia materials for all groups and age levels about the law.

Street Law, Inc. www.streetlaw.org

Offers program training and program development in law-related education.

CITY COUNCIL REPORT

SUBJECT: Resolution 1065-0821 – Intergovernmental Agreement with Tolleson Union High School District #216, West Point for a School Resource Officer

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police - 623-333-7207

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1065-0821, authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale to share the cost of providing a School Resource Officer (SRO) during the 2021/2022 school year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

School safety issues in Avondale continue to be a priority for our city and schools and the need to maintain an SRO in the high schools located in Avondale is a benefit for all involved. The Avondale Police Department has partnered with the Tolleson Union High School District since 1994, to provide a School Resource Officer to their schools.

The police department enjoys the benefit of having an SRO assigned to these schools who can field most calls for service that would normally be handled by a patrol officer. Further, the SRO conducts follow up on criminal investigations involving the students attending West Point High School, which provides relief to officers who would otherwise handle these follow up investigations. This will be West Point High School's second year in the district.

DISCUSSION:

The proposed IGA establishes a funding agreement for the school year running from August 4, 2021, through May 28, 2021, for West Point High School which provides direction, supervision, and management of the

assigned SRO. The SRO will work with the school staff to coordinate a variety of law enforcement-related topics including criminal law, traffic law, and constitutional law. The SRO will provide a positive police role model for students as well as serving as a security advisor to school administrators.

BUDGET IMPACT:

The Tolleson Union High School District has committed financially to fund a portion of the assigned SRO's salary, benefits, and school-related overtime during the school year at West Point High School.

The District shall pay the City:

- Salary and benefits for 10 months of 2021-2022 school year
- An additional one month of summer school, if required
- Amount not to exceed \$56,907.50 for West Point High School SRO

The City is responsible for 100% of SRO's costs during the two-month summer break, week-long school breaks, vacation, and sick leave.

The City and District will share equally the cost of school-related overtime, up to 40 hours annually.

RECOMMENDATION:

Staff recommends City Council adopt a resolution authorizing an Intergovernmental Agreement between the Tolleson Union High School District #214 and the City of Avondale.

RESOLUTION NO. 1065-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 RELATING TO SCHOOL RESOURCE OFFICER SERVICES FOR LA JOYA COMMUNITY HIGH SCHOOL AND WESTVIEW HIGH SCHOOL.

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

SECTION 1. The Intergovernmental Agreement with Tolleson Union High School District No. 214 relating to school resource officer services for La Joya Community High School and Westview High School for fiscal year 2021-2022 (the “Agreement”) is hereby approved in substantially 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 take all steps necessary to cause the execution of the Agreement and to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1065-0821

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES
(West Point High School)**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into this 3rd day of August, 2021 between the City of Avondale, an Arizona municipal corporation (the "City"), and the Tolleson Union High School District No. 214, an Arizona school district (the "District").

RECITALS

A. The District has funding available through its maintenance and operations budget to fund school resources officer services ("SRO Services") for West Point High School ("School").

B. The City has funding available through its operating budget to provide the District with sworn, certified police officers capable of performing the SRO Services for the District.

C. The City and the District desire to enter into this Agreement whereby the City will provide sworn, certified police officers to serve as school resource officers (each, an "SRO") to provide the SRO Services at the School; and

D. The District is authorized by ARIZ. REV. STAT. § 15-342(13), ARIZ. REV. STAT. § 11-952, and the approval of its governing board to enter into this Agreement; and

E. The City is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-952 and the Avondale City Charter, Article I, Section 3.

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 are hereby acknowledged, the parties hereby agree as follows:

SECTION I – OBLIGATIONS OF THE CITY

1.1 Services to be Provided.

A. The City shall provide SRO Services to the District at the School on an hourly basis, as required by the Dean of Students or his/her designee, but not to exceed forty (40) hours per week, when school is in session (July 29, 2021 through May 27, 2022).

B. The Avondale Police Officer performing SRO Services shall fulfill his or her duties as a sworn law enforcement officer for the State of Arizona. The SRO may be temporarily

assigned to duties other than SRO services during school times when deemed necessary by the Avondale Police Chief, in his/her sole discretion.

C. The SRO will assist the Dean of Students with preparation of an annual performance evaluation based on the requirements of the Arizona Department of Education (“ADE”) and the District. The SRO shall also provide a monthly recap of law-related education (as more fully described in the Avondale Police Department SRO Program, attached hereto as Exhibit A and incorporated herein by reference), law enforcement activity and time on campus to the Dean of Students.

D. When school is not in session, including all breaks, school-observed holidays, and school vacations, the City shall have full discretion to assign the SRO various City responsibilities; provided, however, that the City shall be responsible for 100% of the SRO’s costs when so assigned.

E. In addition to the provisions of Section 3.18, the City shall, within ten (10) business days upon request by the District, provide verification to the District of the SRO’s successful criminal records check, e.g. a copy of current fingerprint clearance card, copy of successful criminal records report, etc.

F. The roles and responsibilities of the City and the District with respect to the SRO Services shall be as set forth in the Avondale Police Department SRO Program, attached hereto as Exhibit A.

1.2 Accounting and Documentation. The SRO’s salary and employer-paid benefits rate shall be used to calculate the amount due from the District for SRO Services. Supporting documentation of these actual amounts must be on file with the District’s Grants Office prior to payment of any invoice to the City.

SECTION II- OBLIGATIONS OF THE DISTRICT

2.1 Reimbursement to City – Monthly. The District shall reimburse the City monthly for the services it provides pursuant to Section I above.

a. The District shall pay the City an amount not to exceed \$56,907.50 for SRO Services at West Point High School for the SROs’ benefits and salary for the ten-month 2021-2022 school year. If an SRO is required to cover summer school for one month in June 2022, that will be an additional cost to the District. The City shall pay 100% of the SROs’ costs during the two-month summer break and any other school breaks or school observed holidays or vacations during which the City assigns the SRO to City related duties. The SROs’ time spent at West Point High School including all overtime, must be substantiated by timecards and approved by the high schools’ Principal. The District and the City shall equally share the cost of any SRO overtime worked on school-related investigations, with each party paying 50% of the cost. The District shall not use any grant funds to pay for overtime costs associated with SRO overtime. The SRO must seek approval from the appropriate Avondale Police Department (the “Department”) supervisor before working on school-related overtime. Overtime payments shall not exceed, under any circumstance, forty (40) hours annually. The District will not pay for any SRO Services for week-long school breaks in October, November, December, January and March, nor for any personal vacations taken by an SRO nor for any sick leave incurred by an SRO. The Fiscal

Year (FY) 2021 School Safety Program application is year one of a three year grant. Requests for salary and benefits (under purchased professional services) for a continuing officer must be consistent with the FY 2021 approved salary and benefits amount for that officer. Upward adjustments in salary and benefits cannot be accepted. If the actual salary of an officer is less than what was approved in FY 2021, the lesser amount of the two must be requested.

b. The District shall pay invoices from the City within 30 days of receipt, assuming proper documentation is on file to support the charges.

2.2 Office Space. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office provided shall include the necessary equipment for the SRO to effectively perform his or her duties, including, without limitation, a telephone, desk, chair and filing cabinet.

2.3 Non-Interference by District. No District or School administrator shall interfere with an SRO's sworn law enforcement duties.

SECTION III - GENERAL TERMS AND CONDITIONS

3.1 Indemnification. To the extent permitted by law each party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents for, from and against 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 departments, officers, employees or agents.

3.2 Term. The term of this Agreement shall be for one year from June 30, 2021 until June 30, 2022, unless sooner terminated by the parties hereto pursuant to subsection 3.6 below.

3.3 Personnel. The City represents that the SRO performing the SRO Services required in Section I of this Agreement shall be a sworn Avondale Police Officer.

3.4 Independent Contractor. The City acknowledges and agrees that the SRO Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the District, except as provided in Section 3.13 below. City, its employees, and subcontractors are not entitled to worker's compensation benefits from the District. The District does not have the authority to supervise or control the actual work of City, its employees or subcontractors. The City, and not the District, shall determine the time of its performance of the SRO Services provided under this Agreement so long as City meets the requirements of its agreed scope of work as set forth in Section I above. The District and the City do not intend to nor will they combine business operations under this Agreement.

3.5 Records. Both parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.

3.6 Termination. Either party may terminate this Agreement upon 30 days' written notice to the other party at the addresses indicated below. The City may terminate this Agreement by giving ten days' written notice to the District for failure to make reimbursements upon the dates as required

3.7 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:

With a copy to: Udall Shumway P.L.C.
1138 N. Alma School Road
Mesa, Arizona 85201
Attn: Cathleen M. Dooley, Esq.

3.8 **Severability and Savings.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the parties.

3.9 Program Continuation Subject to Appropriation. Each party acknowledges and agrees that performance by either party is dependent upon appropriation of funds to or by that party. The provisions of this Agreement for SRO Services shall be effective when funds are appropriated by each party for purposes of this Agreement and are actually available for payment. Each party shall be the sole judge and authority in determining the availability of funds under this Agreement and each party shall keep the other party fully informed as to the availability of funds for the SRO Services. The obligation of the parties to make any payment pursuant to this Agreement is a current expense of each party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either party. If the City or the District fails to appropriate money sufficient to meet the financial obligations as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement.

3.10 Entire Agreement. This Agreement comprises the entire agreement of the parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the persons duly authorized to enter into contracts on behalf of the City and the District.

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

3.12 Cancellation. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

3.13 Workers' 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.

3.14 FERPA Compliance. Both parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

3.15 Non-Discrimination. Both parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4 and 2009-09, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.

3.16 Disposition of Property upon Termination of the Agreement. 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.

3.17 E-Verify. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). The party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching party may terminate this Agreement. The parties retain the legal right to inspect the papers of the other party to ensure that the party is complying with the above-mentioned warranty under this Agreement.

3.18 Fingerprinting Requirements. The parties shall comply with the fingerprinting requirements of A.R.S. § 15-512 unless otherwise exempted.

3.19 Coordination of Student Misconduct. The parties shall work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

[SIGNATURES ON FOLLOWING PAGE]

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

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

By: Kenneth N. Weise, Mayor

Date: _____

ATTEST:

Marcella Carrillo, City Clerk

“District”

TOLLESON UNION HIGH SCHOOL
DISTRICT NO. 214, an Arizona school
district

By: Nora Gutierrez, Superintendent

Date: July 20, 2021

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (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.

Cathleen M. Dooley, Attorney for the District

Nicholle Harris, Attorney for City of Avondale

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“District”

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DISTRICT NO. 214, an Arizona school
district

By: Kenneth N. Weise, Mayor

By: Nora Gutierrez, Superintendent

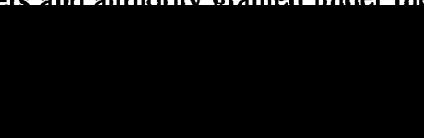
Date: _____

Date: _____

ATTEST:

Marcella Carrillo, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (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.



Jessica S. Sanchez, Attorney for the District

Nicholle Harris, Attorney for City of Avondale

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214
AND
THE CITY OF AVONDALE
FOR
SCHOOL RESOURCE OFFICER SERVICES
[Avondale Police Department SRO Program]

See following pages.

AVONDALE POLICE DEPARTMENT SRO PROGRAM

I. Introduction.

The mission of the Avondale Police SRO Program is to contribute to an orderly, purposeful atmosphere, which promotes the feeling of safety conducive to teaching and learning on school campuses in the City of Avondale. This is accomplished by assigning the same Police Officer to the same campus for an extended period of time. The SRO will first and foremost perform the duties of a police officer to include, criminal investigations, interviews, interrogations, case follow-up and arrests when necessary. The SRO will establish trusting lines of communication with students, parents and teachers. The SRO will serve as a positive role model to instill good moral standards, good judgment, respect for others, and sincere concern for the school community. The SRO will promote citizen awareness of the law to enable students to become better-informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law. The SRO will serve as a confidential resource for administrators, teachers, and students concerning problems they face on the campus as well as providing information on community resources available to them.

II. Mission and Values.

Avondale Police SROs will follow the established mission and values of the Avondale Police Department in the course of their duties at Avondale schools. These mission and values set the tone and direction for Avondale Police employees to follow:

A. Mission - "Serving with Honor": The Mission Statement is the essence of how the organization reaches the vision. It defines the path all members must take in order to make the vision a reality. By asking ourselves the question, "Are we serving with honor," every time we interact with members of our community, our fellow employees, and other City employees, we have, in fact, moved closer to our vision.

B. Values:

1. **Accountability:** All members of the Avondale Police Department are accountable for their actions in accordance with the mission.
2. **Customer Service:** We strive to exceed the expectations of our internal and external customers. This is accomplished, in part, through timely follow-up, courteous service, and having mutual respect and compassion for all those with whom we interact.
3. **Diversity:** We support an organization that contains employees from various backgrounds which helps to improve how we relate to the various cultures in our community. Most importantly, we look for the strength of diversity in the employees we hire which goes beyond exterior diversity and includes the ability to look past our differences and recognize being different is actually a strength.
4. **Employee Involvement:** When appropriate, employees are encouraged and expected to be involved in organizational decision-making and research. We recognize the benefits of creating an environment where employees feel comfortable providing their input without retribution.

5. Fairness: All decisions and actions taken by the Avondale Police Department are to be based on a fair and objective process. Transfers, promotions, training attendance and other career opportunities are based on the needs of the organization and the performance history of those involved, nothing more.

6. Integrity: Providing police services require the trust of those we serve. Whether responding to a request regarding your actions in a specific situation, or providing any police service, employees are expected to be truthful to maintain the credibility of the department.

7. Open Communication: We work to create a work environment where employees at all levels can provide input, receive feedback and ask questions. This creates an employee group that is informed and while they may not agree with every decision, they are entitled to an explanation provided it does not compromise the integrity of the situation.

8. Professionalism: Not only are we striving to make the organization more professional, we recognize the importance of providing services in a professional manner. The manner in which we interact with others is professional, the work product is professional, and our appearance is professional.

9. Teamwork: The Avondale Police Department is successful due to the synergy created when all areas of the Department work together towards mission accomplishment. There is not one work area more important than another. There is no difference in terms of organizational importance regarding “sworn” or “professional staff” positions and each Bureau Manager is expected to recognize and endorse the philosophy that teamwork is critical to a successful police department.

III. Goals.

A. To reduce incidents of school violence:

1. Enforce city code and state laws.
2. ZERO tolerance for drug offenses, weapons offenses, violent acts leading to serious injury and threats towards students, staff or parents.
3. High visibility during peak times such as; morning, lunch, assemblies and after school.

B. Reduction of criminal offenses committed by students.

1. Provide counseling to students and parents to educate them regarding the law and consequences of violating the law.

C. Establish positive rapport with students and parents.

1. Be honest and professional in all interactions with parents and students.
2. Provide LRE counseling to students and parents to inform them of the law, theirs rights, expectations as citizens and consequences for violating the law.
3. Attend extra-curricular student activities when feasible.

D. Establish positive rapport with teachers, staff and administrators.

1. Be honest and professional in all interactions with teachers, staff and administrators.
2. Provide guidance and support on law-related problems occurring on the campus.
3. Be responsive to questions and requests from school administrators when feasible and within the parameters of the law.

IV. Organizational Structure.

A. Supervision: The day-to-day operation and administrative control of the SRO program will be the responsibility of the Avondale Police Department. Responsibility for the conduct and performance of the SRO shall remain with the Avondale Police Department. The City of Avondale will provide supervisory personnel to oversee the program.

B. SRO Accountability: The West Point High School principal or designees will provide a written evaluation of the SRO performance relating to the goals established in this Agreement once a semester. School staff shall contact the SRO Supervisor to report performance or conduct related complaints involving SROs as soon as they become aware of it. It will be the responsibility of the Avondale Police Department to investigate any misconduct allegations against an SRO.

V. Procedures.

The City of Avondale SRO program shall utilize procedures in accordance with State Law, The Arizona School Safety Program Manual, and in accordance with Avondale Police Department policies and procedures.

- SROs are first and foremost police officers and shall be responsible for carrying out all duties and responsibilities of a police officer in the City of Avondale and shall at all times remain under the command and control of the Avondale Police Department.
- SROs shall not enforce any school or district rules.
- SROs are not disciplinarians and shall not assume this role under any circumstances.
- SROs report directly to an Avondale Police Supervisor for all activities.
- SROs will not involve themselves with West Point High School administrative matters that are not criminal offenses.
- SROs are not formal counselors, and will not act as such, however, they are to be used as a law related resource to assist students, staff and all persons involved with West Point High School.
- SROs will present varied topics to students to better inform them of their rights and expectations as citizens as well as consequences for violating laws. The SROs' are not certified teachers and therefore should present in classrooms with a teacher present at all times.

VI. SRO Selection.

A. Recommended Qualifications:

- Desire to work with students, educators, and parents.
- Willingness to teach law-related education.
- Supportive of prevention strategies.
- Satisfactory employment history with supporting documentation.
- Demonstrated effectiveness in working with youth.
- Oral and written communication skills.
- Ability to effectively interact and communicate with diverse sets of individuals.
- Supportive of the philosophy of the SRO program.
- Willingness to attend law-related education training to implement and maintain LRE programs to meet the needs of the students.
- AZPOST certified general instructor.

B. SRO Duties Include:

- Establish liaison with school administrators, staff, students, and parents.
- Inform students of their rights and responsibilities as lawful citizens through presentation of law-related education in the classroom.
- Network with community agencies that may or do provide services to the school.
- Act as a resource in the investigation of school related criminal activities
- Participate in the Parent-Teacher association as requested.
- Participate in campus activities, student organizations, and athletic events when feasible and appropriate.
- Provided a visible deterrence to crime while presenting a positive impression of a law enforcement officer.
- Investigate criminal offenses occurring on campus.
- Conduct follow-up of assigned criminal cases.
- Conduct interviews, interrogations and make arrests when necessary.
- Provide information when requested to students, parents, and staff in law-related situations.
- Maintain tracking system of statistical information required by supervisor and school administration.

VII. SRO Role.

The School Resource Officer has three basic roles:

A. Law Enforcement Officer:

1. The SRO is, first of all, a sworn law-enforcement officer. When necessary the SRO has the authority to intervene as a law-enforcement officer. This includes the investigation of criminal offenses, conducting interviews and interrogations, following up on assigned cases and making necessary arrests.

2. Administrators should take the lead on school policy violations. The SRO should be involved when a student's conduct violates a law.

3. As partners in school safety, SRO and administrators shall work together to develop procedures for ongoing communication to ensure timely and uniform reporting of criminal activities.

4. An SRO assigned to a school with a juvenile probation officer (PO) is expected to work as a team. The SRO should know the role of the PO.

5. The SRO should serve on the School Safety Committee and collaborate on the development of the safe school plan.

6. The SRO should build a relationship with students, parents and staff that promotes a positive image of law enforcement.

B. Law-Related Educator:

1. The SRO should collaborate with classroom teachers to engage teachers to integrate law-related education into their curriculum. The teacher must be present in the classroom during LRE instruction.

2. The SRO must keep an activity log that tracks LRE classroom instruction hours and law enforcement or probation activity. Situations that take an officer off their assigned campus must be logged. This data must be shared with the school administrator and agency supervisor. The following data will be tracked and provided to the West Point High School Principal or designee:

- a. Total hours of LRE classroom instruction
- b. LRE topic and law enforcement
- c. Teacher name and subject of each class where an LRE lesson is taught
- d. Total hours of Law Enforcement/ Probation activity
- e. Time spent per LRE lesson
- f. Total time spent off campus

C. Positive Role Model:

1. The SRO should set limits being clear about what is acceptable and what is not; letting students know the consequences of unacceptable behavior and the rewards of acceptable behavior.

2. The SRO should set an example by modeling how to handle stress, resolve conflicts, celebrate successes, and how to be a friend.

3. The SRO should be honest by providing accurate information.
4. The SRO should be consistent with students, staff, and parents in applying rules and regulations.
5. The SRO should encourage responsibility by helping students think through options and consequences of decisions, set personal goals, and develop plans to make desired changes.
6. The SRO should show respect by treating students with respect and expressing high expectations for them.
7. The SRO should always strive to be a positive role model because students learn from every observation of or interaction with the SRO.

VIII. SRO Supervisor Role:

The SRO Supervisor's responsibilities include but may not be limited to:

- Communicate to staff and carry out the philosophy and goal of the City of Avondale SRO program.
- Attend SRO program management training for supervisors.
- Conduct on-going visits to schools under their supervision.
- Ensures the SRO keep an activity log that tracks LRE classroom instruction hours, the topic of each LRE class and law enforcement or probation activity and situations that take an officer off their assigned campus.
- Motivate officers and provide positive reinforcement recognizing excellent performance.
- Review all investigations by assigned SRO for accuracy, thoroughness and proper procedures.
- Supervise and monitor performance of SRO, including confronting performance deficiencies and providing documentation and plan for improvement.
- Thoroughly investigate and document allegations of SRO misconduct.
- Regularly brief their Lieutenant on any unusual incidents at Avondale Schools.
- Ensure SROs conduct timely, professional and thorough investigations of criminal activity on school campuses.
- Conduct one supervisory follow-up of a criminal investigation per SRO per semester. Includes a written evaluation and assessment of the SRO's performance.
- Meet collectively with SROs once a month for training, policy review, and collaboration.

- Provide School principal or designee with a monthly recap of SRO activities to include number of LRE hours, time off campus and law enforcement activity.
- Meet with or talk on the telephone with principal of schools that have SROs, once a month to discuss SRO performance and law enforcement-related issues.

IX. School District Role:

The district administrator, site principal and teachers' support of the SRO program is vital to the program's success.

A. District Level:

1. Supports and communicates the SRO program philosophy to all site staff.
2. Understands the SRO program requirements.
3. Develops and keeps open communication with local law enforcement.

B. Building Level Administration:

1. Supports and communicates the SRO program philosophy to all staff, students and parents on their campus.
2. Promotes the integration of law-related education into the classrooms.
3. Understands and agrees to the SRO program guidelines.
4. Ensures a teacher is present in the classroom at all times during LRE instruction.
5. Introduces the officer to staff and students.
6. Develops a collaborative relationship with the SRO while allowing the officer to function independently. The officer serves as a resource to the students and staff.
7. Meets with the SRO before the first day of duty to review the Service Agreement, operational procedures and specifics of the program on campus.
8. Monitors the program's implementation process and meets with the SRO on a regular schedule.
9. Directs staff development of teachers and SRO involved in the delivery of LRE.
10. Provides a semi-annual evaluation of the SRO relating to their role as an SRO.

C. Teacher:

1. Supports and communicates information about the SRO program in their classrooms to students and parents.
2. Understands and agrees to the program guidelines.
3. Teams with the SRO in planning and delivery of law-related education units in their classroom. A teacher must be present in the classroom at all times during LRE instruction.

X. The Performance Evaluation

A semi-annual performance evaluation shall be conducted by a school administrator and shared with the SRO's supervisor. The evaluation is meant to assist the SRO and his/her supervisor in meeting the intent of the SRO program and carrying out his or her duties. It is not meant to supplant the official evaluation process used by the SRO's department or agency. Only SROs that have performed in a satisfactory manner should be considered for further service in the SRO program. The following are recommended factors to consider:

- Does the officer have a clear sense of his/her role?
- Does the officer understand the operational policies and procedures of the school necessary to perform effectively in the position?
- Has the officer attended or scheduled to take a law-related education class in the current year?
- How does the officer relate to staff, students, and parents?
- Does the officer work well independently?
- Does the officer perform his/her duties effectively?
- How effective is the officer with classroom presentations?

If a problem occurs, it should first be addressed at the site level between the officer and administration. If a resolution is not reached, the grievance should then move through the process as established by the officer's department and school's policy.

XI. Law Related Education (LRE)¹

A. LRE Defined. Law-Related Education is the teaching of rules, laws, and the legal system that actively involves students to prepare them for responsible citizenship. It also provides instructions in legal rights, responsibilities, and the role of the citizen and requires students to practice the application of LRE in potential real-life situations. *(Adopted by the Arizona Center for Law-Related Education from the Virginia Institute for Law and Citizenship Studies.)*

B. Possible Benefits. Law-Related Education is a component of the SRO program because it:

1. Promotes critical, analytical and problem-solving skills.
2. Actively involves students, teachers and the community.

¹ Modified from "Law-Related Education and Violence Prevention: Making the Connection" By: Robin Haskell McBee
A-8

3. Increases students' knowledge base of the law, making them better informed citizens and consumers.
4. Demonstrates constructive ways to resolve conflict and can reduce violence and discipline problems in schools.
5. Discourages delinquent behavior and encourages positive behavior.
6. Promotes positive self-image in students.
7. Encourages students to respect rules, laws, and persons in authority when exposed to a "balanced" view of "democratic" society.

C. Process. The approach consists of high-interest content and interactive instructional strategies designed to provide students at all levels the following opportunities:

1. To explore and reflect on theirs and others' perspectives,
2. To express and defend their views, to listen to the views of others,
3. To develop arguments for both sides of an issue, to mediate, and
4. To formulate decisions and resolutions based on multiple and often conflicting concerns.

In primary grades, students might consider a rule they don't like, explore why it was made, examine, the consequence for breaking it, and discover who acts as judge when the rule is broken. They might evaluate existing or hypothetical rules to determine whether or not they are clear, consistent, fair, and enforceable. They could listen to and analyze rules issues in stories and they could create and enforce their own set of classroom rules. Intermediate students might role-play as a law enforcement officer encountering a criminal dilemma. They might work in cooperative groups to offer solutions to problems that arise when a law is too general or vague. Older students might use the case study method of analysis to examine legal conflicts throughout history.

Information from this exercise could then be applied to current dilemmas. Simulations of trials, known as mock trials or moot court, legislative hearings, constitutional conventions, police procedures, role playing, conflict resolution, mediation, formal and informal debate, cooperative group problem-solving, outside speakers, from the legal community typify LRE classes at all levels.

Because rules and laws affect all aspects of life, all subject areas, and all ages, the content of LRE can be as varied as the students and teacher need it to be. The methods, however, are characteristically open-ended and participatory in nature. Although some LRE instructional materials have been written for specific topics or age groups, there is no single way to teach LRE and no set LRE curriculum. LRE is most commonly used in social studies to promote civic understanding; however, it regularly incorporates the use of reading, writing, and speaking skills. It has the potential for application in literature, math, science, technology, foreign language, physical education, sports, and other subject areas. It need not be limited to a particular grade, subject, or time frame. The LRE

approach to instruction is flexible enough to be applied as a system-wide, on-going prevention strategy, and an added benefit of such a strategy is the increased likelihood that students will better understand the rules, laws, and legal processes that govern their lives.

One of the cornerstones of LRE is the use of outside resources: school safety officers, attorneys, and other legal professionals. These resource people visit classrooms regularly, provide insight into how and why the system operates the way it does, and develops on-going positive, non-adversarial relationships with students in the class. Though typically not individualized as in mentoring, these relationships often hold meaning for the students and provide an opportunity for them to develop bonds or attachment with representatives of “the system.”

Another feature of LRE is its relevance. It deals with issues that are meaningful to students and their views are valued. LRE provides students the opportunity to get involved and participate. The crux of LRE is problem solving, both as part of a group process and on an individual basis. Social conflict lies at the heart of legal issues. Therefore, all LRE is some form of conflict resolution or problem solving.

The regular inclusion of LRE in the course of instruction will provide steady opportunities to develop and practice the information processing steps that must be developed in aggressive students if they are to acquire non-aggressive social problem-solving skills. Further, the conflicts that characteristically surround rules and laws offer good practice in content that is hypothetical in nature yet directly related to students’ lives. While not a panacea for violence prevention, LRE offers a promising strategy for schools to implement as part of their overall prevention plan. If that plan includes closer work with parents and the community, LRE might also be incorporated into after-school programs, community center programs for children and adolescents, and parent programs. In this way the approach lends itself to a close interface with home and community.

WEBSITES

Arizona Department of Education www.ade.az.gov

Provides links to prevention sites, updates on funding opportunities and a calendar of conferences, trainings, and workshops.

Arizona Foundation for Legal Services and Education <http://azflse.org/>

The site will provide up-to-date information about LRE research, links to other LRE related sites, professional development opportunities, publications, and articles.

Law For Kids www.lawforkids.org

Posts youth laws and information in a manner that kids can read quickly and understand easily. Also kids can get homework answers, access other links, listen to other kids' stories, and play computer games.

Arizona Prevention Resource Center (APRC) <http://www.azprevention.org/>

APRC is Arizona's central source for prevention information and materials. It has an expanded section of school safety materials. Materials may be checked out at no cost.

Join Together ONLINE <http://www.drugfree.org/join-together>

National resource center to reduce substance abuse and gun violence. Offers up-to-date information on legislation, funding opportunities, Action Kits, and resources guides.

Keep Schools Safe www.keepschoolssafe.org

A collection of resources to help make schools safer.

National Association of School Resource Officers (NASRO) www.nasro.org

Nonprofit training organization for district personnel and school resource officers. Sponsors an annual training conference as well as regional trainings. Lesson plans are available to download at no charge.

Arizona School Resource Officers Association (ASROA) www.asroa.org

Nonprofit organization formed to promote law-related education. Sponsors an annual conference and various training opportunities.

National Dropout Prevention Center www.dropoutprevention.org

Provides information on dropout prevention programs, educational strategies, technical assistance, training, and resources.

National Resource Center for Safe Schools www.nwrel.org

Center works with schools and communities to create safe learning environments and prevent school violence.

National School Safety Center www.nsscl.org

Clearinghouse for school safety information.

National Youth Gang Center www.iir.com/nygc

Provides information about gangs and effective responses to them.

Office of Juvenile Justice and Delinquency Prevention www.ojjdp.gov

Provides numerous links to juvenile justice-related resources, model programs and funding opportunities.

Constitutional Rights Foundation (CRF) www.crf-usa.org

Offers programs and develops materials on law-related education. Web site contains ready-to-use lessons.

National Law-Related Education Resource Center (NLRC) www.abanet.org

Facts on current model programs, curricula, print, and multimedia materials for all groups and age levels about the law.

Street Law, Inc. www.streetlaw.org

Offers program training and program development in law-related education.

CITY COUNCIL REPORT

SUBJECT: Resolution 1066-0821 - Outdoor Recreation Legacy Partnership Grant for the Aquatic Center Project

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Bryan Hughes, Parks and Recreation Director, (623) 333-2411

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1066-0821, authorizing the application and acceptance of an Outdoor Recreation Legacy Partnership Fund grant from Arizona State Parks and Trails in the amount of \$5,000,000 for the Avondale Aquatic Center Project and authorize and direct staff to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution. The Council will take appropriate action.

BACKGROUND:

Staff requests approval to submit an application for an Outdoor Recreation Legacy Partnership Fund (ORLP) grant to Arizona State Parks and Trails for the Avondale Aquatic Center Project. The matching grant request is \$5,000,000.00 for the design and development of the proposed aquatic facility to be designed for an array of uses that better serve Avondale residents and visitors. Facility uses could include learning to swim classes, competitive swimming/diving, instructional programs, recreational swimming, lap swimming, exercise and aerobic classes, and event rentals. Although the pool/facility preliminary design is to be determined, selected features may include a competition pool, diving facility, recreation pool, aquatic therapy pool system, locker rooms, and indoor/outdoor multi-purpose rooms. The total project cost is anticipated to be approximately \$16 million. If awarded, the City would be responsible for a 50% match and the project must be completed within 3 years. The project would also be designated a 6F boundary and remain open parkland in perpetuity.

The Arizona State Parks and Trails, who administer the federal grant, will forward it to the National Park Service for review. Arizona State Parks and Trails will notify staff if the grant is approved in Spring, 2022.

DISCUSSION:

Staff is seeking approval of a Resolution to apply and accept an Outdoor Recreation Legacy Partnership (ORLP) grant in the amount of \$5,000,000 and authorize and direct staff to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

BUDGET IMPACT:

The city's match for the grant is included in the CIP project budgets over FY2022 and FY2023.

RECOMMENDATION:

Staff recommends adoption of a Resolution to apply and accept an Outdoor Recreation Legacy Partnership (ORLP) grant from Arizona State Parks and Trails in the amount of \$5,000,000 and authorize and direct staff to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

RESOLUTION NO. 1066-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE ARIZONA STATE PARKS AND TRAILS DEPARTMENT FOR AN OUTDOOR RECREATION LEGACY PARTNERSHIP GRANT FOR THE AVONDALE AQUATIC CENTER; AUTHORIZING THE ACCEPTANCE OF ANY RESULTING GRANT AWARD AND AUTHORIZING THE EXECUTION OF ANY RELATED DOCUMENTS.

WHEREAS, the Congress has authorized the establishment of the Outdoor Recreation Legacy Fund (ORLF) Grant Program (the “Program”), providing matching funds to the State of Arizona (the “State”), its political subdivisions and Indian Tribes for acquiring lands and developing facilities for public outdoor recreation purposes; and

WHEREAS, the Arizona State Parks and Trails Department, through the Arizona State Parks Board (ASPB) is responsible for the administration of the Program within the State, setting up necessary rules and procedures governing application by local agencies under the Program; and

WHEREAS, said adopted procedures established by ASPB require the City of Avondale (the “City”) to certify by resolution the approval of applications, signature authorization, the availability of local matching funds, and authorization to sign a Participant Agreement with ASPB prior to submission of said applications to ASPB; and

WHEREAS, the proposed Avondale Aquatic Center Development Project (the “Project”) must be consistent with the Arizona State Comprehensive Outdoor Recreation Plan; and

WHEREAS, the Project must be compatible with the land use plans of the City; and

WHEREAS, The City desires to apply for the Program and enter into agreements for the 2021 Arizona State Parks and Trails Department Outdoor Recreational Legacy Fund Grant in an amount up to \$5,000,000.00; and

WHEREAS, the Mayor and Council of the City of Avondale (“City Council”) desire to authorize the City Manager, or his authorized designee, to apply for and, if awarded, accept funds from the Arizona State Parks and Trails Department (the “ASPTD”).

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 City Council hereby authorizes the submission of the grant application and the Participant Agreement for the Program to the ASPTD (the “Application”).

SECTION 3. The City Council hereby authorizes (i) the acceptance of any resulting grant award in an amount not to exceed \$5,000,000.00 (the “Grant Funds”) and (ii) the expenditure of a local match at a minimum to 50% of the total cost of the Project.

SECTION 4. The City Council hereby authorizes the execution of the grant agreement relating to the acceptance and administration of the Grant Funds.

SECTION 5. The City will assume all responsibility in the operation and maintenance of the Project upon completion of construction, for the reasonable life expectancy of the facility.

SECTION 6. The Mayor, the City Manager, the City Clerk and the City Attorney or his authorized designee are hereby authorized and directed to execute and submit the Application and any other necessary or desirable instruments in connection with the Grant Funds and to take all 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

CITY COUNCIL REPORT

SUBJECT: Resolution 1067-0821 - Land and Water Conservation Fund Grant for the Civic Center Park Project and a General Fund Contingency Request

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Bryan Hughes, Parks and Recreation Director, (623) 333-2411

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.
 - Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1067-0821 authorizing the application and acceptance of a Land and Water Conservation Fund grant from Arizona State Parks and Trails in the amount of \$1,000,000 for the Civic Center Park Project and authorize and direct staff to take all steps necessary to cause the execution of the Agreement, to take all steps necessary to carry out the purpose and intent of this Resolution, and to transfer from General Fund Contingency the amount necessary for the City's funded portion of the project if the grant is awarded. The Council will take appropriate action.

BACKGROUND:

Staff request approval to submit an application for a Land and Water Conservation Fund (LWCF) grant to Arizona State Parks and Trails for the Civic Center Park Project. The matching grant request is \$1,000,000.00 for the design and development of 4.4 acres located adjacent to the Civic Center Library on the Civic Center Campus. The project includes playgrounds, large and small picnic ramadas, onsite parking, a large turf area, trees for shade and separation from the roadway, a water feature, and site amenities. The project would expand park/open space for passive recreation within the civic center complex, complementing the existing Library and City Hall facilities, including the new City Hall Annex. The total project cost is anticipated to be approximately \$2.1 million. Without a grant, the project could be deferred or phased out over two fiscal years (FY22 & FY23). If awarded, the City would be responsible for a 50% match and the project must be completed within 3 years. The parcel would also be designated a 6F boundary and remain open parkland in perpetuity.

The Arizona State Parks and Trails, who administer the federal grant, will forward it to the National Park Service for their review. Arizona State Parks and Trails will notify staff if the grant is approved in Spring of 2022.

DISCUSSION:

Staff is seeking approval of a Resolution to apply and accept a Land and Water Conservation Fund (LWCF) grant in the amount of \$1,000,000 and authorize and direct staff to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

BUDGET IMPACT:

The total project cost is anticipated to cost \$2.1 million and the construction of the project is currently not budgeted. The design for the project is budgeted in FY2022 for \$160,000. If awarded, the impact of the project to the General Fund would be an additional \$940,000 in expenses, which would need to be transferred from the General Fund Contingency.

RECOMMENDATION:

Staff recommends adoption of a Resolution to apply and accept a Land and Water Conservation Fund (LWCF) grant from Arizona State Parks and Trails in the amount of \$1,000,000, authorize and direct staff to take all steps necessary to cause the execution of the Agreement, to take all steps necessary to carry out the purpose and intent of this Resolution, and to transfer from General Fund Contingency the amount necessary for the City's funded portion of the project if the grant is awarded.

RESOLUTION NO. 1067-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE ARIZONA STATE PARKS AND TRAILS DEPARTMENT FOR A LAND AND WATER CONSERVATION FUND GRANT FOR THE CIVIC CENTER PARK; AUTHORIZING THE ACCEPTANCE OF ANY RESULTING GRANT AWARD AND AUTHORIZING THE EXECUTION OF ANY RELATED DOCUMENTS.

WHEREAS, the Congress has authorized the establishment of the Land and Water Conservation Fund Act of 1965 (LWCF) Grant Program (the “Program”), providing matching funds to the State of Arizona, its political subdivisions and Indian Tribes for acquiring lands and developing facilities for public outdoor recreation purposes; and

WHEREAS, the Arizona State Parks and Trails Department, through the Arizona State Parks Board (ASPB) is responsible for the administration of the Program within the State, setting up necessary rules and procedures governing application by local agencies under the Program; and

WHEREAS, said adopted procedures established by ASPB require the City of Avondale (the “City”) to certify by resolution the approval of applications, signature authorization, the availability of local matching funds, and authorization to sign a Participant Agreement with ASPB prior to submission of said applications to ASPB; and

WHEREAS, the proposed Civic Center Park Project (the “Project”) must be consistent with the Arizona State Comprehensive Outdoor Recreation Plan; and

WHEREAS, the Project must be compatible with the land use plans of the City; and

WHEREAS, The City desires to apply and enter into agreements for the 2021 Arizona State Parks and Trails Department Land and Water Conservation Fund Grant in an amount up to \$1,000,000.00; and

WHEREAS, the Mayor and Council of the City of Avondale (“City Council”) desire to authorize the City Manager, or his authorized designee, to apply for and, if awarded, accept funds the Arizona State Parks and Trails Department (the ASPTD”).

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 City Council hereby authorizes the submission of the grant application and the Participant Agreement for the Program to the ASPTD (the “Application”).

SECTION 3. The City Council hereby authorizes (i) the acceptance of any resulting grant award in an amount not to exceed \$1,000,000.00 (the “Grant Funds”) and (ii) the expenditure of a local match at 100% of the Grant Funds.

SECTION 4. The City Council hereby authorizes the execution of the grant agreement relating to the acceptance and administration of the Grant Funds.

SECTION 5. The City will assume all responsibility in the operation and maintenance of the Project upon completion of construction, for the reasonable life expectancy of the facility.

SECTION 6. The Mayor, the City Manager, the City Clerk and the City Attorney or his authorized designee are hereby authorized and directed to execute and submit the Application and any other necessary or desirable instruments in connection with the Grant Funds and to take all 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

CITY COUNCIL REPORT

SUBJECT: Resolution 1068-0821 - Well Sharing and Water Transportation Agreement and Interim Operating Agreement for Alamar Development in City of Avondale

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kirk Beaty, Public Works Director, (623) 333-4417

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Areas:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government.

This innovative agreement demonstrates a public private partnership between Avondale and Alamar Community Association, Inc. to ensure water rights and the use of raw groundwater for irrigation and recreation purposes in lieu of potable water.

- Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local businesses unified by pride and common values.

This agreement demonstrates creative collaboration to ensure sustainable recreation and community development through effective water resource management.

PURPOSE:

City Council will consider a request to adopt Resolution 1068-0821, authorizing the Agreement with the Alamar Community Association, Inc. (HOA) for well sharing and water transportation and an Interim Operating Agreement with the Alamar Community Association, Inc. and Brookfield Lakin, LLC and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Alamar is a 1,179-acre master - planned community bounded by Avondale Boulevard on the east, Elwood Street on the north, Dysart Road on the west, and Southern Avenue on the south. The property was annexed and zoned Planned Area Development (PAD) by action of the City Council in May 2018. The approved Alamar (formerly Lakin Property) PAD allows for development of a master - planned community consisting of single-family residential lots and associated HOA-owned open spaces, a commercial site, a public community park, an elementary school site, and a public safety facility site.

An Amendment (the “First Amendment”) to the Pre-Annexation Development Agreement between the City and Brookfield Lakin LLC was approved by City Council in March 2020. The First Amendment modified agreement language pertaining to grandfathered irrigation rights, allowing a portion of those rights to be used to irrigate the planned City Park and greenbelt corridors within Alamar.

DISCUSSION:

Alamar Community Association, Inc. is the homeowner’s association created by the developer, Brookfield Lakin, LLC and will be the owner of the Master Planned community known as Alamar. Alamar will use their existing well located just southeast of Elwood Street and El Mirage Road as shown in Exhibit B to produce Type 1 groundwater for the purpose of irrigating turf-related common areas and other landscape areas within the development. Avondale will use this well for the purpose of filling the Alamar Community Park lake and associated park irrigation.

The benefit to Avondale is that this agreement allows the use of raw groundwater for these recreational and irrigation uses without the need to construct and maintain a separate well or use treated potable water for those purposes which comes at a higher treatment and pumping cost. This option does require Avondale to obtain a Recovery Permit from ADWR, which allows Avondale to apply previously recharged effluent and the associated credits against this withdrawal and use.

The well operation and maintenance costs will be split based on metered water use. As an example, if both parties use equal amounts of water, the total cost to operate and maintain the well will be split in half. If Alamar uses more water than Avondale for the given year, Alamar will be responsible for that percentage of the total, which includes electrical costs, preventative maintenance and repairs, as necessary.

The Interim Operating Agreement will allow the HOA and Brookfield to fill the Alamar Lake, operate the pumping systems to irrigate the park and associated HOA landscaping prior to the City of Avondale providing Final Acceptance of the Alamar Park and Alamar Lake. During this time, Brookfield will be responsible for all construction costs and/or repairs and the HOA will be responsible for all operational costs during this time. Avondale will have no operational, maintenance or cost-sharing responsibility during this term.

BUDGET IMPACT:

The operating and maintenance costs for this well will be budgeted in future years. While the approval of this agreement will require the city to contribute \$25,000 to an Operations & Maintenance Bank Account, this deposit will not have a budgetary impact as the funds will continue to belong to the city. The city will have full and transparent access to the account.

RECOMMENDATION:

Staff recommends the City Council adopt the resolution authorizing the Well Sharing and Water Transportation Agreement and Interim Operating Agreement for the Alamar Development in City of Avondale and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

RESOLUTION NO. 1068-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A WELL SHARING AGREEMENT WITH ALAMAR COMMUNITY ASSOCIATION, INC AND AN INTERIM OPERATING AGREEMENT WITH ALAMAR COMMUNITY ASSOCIATION, INC AND BROOKFIELD LAKIN, LLC.

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

SECTION 1. The Well Sharing Agreement with Alamar Community Association, Inc. (the “Well Sharing Agreement”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Interim Operating Agreement with Alamar Community Association, Inc. and Brookfield Lakin, LLC (the “Operating Agreement”) is hereby approved substantially in the form and substance attached hereto as Exhibit B and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Well Sharing Agreement and the Operating Agreement, and the related documents, 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1068-0821

[Well Sharing Agreement]

See following pages.

WELL SHARING AND WATER TRANSPORTATION AGREEMENT FOR ALAMAR DEVELOPMENT IN CITY OF AVONDALE

This Well Sharing and Water Transportation Agreement (“Agreement”) is between Alamar Community Association, Inc., an Arizona non-profit corporation (“Alamar HOA”) and the City of Avondale, an Arizona municipal corporation (“City”). Alamar and City are sometimes referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. WHEREAS Brookfield Lakin, LLC is developing approximately 1,179 gross acres within City as a master planned community known as Alamar. Brookfield Lakin, LLC has created the Alamar HOA under Covenants, Conditions and Restrictions recorded upon the land. Alamar HOA is the home-owners association that is today, and will be henceforth, the fee owner of certain common area lands within the master planned community, and will have responsibility for maintaining those common area lands to the benefit of the homeowners and guests in the overall Alamar development.

B. WHEREAS, City is a municipal water provider that holds a Designation of Assured Water Supply issued by the Arizona Department of Water Resources (“ADWR”) No. 86-002003.0002. City will serve the Alamar development all necessary potable water for residential, landscape, common areas and commercial use within Alamar except as expressly provided in this Agreement. A principle purpose of this Agreement is to delineate the lands that will be served non-potable water by the Alamar HOA. Some of the lands owned by the Alamar HOA will receive potable water service by City

C. WHEREAS, **Exhibit A** attached hereto is a diagram of the entire Alamar community land base. The lands identified by the shading, and the acreages also so identified in this diagram, are the Alamar HOA lands that will be the subject of this Agreement. The project will be developed in phases and, as each phase advances, Alamar HOA will continue to acquire more of these common area lands. These lands, some of which are owned today by Alamar HOA today, and as such additional lands shall be acquired within the boundaries as depicted on Exhibit A, are collectively referred to here as the “HOA Property.”

D. WHEREAS, the HOA Property is, at the time of acquisition of each portion, under active agricultural irrigation. Each parcel holds a portion of an overlying Irrigation Grandfathered Right (“IGFR”) that Alamar HOA will cause to be conveyed to Alamar HOA and then permanently retired from irrigation to a Type 1 non-irrigation right pursuant to a Type1 Development Plan on file with, and approved by, ADWR. Alamar HOA will eventually hold several Type 1 groundwater rights under this Development Plan that it may use to withdraw and use groundwater for purposes of maintaining a Turf-Related Facility that will comprise the bulk of the HOA Property.

E. WHEREAS, Alamar HOA owns, on the HOA Property, a groundwater production well, ADWR Well Registration No. 55-606290 (“HOA Well”). Alamar HOA intends to use the HOA Well to produce groundwater pursuant to the Alamar HOA Type 1 rights and use that groundwater to develop and maintain the Turf Related Facility on the HOA Property. The location of the HOA Well is also depicted on the diagram attached as Exhibit A.

F. WHEREAS, the City operates and maintains City-owned wells and a City-owned water distribution system to provide water utility services to City water customers; City also maintains City parks and recreational facilities and supplies water to those parks and recreational facilities.

G. WHEREAS, the City and Brookfield Lakin LLC intend to construct Alamar Park within the Alamar development, and the City will maintain that park with City water resources. It is convenient to use the HOA Well to produce water to be used in the Alamar Park. City and Alamar HOA agree that the HOA Well has sufficient capacity to allow Alamar HOA and City to share such capacity to service both Parties' needs.

H. WHEREAS, the Parties in this Agreement intend to define the terms under which the City and Alamar HOA will share use of the HOA Well and wheel the water produced from that well to the City's and Alamar HOA's respective uses.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above and all Exhibits attached to this Agreement.
2. Definitions. Certain capitalized terms used in this Agreement are defined in the foregoing Recitals and elsewhere in this Agreement. Other capitalized terms that are used refer to terms used in Arizona Revised Statutes, Title 45, or in the Management Plans adopted thereunder, or in regulations adopted by ADWR. Any reference to Arizona statutes or defined terms in Management Plans or regulations shall mean those currently in effect, or as they may change in the future pursuant to duly authorized legislative or administrative action.
3. Effective Date. This Agreement shall take effect upon the full execution of this Agreement by the Parties, hereafter defined as the "Effective Date." Alamar HOA shall execute this Agreement first, and present it to City for formal adoption. The Effective Date shall be the date that the City Council approves this Agreement by resolution and the Agreement is executed and dated by City as provided in the signature blocks at the end of this Agreement.
4. Term and Expiration Date. The term of this Agreement shall be perpetual, or the duration of the Alamar HOA Type 1 Right (as it may be conveyed with the Property in the future), whichever is earlier, unless terminated earlier upon the mutual agreement, in writing, executed by the Parties.
5. Well Sharing. Alamar HOA agrees, and hereby provides a license to City so that City may share in the use of the HOA Well under the terms of this Agreement, including but not limited to the following:
 - 5.1. Physical Access to Well(s). Alamar HOA shall own the HOA Well and the HOA Property surrounding the HOA Well but shall provide City reasonable access to the HOA Well for purposes of inspection and certification of the HOA Well meters as

herein provided. The HOA Well will be properly enclosed to prevent unauthorized entry during the term of this Agreement.

- 5.2. HOA Well Electric Meter. The HOA Well currently has a dedicated electric service meter in place that will allow Alamar HOA to exclusively meter the electrical usage of the HOA Well (“HOA Well Electric Meter”). That meter shall remain in place throughout the term of this Agreement, as it may be replaced and updated from time to time by the Utility providing electric service to that meter.
- 5.3. HOA Well Water Meter. The HOA Well will have a City approved meter properly installed at the well head pursuant to Permit No. BP-20-0376 (“HOA Well Meter”). This meter has the ability to measure the total water production from the HOA Well. Operation, maintenance, repair and replacement of this meter is to be governed by the provisions of this Agreement (below) regarding operation, maintenance, repair and replacement.
- 5.4. Measurement of Water Produced and Electricity Consumed. The Parties agree that, in accordance with all of the terms of this Agreement, the HOA Well Meter shall determine the quantity of total water production from the HOA Well, which quantity shall be used to determine the Parties’ respective obligations for water produced as provided herein, subject to verification of accuracy (including cross checking of accuracy to the HOA Well Electric Meter) as provided later in this Agreement. The HOA Well Electric Meter, and the utility billing amounts for electric service to that meter regularly sent to the Alamar HOA, shall serve as the basis, in part, for the cost of producing water from the HOA Well.
- 5.5. Allocation of Flow. The Parties have examined, and agree, that the HOA Well is an Existing Well duly registered with ADWR in 1982, Well Registration No. 55-606290. The ADWR Well Registration shows a maximum historic pump capacity of 3,850 gallons per minute, representing the maximum allowed production flow. The Parties have further examined and agree that the HOA Well, as currently configured and operating, is physically able to produce in excess of 3,000 gallons per minute continuous flow. Based on these conditions, the Parties agree that the HOA Well has the current ability to satisfy both the Alamar HOA and City expected water demand. To assure that the HOA Well is not overtaxed, the Parties agree that the use of water from the HOA Well shall be strictly limited to the specific uses described in this Agreement, and for no other use without the express written consent of the Parties.
6. Alamar City Park. As part of the Alamar Development, Brookfield Lakin, LLC will dedicate certain lands in the NE ¼ of the SW ¼ of Section 24, Twp. 1 N, Range 1 E, to City for construction, operation and maintenance of a City park (“Alamar Park”) after completion of the improvements.. The Alamar Park will include a small body of water within it, which shall serve as a recreational facility owned and be operated by City pursuant to A.R.S. § 45-132(B)(3). This body of water (“Park Lake”) shall also serve as a storage and distribution facility for water produced from the HOA Well, or other source as authorized by this Agreement, for use by Alamar HOA and City.

7. Water Distribution Infrastructure; Reciprocal Easements. The water distribution infrastructure contemplated by this Agreement is designed as reflected in the attached **Exhibit B**. This diagram depicts the HOA Well, the HOA Well Electric Meter, the HOA Well Water Meter, a pipeline from the HOA Well Water Meter to the boundary of the HOA Property. All of this infrastructure shall be owned and maintained by Alamar HOA, all as further provided in this Agreement. The Exhibit B diagram also depicts the continuation of the pipeline from the HOA Property boundary to Park Lake, an air gap facility in that line before its terminus into the Park Lake, and a structure designed to introduce water into Park Lake and measure the level of Park Lake ("Lake Fill Structure"). All of this infrastructure shall be owned, operated and maintained by City, all as further provided in this Agreement. The Exhibit B diagram also depicts a pump house ("Pump House") at the down-gradient side of the Park Lake, within which are one or more pumps equipped with water meters designed to withdraw water from the Park Lake and measure that water to each point of delivery. Any pump and meter designed to deliver water to City's point of delivery shall be referred to as "City Pump" and "City Pump Meter" (whether singular or plural). Any pump and meter designed to deliver water to Alamar HOA's point of delivery shall be referred to as "HOA Pump" and "HOA Pump Meter" (whether singular or plural). The Parties contemplate two pipelines emerging from the pump house that will carry water from the respective City Pump and HOA Pump to (i) City owned and operated delivery infrastructure for the operation and maintenance of the Alamar Park and Park Lake; and (ii) Alamar HOA owned and operated delivery infrastructure for the operation and maintenance of the Alamar Turf Related Facility. The Alamar HOA pipeline is identified in Exhibit B as the "HOA 12" Irrigation Main." The point of delivery for each Party shall be the respective City Pump Meter and HOA Pump Meter. Either Party may, in its discretion, also install a fertigation system within the Pump House to blend nutrients into the water produced from the pump for use in that Party's use. The City Pump and the HOA Pump and related infrastructure shall be operated according to the following terms:

- 7.1 Independent Obligations. It is the intention of the Parties that each will be responsible for the operation, maintenance and repair of its respective pump and delivery infrastructure described above. Each Party shall install an independent electric meter that will serve to operate, respectively, the City Pump and the HOA Pump. Each Party shall be solely responsible for all utility electric service provided to their respective pump, and shall timely pay all utility bills associated therewith. City shall own and maintain the pump house but shall provide access to Alamar HOA. Any incidental electric use within the Pump House (lighting, etc.) shall be charged to the City's electric meter. Each Party will own and operate its own property within the pump house, including the pump, valves, and any related fertigation systems that either Party may desire to install and operate. The equipment owned and operated by each Party shall be clearly labeled as belonging to City or HOA, and neither Party shall operate, tamper with or otherwise disturb the equipment of the other Party. Such instructions shall be made clear to any employee, contractor or agent of a Party entering the Pump House. In addition, all delivery infrastructure that exists after emerging from the pump house shall be owned, operated and maintained by the respective party to whom such infrastructure serves.
- 7.2 Dependent Obligations. The Parties recognize that these independent infrastructure systems will have to be operated, and to a certain extent maintained, conjunctively to insure efficiency and the proper production, allocation and delivery of water.

The Parties agree to communicate regularly with each other to schedule maintenance, inspection, repair, replacement and testing of their independent infrastructure. The Parties further agree to cooperate in good faith, and with commercially reasonable diligence in scheduling and assisting (at no third party out of pocket cost) each Party's obligation to maintain, inspect, repair, replace and test the infrastructure.

- 7.3. Operational Controls. The HOA Well shall be operated by electronic controls that allow operation as described in the Paragraph on Maintaining Lake Level below. The HOA Well shall be equipped with controls essentially equivalent in design and quality as those described in the attached **Exhibit C** hereto. All of the pumps, valves, and distribution infrastructure within the Pump House shall be operated by electronic controls that allow each Party to turn its respective pumps on and off, operate any fertigation system owned by that Party, and control any valve that will regulate the flow of water between the respective City Pump and HOA Pump to the point of delivery and beyond.
- 7.4. Easements. To facilitate the operation, maintenance and repair of the above described infrastructure, the City agrees that Alamar HOA shall have the necessary easements to have and maintain its infrastructure within Alamar Park, to move Alamar HOA's water through the Park Lake, and to enter upon and perform work or inspections on the City's land ("Alamar Easements"). Brookfield Lakin shall cause the Alamar Easements to be created prior to the dedication of the Alamar Park to City. The form of this Alamar Easements document is attached hereto as **Exhibit D**. The Alamar Easements document shall be executed by Brookfield Lakin to Alamar HOA at the same time that this Agreement is executed by Alamar HOA and shall be presented as part of this Agreement for City approval. The Alamar Easements shall thereafter be considered as part of this Agreement. Upon dedication of the Alamar Park to City, City shall take the Alamar Park land subject to the Alamar Easements. Alamar HOA shall record the Alamar Easements in the Maricopa County Recorder's office upon the Effective Date of this Agreement and shall return a copy to City upon recording.

8. Water Withdrawal Authority, Usage, Meter Calibration and Reporting. During the term of this Agreement, City shall maintain independent water withdrawal authority for all water withdrawn from the HOA Well that serves City's property. This may take the form of either or both: (i) City adding the HOA Well as a Service Area Well that may be operated pursuant to City's municipal Service Area (groundwater) right; or (ii) City obtaining a Recovery Well Permit associated with the HOA Well such that the HOA Well is authorized to recover stored water owned or controlled by City under annual or long-term underground storage and recovery arrangements between City and ADWR. Alamar HOA shall cooperate in good faith and with commercially reasonable diligence (at no third party out of pocket cost) with City to allow City to obtain any service area or recovery well permits necessary to allow City to meet this obligation. During the term of this Agreement, Alamar HOA shall maintain independent groundwater withdrawal authority for all water withdrawn from the HOA Well that serves Alamar HOA property.

- 8.1. Usage. The total quantity of water produced from the HOA Well as measured at the HOA Well Meter and confirmed by the HOA Electric Meter as provided herein shall be deemed used as follows:
- 8.1.1. Alamar HOA Water. Alamar HOA shall be deemed to have withdrawn water from the HOA Well calculated by measuring the quantity of water measured at the HOA Pump Meter in the Pump House. Any lost or unaccounted for water beyond that meter shall be the sole responsibility of Alamar HOA.
- 8.1.2. City Water. City shall be deemed to have withdrawn the quantity of water from the HOA Well calculated by taking the total amount of water measured at the HOA Well Meter and subtracting therefrom the water measured at the Alamar HOA Pump Meter. This arrangement means that City shall be responsible for any refill of the Park Lake due to seepage and evaporation, and any lost or unaccounted for water between the HOA Well Meter and the HOA Pump Meter
- 8.2. Meter Calibration. At least once each calendar year, City shall cause inspection of the Alamar HOA Well Meter and the City Pump Meter and Alamar HOA Meter to determine accuracy. If any meter is determined to be inaccurate by an amount exceeding 5% the inaccurate meter shall be repaired or replaced according to the terms of the obligations for repair set forth below in this Agreement. Notwithstanding the annual inspection, either Party may, at its own cost, cause inspection of any meter within the system and determine accuracy. If inaccuracy beyond the 5% limit is determined, that Party shall notify the other Party and repair or replacement shall be undertaken as described above. For purposes of meter inspection, both Parties shall make any records, including electrical usage records, available to the other Party upon reasonable request and shall cooperate with the other Party in good faith in making the inspection.
- 8.3. Reporting. Alamar HOA shall record meter readings at the Alamar HOA Well Meter and the HOA Pump Meter and shall report those readings to City within five business days after the expiration of each month. The Parties acknowledge that each Party is obligated to file Annual Water Withdrawal and Use Reports with ADWR on a calendar year basis, which reports are currently due by March 31st of each year for the preceding calendar year. Each Party agrees to timely and accurately report its total annual water use for the preceding calendar year under this Agreement to the other Party by January 31st of the succeeding year. If necessary, the Parties shall meet and confer before March 1st of each year to review the measured amounts of water from the HOA Well and all monthly and annual meter readings and reports to fairly and accurately determine the amount of water withdrawn by each as provided in this Agreement for reporting to ADWR and to ensure that the respective reports are consistent in arriving at the total amount of water withdrawn and used.

9. Operational Cost Sharing and Financial Terms for HOA Well. The cost of operating (including electric usage as measured at the HOA Electric Meter), maintaining and repairing the HOA Well shall be pro-rated between the City and Alamar HOA based on the relative water use of each as measured at the Pump House meters plus the loss calculation for City as described above. For the first year of this Agreement (up to the end of the Operating Year), the pro-rata portion shall be determined by a reasonable estimate of water usage and calculation of cost per acre foot as set forth in this Agreement. For year 2 and beyond, operating costs shall be determined based on the total actual usage by each Party for the preceding operating year and actual cost of operation as set forth below:

- 9.1 Operating Year. The Operating Year shall be May 1st through April 30th of the following year. By May 15th of each year, Alamar HOA shall report to City, and make available to City any books and records kept by Alamar HOA relating to the operation of HOA Well and water usage from the well during the preceding Operating Year, indicating at minimum the total water withdrawn from HOA Well each calendar month, the total cost of operating the well and the distribution system to the Park Lake for each month, and the calculated cost of production and distribution per acre foot of water produced for each month.
- 9.2 Invoicing for Costs. On or before the 15th day of each month in the operating year, Alamar HOA shall calculate the amount of water used by City in the preceding month, and shall invoice City for the cost of that water based on the per acre foot cost determined from the preceding year as provided above. City shall pay Alamar HOA the invoiced amount by the 30th day of that same calendar month.
- 9.3. Cost Adjustment. In the event Alamar HOA collects data showing that the per acre foot cost of operating the well and distribution system varies from the estimated amount derived from the preceding year by more than 10%, Alamar HOA shall notify city of the variance and provide the supporting books records and information. Alamar HOA may, upon such disclosure, adjust the per acre foot cost to reflect the actual cost of operation during that operating year.
- 9.4 Year End True-Up. By May 15th of each year, in addition to the books and records provided by Alamar HOA to City, Alamar HOA shall conduct a year end audit of the amounts actually paid by each Party and reconcile that against the actual costs incurred for the operation of the HOA Well. If either Party has overpaid its proportionate share, that overpayment shall be reflected in an adjusted invoice for the month (or months if necessary) to true up the amounts actually paid by each Party against the actual costs incurred.
- 9.5 City Budgeting. To the extent reasonably requested by City, Alamar HOA shall cooperate with City staff in developing a City budget for the upcoming City fiscal year, projecting as much as reasonably possible the routine operating costs, preventative maintenance and repair, and any necessary capital expenditures anticipated in operating and maintaining the HOA Well to the standards required by this Agreement.

10. Extraordinary Maintenance, Repair and Down Time of HOA Well. In the event the HOA Well or the operating distribution system to the Park Lake suffer failure or imminent failure, Alamar HOA shall forthwith notify City. For purposes of this Paragraph, failure or imminent failure shall include any loss of operational capacity that would impair the ability of the Parties to meet the terms of this Agreement. If time allows, Alamar HOA and City shall confer on the best solution to repair or avoid the operational deficiency. If the failure or imminent failure can be remedied or avoided by a capital expenditure not to exceed \$10,000.00, Alamar HOA may elect to proceed to make the repair or replacement if it determines that such repair or replacement is a commercially reasonable remedy. If such repair or replacement occurs, the cost sharing between the Parties for such repair or replacement shall be determined by the same formula as for Major Repair or Replacement set forth below.

10.1 Major Repair or Replacement. If it is determined that the HOA Well has failed or is in imminent danger of failing, and Alamar HOA estimates the cost of repair or replacement to exceed \$10,000.00, then the Parties shall meet and confer on the best solution to the problem. If the solution is that the best action would be to replace the entire well by a Replacement Well in Approximately the Same Location (as that location is defined by rules adopted by ADWR), Alamar HOA shall make accommodation for the replacement well on the Alamar HOA property. In all such cases, the Parties agree that City has maintenance personnel on staff, and has preferred contractors for major well repair work that will likely provide the most cost efficient means by which to repair or replace the HOA Well. Good faith efforts by both Parties shall be made to use City staff or contractors in any such instance as the preferred alternative. If such services are used, City shall allocate the cost for the HOA Well work based on actual costs.

10.2 Cost Sharing of Major Repair or Replacement. In the event that circumstances require capital expenditures for major repair or replacement, City and Alamar HOA shall bear the cost of same in direct proportion to their use of water from the HOA Well. If sufficient time has passed since the effective date of this Agreement, the relative proportion of water use to each Party shall be the average percentage split of water delivered to City and to Alamar HOA over the last five calendar years, calculated according to the water allocation provisions and reporting requirements of this Agreement. If less than five years, the average shall be determined on the average annual actual use or reasonable approximation thereof according to the best information available. Each Party shall contribute its percentage share of the cost promptly to the other Party, or to the selected contractor as appropriate, to allow the repairs or replacement to proceed in expeditious fashion.

10.3 Replacement Water in Downtime, The Parties agree that if the HOA Well is suffering from failure or is otherwise unable to produce the water necessary to maintain the Park Lake level, a temporary supply from the City's potable water system, delivered through fire hydrants or other convenient locations, shall be made available. If expected downtime is estimated to be more than three business days, the Parties shall meet and confer and decide upon the best strategy for arranging a temporary supply, including a temporary delivery line, an air-gap or other backflow prevention device and flow measuring device. The cost of any such temporary infrastructure shall be borne by the

Parties in proportion to the same formula for cost sharing for major repairs as set forth above. Water from such temporary supply shall be measured at the point of discharge with the best reasonable means. The amount of water withdrawn by Alamar HOA shall be the amount measured at the HOA Pump Meter during the time when the temporary supply is in operation. Upon conclusion of the use of the temporary supply, City shall invoice Alamar HOA for, and Alamar HOA shall pay within 30 days of the date of such invoice, the cost of water used by Alamar HOA during the period of downtime. The cost of City water shall be at the City's potable rate.

11. Filling and Maintaining Lake Level. Upon completion of construction and acceptance of the improvements by City, and under an interim operating agreement until final acceptance, City shall assume operational control of the Park Lake and be responsible for the initial fill of the Park Lake and thereafter maintaining the level of the Park Lake. After construction of the Park Lake is completed, the Parties shall meet and confer on the optimum operating range of the elevation of the water level in the Park Lake, including pre-determined "low" and "full" elevations. City shall have final authority to determine the operating range. As part of the Park Lake improvements, and prior to City's assumption of operation, Alamar HOA shall install an automatic lake level detection system in the Lake Fill Structure capable of determining the elevation of the Park Lake and allowing ability for the HOA Well to commence operation when the level reaches the pre-determined "low" elevation and stop operation at the pre-determined "full" elevation. City shall provide the initial fill water for the Park Lake from City's water withdrawal authority. City shall thereafter use best commercially reasonable efforts to keep the elevation of the water within the determined optimum operating range. For purposes of its obligations under this Paragraph, and as part of the Park Lake improvements made prior to City's assumption of operation, Alamar HOA shall install electronic operating controls on the HOA Well essentially as described in Exhibit C hereto and City shall have access to, and control over, the operation of the HOA Well from these electronic controls to be able to start and stop water production from the HOA Well as necessary to fill Park Lake and maintain the water level. City shall use good commercial judgment in starting and stopping water production from the HOA Well so as to minimize electrical costs and prevent unreasonable wear and tear on the HOA Well for both Parties

12. Allocation in Times of Shortage. If extraordinary circumstances prevent maintaining the Park Lake level within the optimum operating range described above, the Parties agree that, unless the shortage can be relieved by supply of Replacement Water in Downtime as provided above, the Parties will need to curtail their respective water usage until the situation can be remedied. The Parties shall meet and confer upon the reduction of usage necessary to meet the shortage conditions, determined in part by the nature of the operational deficiency, the time of year (season) and other relevant considerations for each Party. The Parties agree to cooperate in good faith and with best responsible judgment to determine the necessary curtailment by each Party and shall thereafter abide by such curtailment until the shortage condition is remedied. The Parties further agree that, if the supply deficiency so demands, the first priority shall be to keep the Park Lake within the optimum operating range if possible, even if such action requires the Parties to cease all withdrawals from the Park Lake until the situation is remedied.

13. Water Delivered "AS IS". All water withdrawn by the HOA Well shall be withdrawn and delivered to the Park Lake "AS IS." Alamar HOA shall have no liability to City for any water quality or quantity deficit for any water delivered to the Park Lake except for Alamar HOA's gross negligence or willful misconduct in the operation, maintenance or delivery of HOA Well water.

Similarly, City shall have no liability to Alamar HOA for any water withdrawn by Alamar HOA from the Park Lake and such water shall be deemed delivered “AS IS” to Alamar HOA.

14. Financial Security for Alamar HOA Obligations. Alamar HOA shall, no later than the Effective Date of this Agreement, create a separate bank account in a reputable financial institution dedicated solely to the operation, maintenance and repair of the HOA Well and any other infrastructure to be maintained by the Alamar HOA. Upon opening of this Account, each Party shall contribute the sum of twenty-five thousand dollars (\$25,000.00) to initially fund the account. This account shall thereafter maintain a minimum balance of \$50,000.00. All receipts of payments from City due under this Agreement shall be timely deposited into this account by Alamar HOA. Any shortfall in funds in the account below the \$50,000.00 minimum shall be replenished by special assessments made by Alamar HOA upon the landowners within Alamar HOA, after taking into account any funds mutually agreed to be paid for well maintenance, repair, and extraordinary maintenance and repair as provided in this Agreement. The account shall be structured so that both Party’s Authorized Representative shall have electronic access to the account through the financial institution and may monitor the account activity on a daily basis if and as necessary.

15. Authorized Representative. In administering this Agreement, City and Alamar HOA shall each name a representative (“Authorized Representative”) and an alternate (“Alternate Authorized Representative”) to administer the terms of this Agreement on behalf of the respective Party. The Authorized Representative and Alternate Authorized Representative shall have authority from their respective Party to do all things, make all decisions and authorize all actions required under this Agreement, including the expenditure of funds, for the expedient and proper administration of this Agreement. The Authorized Representatives shall meet and confer, in person if possible, at least twice each Operating Year, preferable once in the summer months and once at or near the end of the calendar year. The representatives appointed may be updated at any time by the Party by providing notice to the other Party as provided in this Agreement, but any replacement shall have like authority. Both Parties shall exercise due care in appointing their respective representatives to ensure that the person so appointed is reasonably knowledgeable about the terms of this Agreement, the respective obligations of the Parties and the general means of the operation, maintenance and repair of water production and delivery infrastructure. The named initial Authorized Representative and Alternate Authorized Representative are set forth in the Notices and Filings Paragraph below.

16. General Terms.

16.1. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the matters covered herein and supersedes any prior or contemporaneous agreements, understandings or undertakings, written or oral, by or between Parties and/or by or between any of the Parties and any third parties regarding the matters covered herein.

16.2. Amendments. This Agreement shall only be modified, amended or restated by a writing duly executed by Alamar HOA and City and approved by a Resolution of the Mayor and Council of City.

16.3. Notices and Filings. Any and all notices, filings, approvals, consents or other communications required or permitted by this Agreement shall be given in writing and personally

delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight carrier with tracking information, addressed as follows:

To City:

Jeremy Abbott
Public Works Assistant Director
City of Avondale
Public Works Department
399 E. Lower Buckeye Road
Avondale, Arizona 85323
Phone: 623.333.4411

To Alamar HOA:

Roger D. Theis
Secretary
Alamar Community Association, Inc.
14646 N. Kierland Blvd. Suite 165
Scottsdale, Arizona 85254
(602) 903- 7509

copy to:

Stephen Kemp,
Assistant City Attorney
City of Avondale
11465 West Civic Center Drive
Avondale, AZ 85323
623-333-1513

copy to:

Robert F. Kammerle
Vice President of Land Entitlements
Brookfield Residential Properties
14646 N. Keirland Blvd. Suite 165
Scottsdale, Arizona 85254
(602) 903-7492

Authorized Representative:

Jeremy Abbott

Authorized Representative:

Roger D. Theis

Alternate Authorized Representative:

Kirk Beaty, Public Works Director

Alternate Authorized Representative:

Robert F. Kammerle

or to any other valid addresses as any of the Parties hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communications shall be deemed to have been given as of the date of delivery if hand delivered, or as of forty-eight (48) hours following deposit in the U.S. Mail, postage prepaid and addressed as set forth above, or upon notification of delivery by overnight carrier.

16.4. Successors and Assigns. This Agreement is binding on successors and assigns of the Parties if such succession or assignment is by operation of law. Neither City nor Alamar HOA shall voluntarily assign its rights, obligations or interest in this Agreement without the prior written consent of the other, and any attempted voluntary assignment without such consent shall be void and of no effect.

16.5. No Agency or Partnership. Neither City nor Alamar HOA is acting as the agent of the other with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture, or other business relationship between the City and Alamar HOA.

16.6. Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, and may be terminated by the City in accordance with such provisions.

16.7. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

16.8. Defaults and Remedies. Any Party shall be in default under this Agreement (“Default”) if it fails to satisfy any due and owing term or condition as required under this Agreement. For monetary (payment of money) defaults, such default shall accrue if payment is not made within 3 business days of when due, without further notice from the other Party. For non-monetary defaults, such default shall accrue within fifteen (15) business days following written notice from the other Party (“Notice”); provided, however, that the Notice shall set forth the specific reasons for the determination that the Party has failed to satisfy any term of condition hereof. A Party shall not be in Default if the Party commences to cure any deficiencies within fifteen (15) business days of receipt of Notice and cures such deficiencies with diligence and within a reasonable time thereafter.

16.9. No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Alamar HOA of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

16.10. Mediation and Compulsory Arbitration. If a dispute arises out of or related to this Agreement, or any default declared under this Agreement, and if the dispute cannot be settled through negotiation among the Authorized Representatives or Alternate Authorized Representatives, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration or some other dispute resolution. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request a presiding judge of the Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. If the dispute is not resolved within thirty (30) days of from the date a mediator is selected or appointed, the mediation will be deemed to have failed and the obligation hereunder satisfied; provided, however, if the Parties and the agreed upon mediator cannot in good faith schedule a meeting to mediate the dispute within the time stated in the foregoing clause, the period of time state in the foregoing clause shall be extended by an additional thirty (30) days. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

16.10.1 Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration (“Rules”) then followed by the American Arbitration

Association (“AAA”), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of whom shall be selected by Alamar HOA, one of whom shall be selected by the City, and the third, who shall serve as chairman, shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys’ fees and costs.

16.11. WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND ALAMAR HOA KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL. The terms of this Paragraph waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement.

16.12. LIMITATION ON CLAIMS. IN NO EVENT SHALL CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES, WHICH INCLUDES, BUT IS NOT LIMITED, CLAIMS FOR LOST PROFITS, BE AWARDED AS DAMAGES FOR A BREACH OF THIS AGREEMENT, AND THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES IN THE EVENT OF A BREACH OF THIS AGREEMENT. Notwithstanding the foregoing, nothing in this Paragraph shall limit or restrict either Party’s right to seek actual damages or specific performance of the duties and obligations contained herein provided such claims are not subject to any of the waiver provisions expressly set forth in writing in this Agreement. The terms of this Paragraph limiting the remedies available to the Parties in the event of a breach of the Agreement shall survive the expiration or earlier termination of this Agreement.

16.13. Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

16.14. Fair Interpretation. The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed Agreement or any earlier draft of same. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

16.15. Assured Water Supply. The City currently has an assured water supply designation issued by ADWR. Nothing in this Agreement shall be construed or interpreted to create any rights to any water use other than those contained in this Agreement or through the approval of final subdivision plats.

16.16. Choice of Law, Venue, and Attorney's Fees. In any dispute under this Agreement, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by Arbitration or a Court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County. The Parties expressly waive the right to object, for any reason, to the venue of Maricopa County. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

16.17. Survival Clause. All provisions in this Agreement that logically ought to survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement. This includes by way of example: all provisions imposing obligations that will not be triggered until the Agreement is terminated, all indemnification provisions; all limitation of remedies and damages provisions; all provisions waiving claims; and all provisions relieving any Party of liability for actions taken. The fact that certain provisions in this Agreement expressly state that such provisions shall survive the expiration or earlier termination of this Agreement shall not be construed as limiting the application of the Survival Clause set forth in this Section to other provisions in the Agreement.

16.18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Further this Agreement may be executed and delivered by electronic transmission. A manually signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement provided however, Alamar HOA shall deliver an original to City for City's official records.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement the City and Alamar HOA have caused this Agreement to be executed by their duly appointed representatives.

[Signatures on Following Pages]

ALAMAR HOA:

Alamar Community Association, Inc.
an Arizona non-profit corporation

By: _____

Its: _____

State of Arizona)
) ss.
County of Maricopa)

The Well Sharing and Water Transportation Agreement for Alamar Development in City of Avondale between Alamar Community Association, Inc., an Arizona non-profit corporation, and the City of Avondale, an Arizona municipal corporation, was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Alamar Community Association, Inc., for and on behalf thereof.

Notary Public

CITY:

CITY OF AVONDALE, an Arizona municipal corporation

By: _____

Its: City Manager

Effective Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Well Sharing and Water Transportation Agreement for Alamar Development in City of Avondale between Alamar Community Association, Inc., an Arizona non-profit corporation, and the City of Avondale, an Arizona municipal corporation, was acknowledged before me this _____ day of _____, 2021, by _____, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

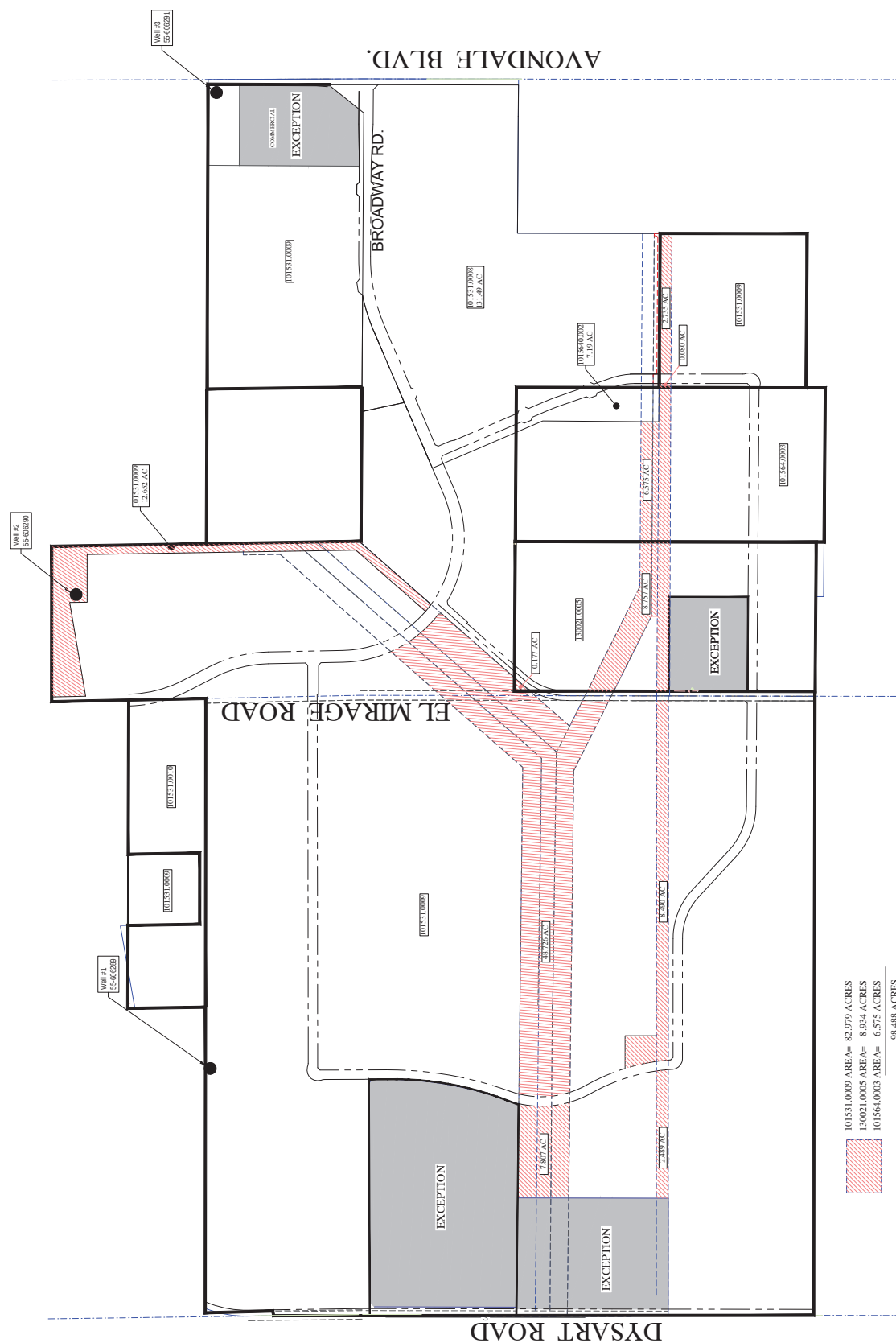
City Clerk

Approved as to Form:

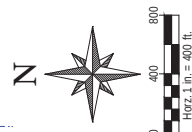
City Attorney

EXHIBIT A

DIAGRAM OF THE HOA PROPERTY



101531.0009	AREA=	82.979 ACRES
130021.0005	AREA=	8.934 ACRES
101564.0003	AREA=	6.575 ACRES
		98.488 ACRES



NOT
FOR
CONSTRUCTION
OR RECORDING

WOOD/PATEL
MISSION: CLIENT SERVICE®
(602) 335-8500
WWW.WOODPATEL.COM

ALAMAR

DEVELOPMENT PLAN FOR ADWR
"TURF RELATED FACILITY"

DATE:	SCALE:
-------	--------

DATE: 3/16/2019
SCALE: 1" = 400'

SHEET
1 OF 1

EXHIBIT B
INFRASTRUCTURE DIAGRAM

EXHIBIT B – INFRASTRUCTURE DIAGRAM

IS ON FILE IN THE

CITY OF AVONDALE

CITY CLERK'S OFFICE
11465 WEST CIVIC CENTER DRIVE
AVONDALE, AZ 85323

EXHIBIT C

DESCRIPTION OF OPERATIONAL CONTROLS FOR HOA WELL

COA SCADA Alamar Park Control Scheme: Well – Radio control (REV. 3):

The well control communications are configured using a Phoenix Contact unlicensed 900 MHz radio network. This network consists of two RAD-900-IFS wireless network modules. The network will run between the well control site and the lake level control site next to comfort station #2. I will list the preferred Radio Configuration Below using the RAD-900-IFS Radio:

Lake Level Control site:

RAD-900-IFS Phoenix Contact 900 MHz Radio / Master Set to 01 / Network: I/O Data Mode
RAD-DI4-IFS PC 4 - 24VDC Discrete Inputs Exp. Module
RAD-DOR4-IFS PC 4 – Digital Relay Outputs Exp. Module
RAD-AO4-IFS PC 4 – Analog Outputs 4ma – 20ma Exp. Module
DI1: Low Level Warrick probe to start the Well.
Relay Output 2: Well Running Signal to M340 PLC
Relay Output 3: Well Failed signal to M340 PLC
Relay Output 4: Well Flow Totalization Pulse to M340 PLC
Analog Output 1: Well Flow GPM
Analog Output 2: Well System Supply Line PSI to M340 PLC

Well Control Site:

RAD-900-IFS Phoenix Contact 900 MHz Radio / Slave Set to 02 / Network: I/O Data Mode
RAD-DI4-IFS PC 4 - 24VDC Discrete Inputs Exp. Module
RAD-DOR4-IFS PC 4 – Digital Relay Outputs Exp. Module
RAD-AI4-IFS PC 4 – Analog Inputs 4ma – 20ma Exp. Module
DI2: Well Running Signal
DI3: Well Fail Signal
DI4: Flow Meter Totalization Pulse
Analog Input 1: Well Flow GPM
Analog Input 2: Well System Supply Line PSI



EXHIBIT D
ALAMAR EASEMENTS

WHEN RECORDED, RETURN TO:

Neil D. Biskind, Esq.
Biskind, Hunt & Semro, PLC
8901 East Pima Center Parkway, Suite 225
Scottsdale, Arizona 85253

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT ("**Declaration**") is made this ____ day of _____, 202_, by BROOKFIELD LAKIN LLC, a Delaware limited liability company ("**Grantor**"), for the benefit of Alamar Community Association, Inc., an Arizona non-profit corporation ("**Grantee**").

RECITALS

A. Grantor holds title to the parcel of real property described on Exhibit "A" attached hereto (the "**Easement Premises**").

B. Grantee desires to utilize the Easement Premises for the purpose of, operating, maintaining and repairing and replacing as needed water pipelines and appurtenant facilities within the Easement Premises, including, without limitation, pumps, valves, controls, meters and delivery and distribution systems and any related fertigation system, installed in connection with delivery, storage and distribution of water produced by the groundwater production well, ADWR Well Registration No. 55-606290, owned by Grantee, to the park lake located on Grantor's property described on Exhibit "B" attached hereto, and to use the park lake for temporary storage and delivery of Grantee's water through the park lake to Grantee's downstream facilities (collectively, the "**Facilities**") upon, across, over and under the Easement Premises, pursuant to the terms and conditions more particularly set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby declares as follows:

1. Grant of Easement. Grantor hereby grants to Grantee and its successors and assigns a perpetual non-exclusive easement (the "**Easement**") upon, across, over and under the Easement Premises for the purpose of, operating, maintaining and repairing and replacing the Facilities together with the right to: (a) operate, repair, replace, maintain and remove the Facilities from the Easement Premises; (b) add to or alter the Facilities; and (c) provide Grantee with reasonable ingress and egress to the Facilities.

2. Conditions and Limitations. The foregoing Easement is subject to the following conditions and limitations: (a) all persons and entities using the Easement and rights granted and reserved hereby shall avoid any damage to property and any improvements located at any time on the Easement Premises, and (b) upon the completion of any installation, construction, maintenance, replacement or repair of any improvement or other facility within the Easement Premises, the applicable person or entity shall promptly return the affected property (including any improvements and landscaping and related irrigation facilities thereon) to substantially its prior condition, at the sole expense of such person or entity. In elaboration of the foregoing, the obligation to return affected property to its prior condition upon the completion of any such installation, construction, maintenance, repair, or replacement shall include repair or replacement to its prior condition of any paving, curbs, gutter, sidewalks, landscaping, irrigation lines, sprinklers or other similar facilities, or fence damaged or disturbed.

3. Indemnity. This Easement is granted subject to the condition that Grantee shall hold Grantor and Grantor's successors and assigns harmless for, from and against any and all damages, claims, liabilities or expenses that may result from Grantee's use of the Easement.

4. Running of Benefits and Burdens. All provisions of this Declaration, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the respective successors and assigns of Grantor.

5. Grantors' Reservations. Grantor, on behalf of its successors and assigns, reserves the right to use the Easement Premises and the right to grant others the right to use the Easement Premises and otherwise to use and enjoy the Easement Premises in any manner so long as such use and enjoyment is not inconsistent with, and does not unreasonably interfere with, Grantee's enjoyment of the Easement granted hereby for the purposes set forth herein.

6. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Easement Premises to or for the general public, or for any public purpose whatsoever, and this Agreement shall be strictly limited to and for the purposes expressed herein.

[Signatures on Next Page]

DATED as of the day and year first above written.

GRANTOR: **BROOKFIELD LAKIN LLC,**
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)

) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____ of
BROOKFIELD LAKIN LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

(Seal)

STATE OF ARIZONA

County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____ of
BROOKFIELD LAKIN LLC, a Delaware limited liability company, for and on behalf thereof.

Notary Public

(Seal)

Exhibit "A"

Legal Description for Easement Premises

Wood, Patel & Associates, Inc.
602.335.8500
www.woodpatel.com

Revised June 7, 2021
June 4, 2021
WP# 174612.09
Page 1 of 8
See Exhibit "A"

LEGAL DESCRIPTION
Alamar
Access, Maintenance and Conveyance Easement

A parcel of land lying within Sections 24 and 25, Township 1 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 25, a 3-inch Maricopa County Department of Transportation (MCDOT) brass cap in handhole, from which the west quarter corner of said Section 25, a 3-inch Maricopa County Department Highway Department (MCHD) brass cap in handhole, bears South 00°07'07" West (basis of bearing), a distance of 2615.86 feet;

THENCE along the west line of said Section 25, South 00°07'07" West, a distance of 166.06 feet;

THENCE leaving said west line, South 89°52'53" East, a distance of 448.76 feet, to the easterly line of that certain Public Utility and Sidewalk Easement, recorded in Book 1537, page 35, Maricopa County Records (MCR), a point of intersection with a non-tangent curve and the **POINT OF BEGINNING**;

THENCE along said easterly line, northerly along said non-tangent curve to the right, having a radius of 942.00 feet, concave easterly, whose radius bears North 69°22'33" East, through a central angle of 16°31'21", a distance of 271.65 feet, to a point of intersection with a non-tangent line;

THENCE North 05°02'26" East, a distance of 99.47 feet;

THENCE North 01°10'37" West, a distance of 140.70 feet;

THENCE continuing along said easterly line and the northeasterly prolongation thereof, North 44°34'57" East, a distance of 30.95 feet;

THENCE leaving said prolongation North 01°10'37" West, a distance of 87.30 feet;

THENCE North 44°34'54" West, a distance of 49.73 feet, to said easterly line;

THENCE along said easterly line, North 01°10'37" West, a distance of 269.79 feet;

THENCE leaving said easterly line, North 90°00'00" East, a distance of 34.23 feet;

THENCE South 00°02'02" East, a distance of 23.00 feet;

THENCE North 90°00'00" East, a distance of 4.87 feet;

THENCE South 38°00'01" East, a distance of 80.15 feet to a point of intersection with a non-tangent curve;

THENCE easterly along said non-tangent curve to the right, having a radius of 56.94 feet, concave southwesterly, whose radius bears South 20°53'05" East, through a central angle of 27°05'46", a distance of 26.93 feet, to a point of reverse curvature;

THENCE northeasterly along said reverse curve to the left, having a radius of 99.99 feet, concave northeasterly, through a central angle of 47°21'08", a distance of 82.64 feet, to a point of reverse curvature;

THENCE easterly along said reverse curve to the right, having a radius of 81.73 feet, concave

Legal Description
Alamar
Access, Maintenance and Conveyance Easement

Revised June 7, 2021
June 4, 2021
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southwesterly, through a central angle of 66°17'29", a distance of 94.56 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said non-tangent curve to the right, having a radius of 80.87 feet, concave southwesterly, whose radius bears South 27°18'04" West, through a central angle of 94°44'28", a distance of 133.72 feet, to a point of intersection with a non-tangent curve;

THENCE southerly along said non-tangent curve to the left, having a radius of 131.64 feet, concave easterly, whose radius bears South 65°04'22" East, through a central angle of 67°05'42", a distance of 154.15 feet, to a point of intersection with a non-tangent curve;

THENCE southerly along said non-tangent curve to the right, having a radius of 48.43 feet, concave southwesterly, whose radius bears South 48°31'25" West, through a central angle of 46°41'46", a distance of 39.47 feet, to a point of reverse curvature;

THENCE southeasterly along said reverse curve to the left, having a radius of 78.30 feet, concave northeasterly, through a central angle of 76°06'49", a distance of 104.02 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said non-tangent curve to the right, having a radius of 58.78 feet, concave southwesterly, whose radius bears South 21°54'24" West, through a central angle of 52°41'32", a distance of 54.06 feet, to a point of intersection with a non-tangent line;

THENCE North 68°28'53" East, a distance of 67.96 feet;

THENCE North 21°20'14" West, a distance of 7.18 feet;

THENCE North 41°16'03" East, a distance of 382.43 feet;

THENCE North 00°00'00" East, a distance of 352.32 feet;

THENCE North 22°30'00" East, a distance of 82.39 feet;

THENCE North 45°00'00" East, a distance of 25.29 feet;

THENCE North 00°00'00" East, a distance of 439.95 feet;

THENCE North 90°00'00" East, a distance of 20.00 feet;

THENCE South 00°00'00" East, a distance of 448.23 feet;

THENCE South 45°00'00" West, a distance of 29.60 feet;

THENCE South 22°30'00" West, a distance of 74.43 feet;

THENCE South 00°00'00" East, a distance of 355.87 feet;

THENCE South 41°16'03" West, a distance of 392.53 feet;

THENCE South 68°39'46" West, a distance of 6.92 feet;

THENCE North 21°20'14" West, a distance of 1.76 feet;

THENCE South 68°28'53" West, a distance of 69.88 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said non-tangent curve to the right, having a radius of 58.78 feet, concave northwesterly, whose radius bears South 84°32'38" West, through a central angle of 81°06'05", a distance of 83.21 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said non-tangent curve to the left, having a radius of 117.30 feet, concave southeasterly, whose radius bears South 20°53'55" East, through a central angle of 05°48'32", a distance of 11.89 feet, to a point of compound curvature;

THENCE southwesterly, along said compound curve to the left, having a radius of 3.00 feet, concave southeasterly, through a central angle of 73°29'38", a distance of 3.85 feet, to a point of reverse curvature;

THENCE southwesterly along said reverse curve to the right, having a radius of 5.63 feet, concave northwesterly, through a central angle of 138°52'36", a distance of 13.66 feet, to a

Legal Description
Alamar
Access, Maintenance and Conveyance Easement

Revised June 7, 2021
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See Exhibit "A"

point of reverse curvature;

THENCE westerly along said reverse curve to the left, having a radius of 3.00 feet, concave southwesterly, through a central angle of $73^{\circ}29'38''$, a distance of 3.85 feet, to a point of compound curvature;

THENCE southwesterly, along said compound curve to the left, having a radius of 117.30 feet, concave southeasterly, through a central angle of $22^{\circ}42'48''$, a distance of 46.50 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said non-tangent curve to the right, having a radius of 54.52 feet, concave northeasterly, whose radius bears North $53^{\circ}47'06''$ West, through a central angle of $161^{\circ}36'34''$, a distance of 153.79 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said non-tangent curve to the left, having a radius of 180.37 feet, concave southwesterly, whose radius bears North $72^{\circ}36'16''$ West, through a central angle of $95^{\circ}05'37''$, a distance of 299.36 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said non-tangent curve to the right, having a radius of 46.49 feet, concave northeasterly, whose radius bears North $12^{\circ}55'18''$ East, through a central angle of $98^{\circ}11'31''$, a distance of 79.67 feet, to a point of intersection with a non-tangent curve;

THENCE northerly along said non-tangent curve to the left, having a radius of 75.71 feet, concave westerly, whose radius bears North $70^{\circ}28'48''$ West, through a central angle of $53^{\circ}49'28''$, a distance of 71.13 feet, to a point of reverse curvature;

THENCE northerly along said reverse curve to the right, having a radius of 56.94 feet, concave easterly, through a central angle of $93^{\circ}07'09''$, a distance of 92.53 feet, to a point of intersection with a non-tangent line;

THENCE North $38^{\circ}00'01''$ West, a distance of 85.84 feet;

THENCE North $90^{\circ}00'00''$ West, a distance of 15.94 feet;

THENCE South $01^{\circ}10'37''$ East, a distance of 242.60 feet;

THENCE South $44^{\circ}34'54''$ East, a distance of 49.73 feet;

THENCE South $01^{\circ}10'37''$ East, a distance of 95.50 feet;

THENCE South $44^{\circ}34'57''$ West, a distance of 30.95 feet;

THENCE South $01^{\circ}10'37''$ East, a distance of 137.03 feet;

THENCE South $05^{\circ}02'26''$ West, a distance of 99.21 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said non-tangent curve to the left, having a radius of 932.00 feet, concave easterly, whose radius bears North $85^{\circ}50'58''$ East, through a central angle of $16^{\circ}28'14''$, a distance of 267.92 feet, to a point of intersection with a non-tangent line;

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Alamar
Access, Maintenance and Conveyance Easement

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THENCE South 69°05'44" West, a distance of 10.00 feet to the **POINT OF BEGINNING**.

Containing 141,734 square feet or 3.2538 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of July, of 2018. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2017\174612.09 Access Maintenance & Conveyance Easement L61R01 06-07-21.docx



W 1/4 CORNER
SECTION 24, T1N, R1W

ELWOOD STREET

EL MIRAGE ROAD

EX 8' PUE & SWE
BOOK 1537, PAGE 35,
MCR

ALAMAR -
PHASE 2
BOOK 1537,
PAGE 35,
MCR

N01°10'37"W 2614.23'

SW CORNER
SECTION 24,
NW CORNER
SECTION 25,
T1N, R1W
3" MCDOT BCH
POC

(BASIS OF BEARING)
S00°07'07"W 2615.86'

166.06'

2449.80'

S89°52'53"E
448.76'

POB

DETAIL
SEE PAGE 6

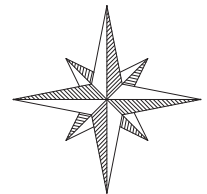
W 1/4 CORNER
SECTION 25, T1N, R1W
3" MCHD BCH

PROPOSED
COMMUNITY
PARK

S89°37'21"E 2611.55'

S 1/4 CORNER
SECTION 24,
N 1/4 CORNER
SECTION 25,
T1N, R1W
2" IP W/ NO ID

N



**WOOD
PATEL**



EXPIRES 12-31-23

EXHIBIT "A"

ALAMAR

ACCESS, MAINTENANCE AND CONVEYANCE EASEMENT

REVISE 06/07/2021

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DETAIL

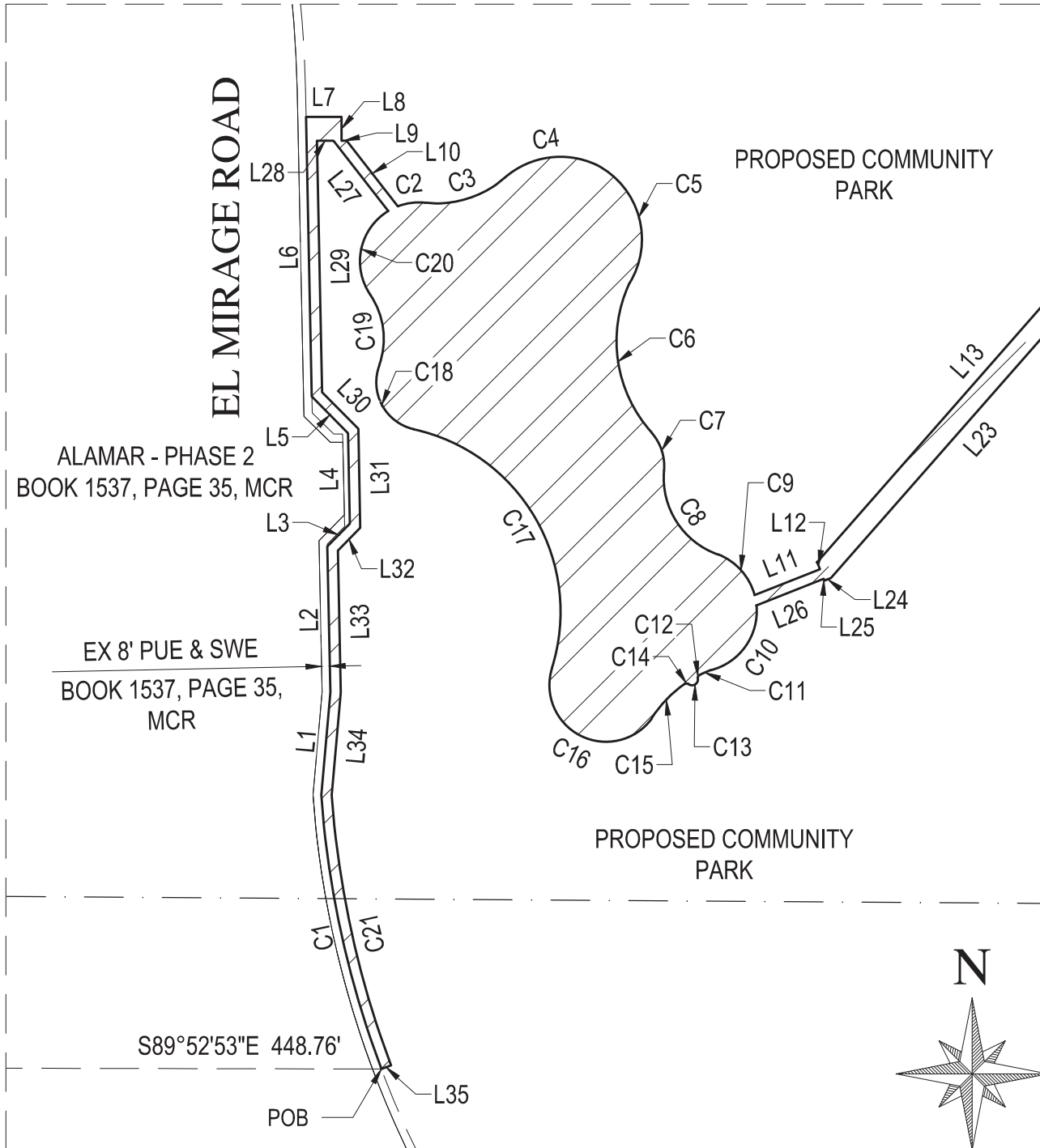


EXHIBIT "A"
ALAMAR
ACCESS, MAINTENANCE AND CONVEYANCE EASEMENT
REVISE 06/07/2021
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N05°02'26"E	99.47'
L2	N01°10'37"W	140.70'
L3	N44°34'57"E	30.95'
L4	N01°10'37"W	87.30'
L5	N44°34'54"W	49.73'
L6	N01°10'37"W	269.79'
L7	N90°00'00"E	34.23'
L8	S00°02'02"E	23.00'
L9	N90°00'00"E	4.87'
L10	S38°00'01"E	80.15'
L11	N68°28'53"E	67.96'
L12	N21°20'14"W	7.18'
L13	N41°16'03"E	382.43'
L14	N00°00'00"E	352.32'
L15	N22°30'00"E	82.39'
L16	N45°00'00"E	25.29'
L17	N00°00'00"E	439.95'
L18	N90°00'00"E	20.00'

LINE TABLE		
LINE	BEARING	DISTANCE
L19	S00°00'00"E	448.23'
L20	S45°00'00"W	29.60'
L21	S22°30'00"W	74.43'
L22	S00°00'00"E	355.87'
L23	S41°16'03"W	392.53'
L24	S68°39'46"W	6.92'
L25	N21°20'14"W	1.76'
L26	S68°28'53"W	69.88'
L27	N38°00'01"W	85.84'
L28	N90°00'00"W	15.94'
L29	S01°10'37"E	242.60'
L30	S44°34'54"E	49.73'
L31	S01°10'37"E	95.50'
L32	S44°34'57"W	30.95'
L33	S01°10'37"E	137.03'
L34	S05°02'26"W	99.21'
L35	S69°05'44"W	10.00'



EXPIRES 12-31-23

EXHIBIT "A"

ALAMAR

ACCESS, MAINTENANCE AND CONVEYANCE EASEMENT

REVISE 06/07/2021

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CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	16°31'21"	942.00'	271.65'
C2	27°05'46"	56.94'	26.93'
C3	47°21'08"	99.99'	82.64'
C4	66°17'29"	81.73'	94.56'
C5	94°44'28"	80.87'	133.72'
C6	67°05'42"	131.64'	154.15'
C7	46°41'46"	48.43'	39.47'
C8	76°06'49"	78.30'	104.02'
C9	52°41'32"	58.78'	54.06'
C10	81°06'05"	58.78'	83.21'
C11	5°48'32"	117.30'	11.89'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C12	73°29'38"	3.00'	3.85'
C13	138°52'36"	5.63'	13.66'
C14	73°29'38"	3.00'	3.85'
C15	22°42'48"	117.30'	46.50'
C16	161°36'34"	54.52'	153.79'
C17	95°05'37"	180.37'	299.36'
C18	98°11'31"	46.49'	79.67'
C19	53°49'28"	75.71'	71.13'
C20	93°07'09"	56.94'	92.53'
C21	16°28'14"	932.00'	267.92'



EXPIRES 12-31-23

EXHIBIT "A"

ALAMAR

ACCESS, MAINTENANCE AND CONVEYANCE EASEMENT

REVISE 06/07/2021

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Exhibit “B”

Legal Description for Park

Wood, Patel & Associates, Inc.
602.335.8500
www.woodpatel.com

July 12, 2021
WP# 174612.09
Page 1 of 4
See Exhibit "A"

LEGAL DESCRIPTION
Alamar
Park Boundary

A parcel of land lying within Sections 24 and 25, Township 1 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 25, a 3-inch Maricopa County Department of Transportation brass cap in handhole, from which the west quarter corner of said Section 25, a 3-inch Maricopa County Highway Department brass cap in handhole, bears South 00°07'07" West (basis of bearing), a distance of 2615.86 feet;

THENCE along the west line of said Section 25, South 00°07'07" West, a distance of 554.55 feet;

THENCE leaving said west line, South 89°52'53" East, a distance of 712.41 feet, to the easterly right-of-way line of El Mirage Road, a point of intersection with a non-tangent curve and the **POINT OF BEGINNING**;

THENCE along said easterly right-of-way line, northwesterly along said non-tangent curve to the right, having a radius of 950.00 feet, concave northeasterly, whose radius bears North 40°38'37" East, through a central angle of 45°17'37", a distance of 750.99 feet, to the curves end;

THENCE North 05°02'26" East, a distance of 99.67 feet;

THENCE North 01°10'37" West, a distance of 145.95 feet;

THENCE North 44°22'34" East, a distance of 35.01 feet;

THENCE North 01°10'37" West, a distance of 70.15 feet;

THENCE South 89°17'02" West, a distance of 12.00 feet;

THENCE North 45°37'26" West, a distance of 35.69 feet;

THENCE North 01°10'37" West, a distance of 315.22 feet, to the beginning of a curve;

THENCE northerly along said curve to the left, having a radius of 1150.00 feet, concave westerly, through a central angle of 26°02'37", a distance of 522.73 feet, to the curves end;

THENCE North 27°13'14" West, a distance of 100.00 feet;

THENCE North 17°46'46" East, a distance of 35.36 feet;

THENCE North 27°13'14" West, a distance of 50.00 feet;

THENCE North 72°13'14" West, a distance of 35.36 feet;

THENCE North 27°13'14" West, a distance of 50.00 feet, to the beginning of a curve;

THENCE northwesterly along said curve to the right, having a radius of 1050.00 feet, concave northeasterly, through a central angle of 01°00'07", a distance of 18.36 feet, to a point of intersection with a non-tangent line;

THENCE leaving said easterly right-of-way line, North 63°46'54" East, a distance of 47.45 feet;

THENCE South 27°23'13" East, a distance of 49.86 feet;

THENCE North 90°00'00" East, a distance of 1023.05 feet, to the westerly line of that certain parcel of land recorded in Document 2021-0485965, Maricopa County Records (MCR);

Legal Description
Alamar
Park Boundary

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See Exhibit "A"

THENCE along said westerly line, South 00°56'20" East, a distance of 1460.67 feet;
THENCE South 41°15'55" West, a distance of 57.26 feet, to the north line of said Section 25;
THENCE leaving said north line, continuing South 41°15'55" West, a distance of 729.27 feet, to the **POINT OF BEGINNING**.

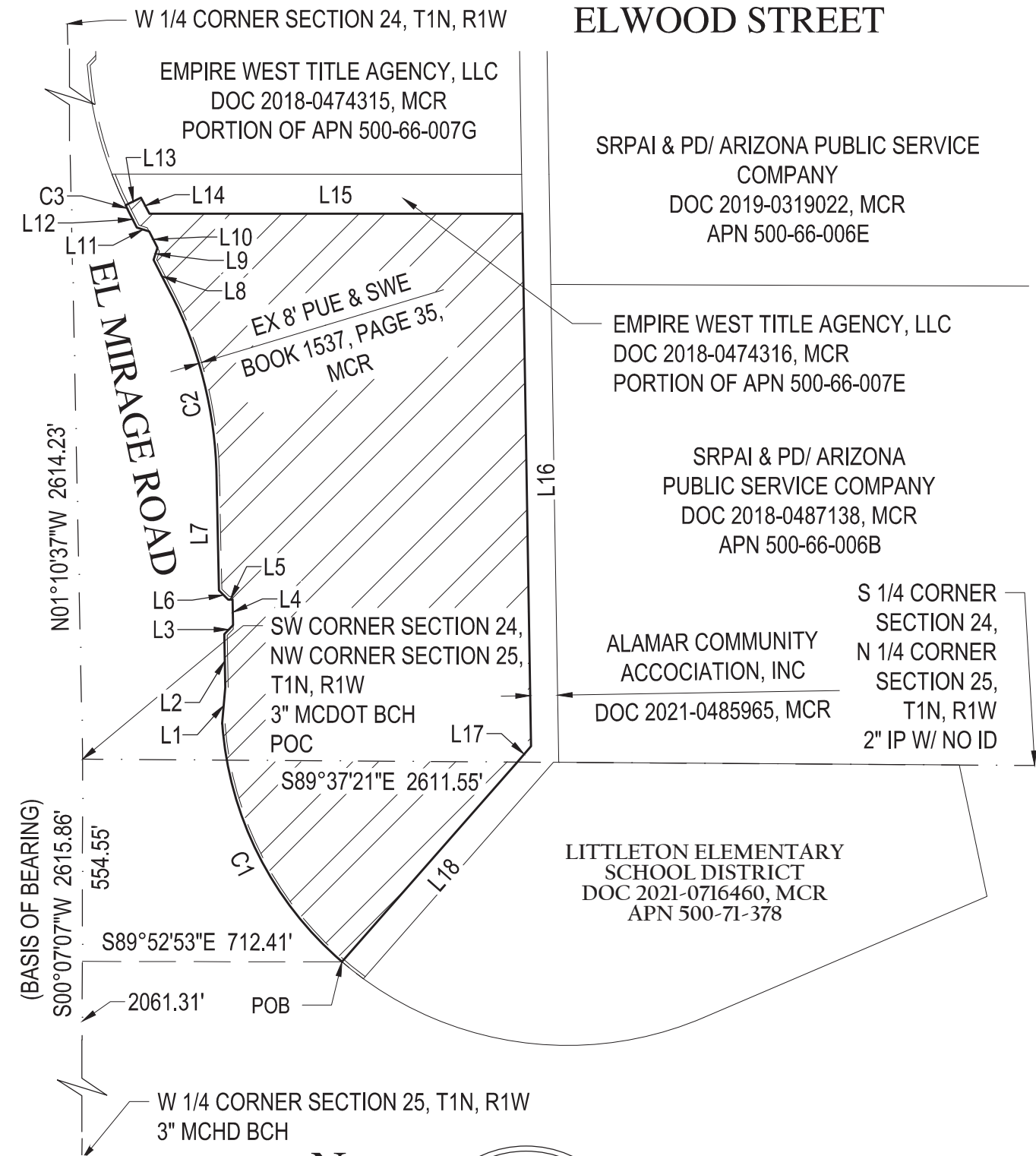
Containing 1,568,199 square feet or 36.0009 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of July, 2018. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2017\174612 Alamar Park Boundary L62 07-12-21.docx





**WOOD
PATEL**

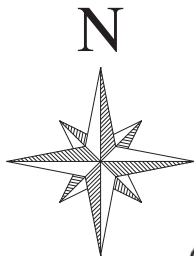


EXHIBIT "A"
ALAMAR
PARK BOUNDARY
07/12/2021
WP# 174612.09
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NOT TO SCALE

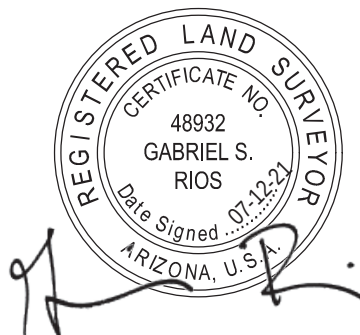
EXPIRES 12-31-23

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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N05°02'26"E	99.67'
L2	N01°10'37"W	145.95'
L3	N44°22'34"E	35.01'
L4	N01°10'37"W	70.15'
L5	S89°17'02"W	12.00'
L6	N45°37'26"W	35.69'
L7	N01°10'37"W	315.22'
L8	N27°13'14"W	100.00'
L9	N17°46'46"E	35.36'

LINE TABLE		
LINE	BEARING	DISTANCE
L10	N27°13'14"W	50.00'
L11	N72°13'14"W	35.36'
L12	N27°13'14"W	50.00'
L13	N63°46'54"E	47.45'
L14	S27°23'13"E	49.86'
L15	N90°00'00"E	1023.05'
L16	S00°56'20"E	1460.67'
L17	S41°15'55"W	57.26'
L18	S41°15'55"W	729.27'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	45°17'37"	950.00'	750.99'
C2	26°02'37"	1150.00'	522.73'
C3	1°00'07"	1050.00'	18.36'



EXPIRES 12-31-23

EXHIBIT "A"

ALAMAR
PARK BOUNDARY
07/12/2021
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EXHIBIT B
TO
RESOLUTION NO. 1068-0821

[Operating Agreement]

See following pages.

**INTERIM OPERATING AGREEMENT
CITY OF AVONDALE ALAMAR PARK LAKE**

This Interim Operating Agreement (“Agreement”) is between Alamar Community Association, Inc., an Arizona non-profit corporation (“Alamar HOA”), Brookfield Lakin, LLC, an Arizona limited liability company (“Brookfield”), and the City of Avondale, an Arizona municipal corporation (“City”). Alamar and City are sometimes referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. WHEREAS Brookfield is developing approximately 1,179 gross acres within City as a master planned community known as Alamar (“Alamar”). Brookfield has created the Alamar HOA under Covenants, Conditions and Restrictions recorded upon the land. Alamar HOA is the fee owner of certain lands within Alamar.

B. WHEREAS, City is a municipal water provider that will provide water service within Alamar and will eventually receive dedicated lands within Alamar for City parks and amenities.

C. WHEREAS, City and Alamar HOA have entered into that certain Well Sharing and Water Transportation Agreement (“Well Sharing Agreement”) which details the relationship between Alamar HOA and City on the sharing of a certain well, ADWR Well Registration No. 55-606290 (“HOA Well”). City intends to use the HOA Well as a recovery well for long-term storage credits owned by City, and to use the recovered water to supply water to the City parks and amenities within Alamar once those lands are dedicated to City.

D. WHEREAS, the Alamar development is currently being developed by Brookfield in phases. The lands intended for dedication to City are currently held in trust by Empire West Title Agency, LLC, Trust No. 1305TRTAZ. Brookfield controls the development of these lands pursuant to the terms of the Trust. Part of the Alamar development includes a plan for a small body of water that will be known as Alamar Lake. Alamar Lake is within a park setting that, upon dedication to City, will be a City owned park known as Alamar Park. Construction is underway by Brookfield for Alamar Park, Alamar Lake and the related infrastructure and improvements. It is the intention of the Parties that, once all construction is complete and accepted by City, the lands within Alamar Park will be dedicated to the City and City shall thereafter operate and maintain Alamar Park and Alamar Lake.

E. WHEREAS, Alamar Lake is also intended to serve as a water storage and regulatory structure for water produced from the HOA Well and thereafter distributed to Alamar Park and to other lands owned by Alamar HOA. It is therefore necessary to commence operation of Alamar Lake before all of the park related infrastructure and improvements are in place and before final dedication to City. Because Alamar Lake is intended to be a City operated facility within the meaning of A.R.S. § 45-132(B)(3), City intends to assume operational control of Alamar Lake before dedication to City pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The Parties incorporate the Recitals stated above and all Exhibits attached to this Agreement.
2. Definitions. Certain capitalized terms used in this Agreement are defined in the foregoing Recitals and elsewhere in this Agreement. Other capitalized terms that are used refer to terms used in Arizona Revised Statutes, Title 45, or in the Management Plans adopted thereunder, or in regulations adopted by ADWR. Any reference to Arizona statutes or defined terms in Management Plans or regulations shall mean those currently in effect, or as they may change in the future pursuant to duly authorized legislative or administrative action.
3. Effective Date. This Agreement shall take effect upon the full execution of this Agreement and the Well Sharing Agreement by the Parties.
4. Term and Expiration Date. The term of this Agreement shall be from the Effective Date until final dedication of Alamar Park and Alamar Lake. This interim Agreement shall then expire and future operation of Alamar Lake and Alamar Park shall be governed by the terms of the Well Sharing Agreement. During the term of this Agreement, the terms and conditions of the Well Sharing Agreement shall control the particular operational regimen for Alamar Park and Alamar Lake except as expressly or necessarily altered by this Agreement.
5. Initial Lake Fill. City shall cooperate with Brookfield and Alamar HOA to ensure that City recovered Effluent water is withdrawn from the HOA Well to provide the initial fill requirements of Alamar Lake. City shall provide City Long-Term Storage Credits and report such recovered Effluent as City water delivered to the Lake during the term of this Agreement.
6. Construction and Repair. During the term of this Agreement, Brookfield shall continue to be solely responsible for all costs of construction and maintenance of all infrastructure and improvements within Alamar Park and Alamar Lake and shall construct and maintain same in good and functional condition until final dedication of the real property, the infrastructure, and the improvements thereon to City. Alamar HOA shall be responsible for all maintenance of the HOA Well and any infrastructure associated with the HOA Well for the production and measurement of water produced from the HOA Well. City shall have no responsibility for operation and maintenance of Alamar Park, Alamar Lake or the HOA Well.
7. Operational Costs. During the term of this Agreement, Alamar HOA shall pay all operational costs of producing water from the HOA Well and transporting that water to Alamar Lake. Brookfield shall be solely responsible for all construction on the real property comprising Alamar Park and Alamar Lake and shall maintain adequate insurance thereon for any casualty loss that may be suffered during the term of this Agreement. Alamar HOA, Brookfield and City shall cooperate in the City's initial fill and operation of Alamar Lake such that the terms of the Well Sharing Agreement are followed and adhered to in this initial operation period by City.
8. Indemnity. Brookfield shall indemnify and hold City harmless from any loss, liability or claim resulting from the fill and operation of Alamar Lake during the term of this Agreement, except for willful or grossly negligent acts of City. City shall include, for purposes of this

indemnity, all City staff and elected officials and such indemnity shall cover any loss related expense incurred by City, including attorneys' fees.

9. General Terms and Authorized Representatives. For purposes of this Agreement, the Parties incorporate by reference the General Terms (Paragraph 19) and the appointment of Authorized Representatives (Paragraph 18) of the Well Sharing Agreement into this Agreement.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement the City and Alamar HOA have caused this Agreement to be executed by their duly appointed representatives.

ALAMAR HOA:

Alamar Community Association, Inc.
an Arizona non-profit corporation

By: _____

Its: _____

State of Arizona)
) ss.
County of Maricopa)

The Interim Operating Agreement City of Avondale Alamar Park Lake City of Avondale, an Arizona municipal corporation, was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Alamar Community Association, Inc., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the and acknowledged to me that he being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of Alamar Community Association, Inc..

Notary Public

BROOKFIELD:

Brookfield Lakin, LLC
an Arizona limited liability company

By: _____

Its: _____

State of Arizona)
) ss.
County of Maricopa)

The Interim Operating Agreement City of Avondale Alamar Park Lake City of Avondale, an Arizona municipal corporation, was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Brookfield Lakin, LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the and acknowledged to me that he being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of Brookfield Lakin, LLC.

Notary Public

CITY:

CITY OF AVONDALE, an Arizona municipal corporation

By: _____

Its: City Manager

Effective Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The Interim Operating Agreement City of Avondale Alamar Park Lake in City of Avondale between Alamar Community Association, Inc., an Arizona non-profit corporation, and the City of Avondale, an Arizona municipal corporation, was acknowledged before me this _____ day of _____, 2021, by _____, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY COUNCIL REPORT

SUBJECT: Ordinance 2033-0821 - Lease Agreement with Desert Tap LLC DBA: Tap2

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kenneth Chapa, Economic Development Director, 623-333-1411

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

The approval of this agenda item will help increase visitor traffic to Avondale.

PURPOSE:

City Council will consider a request to adopt Ordinance 2033-0821, approving the Lease Agreement with Desert Tap LLC DBA: Tap2 for the property located at 745 North 114th Avenue, Suite 101, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale (Landlord) and Desert Tap LLC DBA: Tap2 (Tenant) desire to enter into a Lease Agreement for the use of City property (the Premises) located at 745 N. 114th Avenue, Suite 101, containing approximately 1,500 square feet.

DISCUSSION:

The term of the lease is ten (10) years with two (2) five (5) year options to extend.

The tenant will receive four (4) months abated rent beginning with the first full month on or after the commencement date, but not later than April 29, 2022. Thereafter, the Tenant will pay \$22.00 per square foot (the Base Rent) the first two (2) years, then \$25.00 per square foot beginning year three (3), then \$26.00 per square foot beginning year four (4), then \$32.00 per square foot for years five (5) and six (6), then \$33.00 per square foot for years seven (7) and eight (8), then \$34.00 per square foot beginning year nine (9), and \$35.00 per square foot beginning year ten (10). At the option term the lease rate will be \$35.70 per square foot with 2%

annual increases.

The City will pay a maximum of \$429,990.00 for Tenant Improvements (TIs) to:

- i. provide a catalyst for The BLVD Retail and increase daytime and evening population to feed new retail in the Park Avenue District and further development in this area, and
- ii. create new opportunities for employment in Avondale.

The City has determined, by a review of comparable rental rates, that the Base Rent and Allowance are within market value for a similar type of tenant in the area.

BUDGET IMPACT:

Total Rent: Initial Term and Option Term	\$1,016,357.56
<u>City's Costs: (Tenant Improvements)</u>	<u>\$ 429,990.00</u>
Net Cumulative Rent	= \$ 586,367.56

City's costs to be paid through the Economic Opportunities Fund (10245000-61800), which is proposed to have \$2 million in appropriation in FY2022.

RECOMMENDATION:

Staff recommends approval of the Lease Agreement between the City of Avondale and Desert Tap LLC DBA: Tap2

ORDINANCE NO. 2033-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF AVONDALE AND DESERT TAP, LLC, D/B/A TAP2.

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

SECTION 1. The Lease Agreement between the City of Avondale and Desert Tap, LLC, d/b/a Tap2, is hereby approved in substantially 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 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2033-0821

[Lease Agreement]

See following pages.

DATE: August 23, 2021

LEASE AGREEMENT

By and Between

THE CITY OF AVONDALE,
an Arizona municipal corporation, as Landlord

and

DESERT TAP, LLC,
an Arizona limited liability company,
D/B/A: Tap2, as Tenant

LEASE AGREEMENT

This Cover Sheet (this "**Cover Sheet**") is hereby incorporated by reference into and made a part of the attached Lease. Each reference in the Lease to any term of this Cover Sheet shall have the meaning as set forth in this Cover Sheet for such term. In the event of a conflict between the terms of this Cover Sheet and the Lease, the terms of the Lease shall prevail. Any initially capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Lease.

COVER SHEET

LANDLORD NAME: THE CITY OF AVONDALE
an Arizona municipal corporation

TENANT NAME: Desert Tap, LLC D/B/A: Tap2

TENANT ADDRESS: 745 N. 114th Avenue, Suite 101, Avondale, AZ 85323

TRADE NAME: Tap2

- ITEM 1. **PREMISES:** Those certain premises at 745 N. 114th Avenue, Suite 101, Avondale, Arizona 85323 (the "**Premises**") containing approximately 1,500 square feet of "**Floor Area**" (as defined in **ITEM 2** of the Cover Sheet), as set forth on Exhibit A (the Site Plan), all located at The BLVD and 114th Avenue, in the retail component of the mixed-use development, owned by the City of Avondale, Assessor Parcel Number 102-57-247 ("**The BLVD Retail**"). The approximate layout The BLVD Retail and location of the Premises, including, therein are shown on the site plan attached hereto as **Exhibit A** (the "**Site Plan**").
- ITEM 2. **FLOOR AREA:** With respect to each building or structure in The BLVD Retail, the number of square feet of floor space intended for exclusive occupancy at each level or story lying within the exterior faces of exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not leased or occupied ("**Floor Area**"). If such space is office space, "**Floor Area**" shall refer to the rentable area of the space in question.
- ITEM 3. **PERMITTED USE:** Subject to the other provisions of this Lease, Tenant shall use the Premises for the purpose of operating therein a bar and restaurant ("**Permitted Use**"), and for no other use or purpose and under the Trade Name set forth above and under no other trade name, without Landlord's prior written consent. Tenant will not commit, omit or permit any act, condition or event that is contrary to any Legal Requirement or Insurance Requirement, as defined below.
- ITEM 4. **INITIAL TERM:** The term of this Lease (the "**Initial Term**") shall commence on the Commencement Date (as defined in **ITEM 6** below) and shall end on the date that is one hundred and twenty (120) months from the Commencement Date. The term "**Lease Years**" is defined in **Article 2**, which also sets forth the calculation thereof.

The Initial Term of this Lease, and any extension thereof, are sometimes herein referred to as the "**Term**."

OPTION TERM: At the end of the Initial Term provided that the Tenant is not in default and the Lease is in good standing, shall have two (2) options to extend the lease for an additional five (5) years. The Rent for the Option Term shall increase by 2% each year.

ITEM 5. **DELIVERY DATE:** The “**Delivery Date**” shall be the date on which Landlord delivers possession of the Premises to Tenant. Tenant may commence “**Tenant's Work**” (as defined in **Exhibit B-2**) in the Premises without substantial interference from Landlord or its contractor. The Delivery Date shall be no more than one week after the Effective Date. Tenant shall acknowledge delivery of the Premises by executing the Delivery Date Certificate in the form attached hereto as **Exhibit B-1**.

ITEM 6. **COMMENCEMENT DATE:** Subject to the provisions of this Lease, the Initial Term of this Lease and Tenant's obligation to pay “**Rent**” (as defined in **Article 3**) shall commence on the date (the “**Commencement Date**”) that is the later of the following: (i) forty-five days (45) after delivery of Premises and completion of Tenant's work; or (ii) Tenant's opening of business. Within 30 days after the Commencement Date has been determined, Landlord and Tenant shall execute and deliver to each other a commencement date memorandum in the form attached hereto as **Exhibit D** and incorporated herein by this reference (“**Form of Commencement Date Memorandum**”). The parties agree that the Commencement Date shall not be later than April 29, 2022, unless agreed to by both parties in writing.

ITEM 7. **RENT:** The Rent payable by Tenant pursuant to this Lease shall include all the following:

A. During the Initial Term and the Option Term (if applicable), an amount, per month, as set forth below, provided Tenant shall receive three months of abated rent beginning with the first full month on or after the Commencement Date:

Initial Term:

Months	1-4	\$0	Rent Abated
Months	5-12	\$22.00 SF	\$2,750.00
Months	13-24	\$22.00 SF	\$2,750.00
Months	25-36	\$25.00 SF	\$3,125.00
Months	37-48	\$26.00 SF	\$3,250.00
Months	49-60	\$32.00 SF	\$4,000.00
Months	61-72	\$32.00 SF	\$4,000.00
Months	73-84	\$33.00 SF	\$4,125.00
Months	85-96	\$33.00 SF	\$4,125.00
Months	97-108	\$34.00 SF	\$4,250.00
Months	109-120	\$35.00 SF	\$4,375.00

Extension:

Months	121-132	\$35.70 SF	\$4,462.50
Months	133-144	\$36.41 SF	\$4,551.75
Months	145-156	\$37.14 SF	\$4,642.79
Months	157-168	\$37.89 SF	\$4,735.64
Months	169-180	\$38.64 SF	\$4,830.35
Months	181-192	\$39.42 SF	\$4,926.96
Months	193-204	\$40.20 SF	\$5,025.50
Months	205-216	\$41.01 SF	\$5,126.01

Months	217-228	\$41.83 SF	\$5,228.53
Months	229-240	\$42.66 SF	\$5,333.10

ITEM 8. **PERCENTAGE RENT: INTENTIONALLY OMITTED**

ITEM 9. **IMPROVEMENTS BY LANDLORD AND TENANT:**

A. Landlord's Work.

1. "Landlord's Work" shall mean the following: The Landlord will inspect the HVAC, plumbing, gas and electric and certify that all are in operating order, the Landlord will perform any maintenance repairs on the aforementioned if needed prior to the Delivery Date. Notwithstanding the foregoing, Landlord is not required to perform any additional improvements to the Premises prior to the Commencement of the Lease. Tenant agrees to accept the Premises in its "AS IS" condition.

2. If for any reason, Landlord cannot deliver possession of the Premises to Tenant on the Delivery Date, (a) this Lease will not be void or voidable and Landlord will not be liable to Tenant for any resultant loss or damage and (b) the Commencement Date, Delivery Date and Expiration Date shall each be delayed by one day for each day of such delay; provided, however, if the Commencement Date is delayed by more than 90 days, Tenant, by written notice to Landlord prior to the Delivery Date, may terminate this Lease. Tenant will execute the Form of Commencement Date Memorandum attached to this Lease as **Exhibit D** within 15 days of Landlord's request.

B. Tenant's Work.

1. Tenant shall, at its sole cost and expense, install fixtures and stock the Premises and perform all work designated as "**Tenant's Work**" in **Exhibit B-2** in the manner set forth in this Lease. Tenant shall, at its sole cost and expense, cause an architect licensed in the state to prepare interior plans and specifications for Tenant's Work.

2. Tenant agrees to furnish to Landlord, for Landlord's prior review and approval, the Plans and Specifications (as such term is referred to in **Exhibit B-2**) with respect to the Premises prepared in the manner and within the time periods required in the Construction Guidelines. If such Plans and Specifications are not furnished by Tenant to Landlord within the required time period in a form to permit approval by Landlord, then Landlord may avail itself of its options under the Construction Guidelines. Once Landlord receives the Plans and Specifications, Landlord may not unreasonably withhold its approval of the same. Landlord's approval of Tenant's Plans and Specifications or any modifications thereof shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency or their conformity with applicable laws, and Tenant shall be solely responsible therefor. In addition to conforming to the requirements specified in the Construction Guidelines, Tenant shall schedule its work so as not to unreasonably interfere with any work being performed by Landlord or by any other tenant in The BLVD Retail, or with the operation of The BLVD Retail and its tenants. It is further understood and agreed that: **(a)** Landlord shall have no responsibility or liability whatsoever for any loss of, or damage to, any fixtures, equipment, merchandise, or

other property belonging to Tenant or its agents, employees and contractors, installed or left in the Premises, unless such loss or damage is caused by Landlord or its agents, employees or contractors, in which case Landlord shall be solely liable; and **(b)** Tenant's entry upon and occupancy of the Premises prior to the Commencement Date shall be governed by and subject to all the provisions, covenants and conditions of this Lease.

3. Additional alterations to the interior and/or exterior of the Premises shall be approved in accordance with provisions of the Lease.

C. Performance of Tenant's Work

1. Tenant shall not perform Tenant's Work without providing to Landlord, according to the time requirements set forth in the Construction Guidelines, any drawings or specifications required by Landlord, and without Landlord's prior written consent. In the event Landlord grants such consent, such Work shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and all drawings or specifications approved by Landlord. Any work performed by Tenant shall be subject to Landlord's inspection and approval after completion.

2. Tenant shall timely obtain at its sole cost all certificates and approvals with respect to work done and installations made by Tenant that may be required for the issuance of a non-temporary certificate of occupancy for the Premises, and shall immediately deliver to Landlord a copy of all such certificates and approvals. Promptly upon the completion of its work, Tenant shall repair, clean and restore to their prior condition all portions of The BLVD Retail affected by any work of Tenant. In the event that any mechanic's, materialman's or other lien is filed against the Premises or The BLVD Retail as a result of any work or act of or on behalf of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten days from the filing thereof. If Tenant fails to discharge said mechanic's, materialman's or other lien, Landlord may bond or pay the same without inquiring into the validity or merits of such lien and all reasonable sums so advanced and fees incurred (including legal fees) shall be paid by Tenant on demand as Additional Rent. It shall be Tenant's continuing obligation to keep and maintain the Premises and all other parts of The BLVD Retail free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant. In addition, Tenant shall replace any bonds posted by Landlord pursuant hereto with a suitable bond of equivalent amount within seven days after Landlord's demand therefor. Tenant shall have the right to contest the correctness or the validity of any such lien provided Tenant is diligently pursuing the matter to resolution and further provided that Landlord, in its reasonable judgment, concludes that there is no jeopardy to Landlord's title to the Premises or The BLVD Retail. In the event Landlord concludes that its title to the Premises or The BLVD Retail is jeopardized hereunder, Tenant shall, within thirty days of notice from Landlord, procure and record a lien release bond meeting the requirements of Ariz. Rev. Stat. § 33-1004, as amended, or any successor statute.

D. **Removal by Tenant.** All of Tenant's Work made by Tenant shall at once when made become part of the leasehold and become property of Landlord. Upon the expiration or sooner termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions and improvements, except that trade fixtures,

furniture and equipment installed by Tenant may be removed if: **(1)** such trade fixtures, furniture and equipment are not integral to the operation of the Building or the Premises (by way of example only and not a limitation, HVAC and plumbing systems may not be removed); **(2)** all Rents hereunder are paid in full; and **(3)** Tenant has performed all of its other obligations hereunder. Tenant hereby acknowledges and agrees that any property remaining in the Premises after the expiration or earlier termination of this Lease, shall be deemed abandoned by Tenant and Landlord may dispose of such personal property as it deems appropriate, at Tenant's cost, and Tenant shall reimburse Landlord for such costs within fifteen (15) days after being billed for the same.

E. **Allowance for Tenant Improvement Costs.** Tenant's Work, including Outdoor Seating Area, and together with all architectural mechanical, engineering, the Construction Documents, the Tenant's Drawings, general contractor fees, signage, structural floor enhancements, construction management or consulting fees incurred by the Tenant shall be referred to herein as "**Tenant Improvements**". Landlord and Tenant agree that Landlord will provide Tenant an amount not to exceed four hundred twenty-nine thousand, nine hundred and ninety dollars and zero cents (\$429,990.00) for Tenant Improvements (the "**Tenant Improvement Allowance**" or the "**Allowance**"). The City desires to provide this Tenant Improvement Allowance to:

1. Provide a catalyst for The BLVD Retail and increase daytime population to attract new retail in the Park Avenue District and further development in this area,
2. Create new opportunities for employment in Avondale.

The City has determined, by a review of comparable rental rates that the Base Rent and Allowance are within market value for a similar type of tenant in the area.

Any cost for the Tenant Improvements above the Tenant Allowance shall be solely borne by Tenant. Landlord may disburse to Tenant the Tenant Improvement Allowance only upon a delivery to the Landlord by Tenant of a draw request ("**Draw Request**") which is accompanied by (a) a certification by the Tenant's construction manager that the Tenant Improvements described in the Draw Request has been completed in accordance with plans and specs therefor, (b) final mechanic's lien waivers (i.e., conditional only upon receipt of payment) for all labor, suppliers, materialmen, contractors and subcontractors to the extent included in such Draw Request, (c) copies of any related invoices, billing statements, or other documentation supporting Developer's request of the amount requested pursuant to such Draw Request and (d) for the final draw request, a valid certificate of occupancy. Landlord shall, with reasonable promptness, but in no event later than 30 days after receipt of the above listed items submitted by Tenant, (a) inspect the Tenant Improvements so submitted and approve or disapprove the completion of it as in compliance with Tenant's plans and specs and (b) if the Tenant Improvements so submitted is approved by Landlord, then Landlord will pay the actual paid amounts not to exceed the Tenant Improvement Allowance subject to the limitations set forth in herein. If the Tenant Improvements are not approved by Landlord, Landlord shall designate the specific reason(s) for the disapproval in writing. If Landlord does not approve the Tenant Improvements, Tenant, at its option, may: (i) resubmit its Draw Request at such time as Tenant has corrected the deficiencies

specified by Landlord for approval. Notwithstanding anything to the contrary contained herein, the Landlord shall retain ownership of all improvements affixed to the Property and Tenant shall retain ownership of all equipment or other property paid by the Tenant Improvement Allowance. Landlord shall be under no obligation to pay the Tenant Improvement Allowance during any time the Tenant is in default under this Lease. At such time as the Tenant cures any such default, Landlord's obligation to pay the Tenant Improvement Allowance, as set forth herein, shall be reinstated.

F. Intentionally Omitted.

G. Design Services and Fees. The Tenant will pay for all professional fees associated with the design and review of the Tenant Improvements. Tenant may apply the Tenant Improvement Allowance towards such professional fees.

H. Development Services and Fees. The Landlord will pay for all municipal development and infrastructure hookup and impact fees associated with the Premises.

ITEM 10. **GUARANTEE:** The following shall guarantee the lease:

Name: David Quintana
Address: 3605 N. Canary Circle, Avondale, Arizona 85392
Telephone: 623-826-0402
Email: David.quintana@cox.net

ITEM 11. **SECURITY DEPOSIT:** An amount equal to Two Thousand, Seven Hundred and Fifty dollars (\$2,750.00) to be paid on or before the Effective Date (the "**Security Deposit**").

ITEM 12. **TENANT'S CONTACTS:**

Name: David Quintana
Address: 3605 N. Canary Circle, Avondale, Arizona 85392
Telephone: 623-826-0402
Email: David.quintana@cox.net

ITEM 13. **CITY:** The City of Avondale, an Arizona municipal corporation (the "**City**").

ITEM 14. **STATE:** The State of Arizona (the "**State**").

ITEM 15. **BUILDING:** The building in The BLVD Retail in which the Premises are located, or the retail portion of the building in The BLVD Retail in which the Premises are located.

ITEM 16. **CONTROLLABLE ELEMENTS:** "Controllable Elements" shall be deemed to include all expenses except (i) Taxes, (ii) utility costs or charges (including without limitation any utility taxes which may be imposed on any of the same), (iii) any weather-related clean-up or damage (including without limitation any snow, ice, or water removal or similar cost), (iv) capital expenditures, (v) expenses attributable to an event of Force Majeure, (vi) insurance costs and charges, and (vii) any other charges or expenses for which Landlord does not reasonably have an opportunity to select a vendor or negotiate rates.

LEASE AGREEMENT

This Lease Agreement (this “**Lease**”) is made and entered into as of the Effective Date by and between the City of Avondale, an Arizona municipal corporation (“**Landlord**”) and Desert Tap, LLC D/B/A: Tap2, an Arizona limited liability company (“**Tenant**”). The “**Effective Date**” shall be the date upon which the last of Landlord and Tenant executed this Lease, as indicated on the signature pages of this Lease.

ARTICLE 1

Lease of Premises; Use of Common Areas; Reservation of Rights

1.1 **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

1.2 **Use of Common Areas.** Except as otherwise specifically set forth by the Landlord in subsequent documents governing the use of The BLVD Retail Common Areas, Landlord grants to Tenants and its agents, employees and invitees, the non-exclusive right, together with all of the occupants of The BLVD Retail and their agents, employees and invitees, to use the Common Areas.

1.3 **Landlord's Reservation of Rights.** Landlord reserves “as-is”: **(A)** the exclusive use of the exterior walls (other than the storefront), the roof, the airspace above the roof and the space below the floor slab; and **(B)** the right to install, maintain, use, repair and/or replace pipes, ducts, conduits, utility lines and wires in the space above the interior surfaces of the ceilings, below the finished floor, within the demising walls of the Premises and in all of the “**Common Areas**” (as defined in **Article 4**) of The BLVD Retail. Landlord reserves the right to affect such other tenants in The BLVD Retail as Landlord may elect in its sole business judgment, subject to the exclusivity requirements herein and Tenant’s quiet enjoyment.

ARTICLE 2

Lease Year; Option Term; Obligation to Open and Continuously Operate

2.1 **Lease Year.** For purposes of this Lease, the term “**Lease Year**” shall mean a period of twelve (12) full, consecutive calendar months. The first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth full calendar month following the Commencement Date. If the Commencement Date occurs on a date other than the first day of the month, then the first Lease Year shall include the partial month between the Commencement Date and the last day of the month during which the Commencement Date occurs, and the Minimum Rent and other charges payable during such partial month shall be appropriately prorated based on the number of days in such month. Any Lease Year which is for any reason shorter than a full 12-month calendar year is sometimes herein referred to as a “**partial**” Lease Year. For purposes of calculating and paying the Minimum Rent and all recurring “**Additional Rent**” (as defined in **Article 3**) payable under this Lease during any partial Lease Year, such charges shall be appropriately prorated based on the number of days in such partial Lease Year.

2.2 **Option Term.** Provided, (A) Tenant is fully operating its business for the Permitted Use in all portions of the Premises; and (B) no “**Event of Default**” (as defined in Article 23) exists, Tenant may provide written notice (the “**Option Notice**”) to Landlord not less than one hundred and eighty (180) days prior to the expiration of the Lease of Tenant’s election to exercise the

option to extend the Lease for the Option Term. The right to exercise the Option Term is personal to the named Tenant herein and may not be exercised by any person or entity other than Tenant or a permitted assignee. The right to extend the Lease for the option term is expressly conditioned on Tenant not being in Default at the time the Option Term commences. The Minimum Rent payable by Tenant during the Option Term shall be as set forth in **ITEM 7** of the Cover Sheet.

2.3 Tenant Obligation to Open and Continuously Operate. Tenant agrees to open for business to the public in the Premises after the completion of the Tenant Improvements and the receipt of the Certificate of Occupancy and any other requirements to reasonably open the Premises and to continuously operate thereafter throughout the remainder of the Term. Tenant shall operate during commercially reasonable hours and on commercially reasonable dates unless it is illegal, inadvisable, or reasonably impossible to operate or due to remodeling or alterations as described herein. If Tenant fails to open for business by said date, or **"ceases operating"** (as defined in this Section) at any time during the Term (including an Option Term exercised by Tenant), then and in either of such events, in addition to Landlord's other rights and remedies with respect to such default, Tenant shall pay to Landlord, in addition to the Rent and Additional Rent payable hereunder, as liquidated damages (**"Liquidated Damages"**), an additional amount equal to 10% of the total Rent due from Tenant hereunder (calculated at a daily rate based on a 30-day month) for each day between the Commencement Date and the date Tenant opens for business in the Premises as required under this Lease, or between the date Tenant ceases operating for business in the Premises and the date Tenant resumes operating for business in the Premises as required under this Lease (as applicable). Tenant shall pay Landlord the Liquidated Damages together with the monthly installments of Rent and other charges payable under this Lease. Tenant agrees that the forgoing amount of Liquidated Damages is a reasonable estimate of the damage to Landlord that would be caused by Tenant's failure to open or continuously operate the Premises for business as required under this Lease. Tenant acknowledges that The BLVD Retail is an interdependent enterprise and its success is dependent upon the opening and continued operation of Tenant's business in accordance with the terms of this Lease. Tenant shall maintain in the Premises all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein. For purposes of this Section, the term **"ceases operating"** shall mean and refer to any period when Tenant has not been open for business with the public in the Premises in accordance with the provisions of this Lease for 15 or more consecutive days (exclusive of reasonable periods during which the Premises are being restored following casualty damage thereto or a **"Taking"** (as defined in **Article 22**) thereof, and periods during which the Premises are being remodeled or altered in accordance with this Lease or when it is inadvisable, illegal, or reasonably not possible to operate.

ARTICLE 3

Rent; Payment of Rent; Late Charge

3.1 Rent. The term **"Rent"** shall mean all amounts required to be paid by Tenant to Landlord under this Lease. Commencing as of the Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Rent in equal monthly installments (as set forth in **ITEM 7** of the Cover Sheet), in advance, on the first day of each month, without prior notice or demand, setoff or deduction. Rent shall be prorated for any partial calendar month. If the Commencement Date is a date other than the first day of a calendar month: **(1)** Rent for the month containing the Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month; and **(2)** the initial monthly rental period shall include the month in which the Commencement Date occurs and the following full calendar month (unless the Commencement Date is the first day of a calendar month,

in which event the initial monthly rental period shall include only the month containing the Commencement Date). Notwithstanding the aforementioned, Landlord shall provide three (3) months of abated Rent to Tenant beginning on the first day of the first full month after the Commencement Date. The term "**Additional Rent**" means all amounts required to be paid by Tenant to Landlord hereunder, other than Rent, whether or not such amount is specifically designated Additional Rent.

3.2 **Payment of Rent.** Tenant shall pay all sums required to be paid to Landlord, without prior notice, demand, setoff or deduction at the office of Landlord, City of Avondale, 11465 W. Civic Center Drive, Suite 250, Avondale, Arizona 85323, Attention: Accounts Receivable, or at such other place or places as Landlord may designate from time to time. In the event Landlord designates a property manager to manage this Lease, the Tenant shall be notified in writing and shall pay all rents directly to the property management firm designated in the official notice. The obligation of Tenant to pay any amount due to Landlord hereunder shall be independent of any obligation of Landlord under this Lease.

3.3 **Late Charge.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent shall cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent due from Tenant under this Lease is not received by Landlord when due, then, after a seven calendar day grace period, such unreceived amounts of rent shall incur interest from the end of the grace period to the date of payment at the rate of 12% per annum (the "**Interest Rate**").

ARTICLE 4

Common Areas; Control of Common Areas; Operating Costs; Rental Tax; Trash

4.1 **Common Areas.** The Common Areas shall be operated and maintained by the Landlord. The term "**Common Areas**" means all areas, space, equipment and services in or serving The BLVD Retail and the Premises provided for the common or joint use and benefit of Landlord, Tenant and the occupants of The BLVD Retail and their employees, agents, servants, customers and other invitees, including, without limitation, storage areas not within the Premises, public restrooms other than those within the Premises, offices not within the Premises, utility rooms other than those within the Premises, the parking areas serving The BLVD Retail (the use of which is subject to the fees, rules and regulations established therefor by the operator of the parking facility from time to time), access roads, corridors, balconies, stairs, elevators, escalators, driveways, retaining walls, exterior boundary walls and fences, water, sanitary and storm sewers (including, without limitation, any on or off-site sewer lines), on or off-site water retention and drainage facilities serving The BLVD Retail and which Landlord is required to maintain (however, Landlord shall only maintain as part of the Operating Costs, sanitary sewers up to the Premises), gas, electric, telephone and other utilities lines, systems, conduits and facilities to the perimeter walls of any building (even though intended for the use of only one or a limited number of occupants) and those serving more than one premises within a building, and any of the foregoing which serve the Common Areas, plantings, landscaped areas, truck service ways, loading dock areas and facilities, courts, ramps, sidewalks, any drinking fountains, and the facilities appurtenant to the foregoing. The Common Areas are set forth on Exhibit A.

4.2 **Control of Common Areas.** Subject to the Landlord's subsequent documents relating to use of the Common Areas, it is agreed that: **(A)** all Common Areas shall be subject to the exclusive control and management by Landlord, and Landlord shall have the right at any time (either before, during or after the initial arrangement of the entrances, access roads, parking areas

and other Common Areas), to construct buildings and other improvements thereon and therein, and to permit the owners and occupants of land located outside The BLVD Retail and Premises and their invitees to use the Common Areas; **(B)** Landlord shall have the right to demolish and make alterations and additions to the buildings in The BLVD Retail (including the construction of additional buildings therein), and to add and exclude areas from The BLVD Retail, and to relocate improvements so long as they do not have a material adverse effect on Tenant; and **(C)** Landlord shall have the right to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable, in its sole and absolute discretion, so long as such acts do not have a material adverse effect on Tenant. The rights of Landlord as reserved in this Lease shall be subject to the condition that no exercise of such rights by Landlord shall alter the physical dimensions of the Premises, or change their location or relative proximity to other stores, or otherwise materially or unreasonably interfere with the conduct of Tenant's business in the Premises.

4.3 Tenant's Obligations. In addition to the Rent provided herein above, for each Expense Year during the Term, tenant shall pay to Landlord Tenant's Share of Operating Expenses allocated to the tenants of The BLVD Retail (pursuant to Section 4.4.2, below) which are incurred by Landlord on account of operation and maintenance of The BLVD Retail during such Expense Year. For purposes hereof, "**Tenant's Share**" shall mean the percentage determined by dividing the Floor Area of the Premises, approximately 1,500 square feet, by the total Floor Area within The BLVD Retail, approximately 26,294 square feet. Landlord reserves the right, in its sole discretion, to increase or decrease from time to time the total Floor Area of The BLVD Retail based upon Landlord's standard Floor Area measurement standards used for The BLVD Retail. In the event either the Floor Area of the Premises and/or the total Floor Area of The BLVD Retail is changed, Tenant's Share shall be appropriately adjusted, and, as to the Expense Year in which such change occurs, Tenant's Share for such year shall be determined on the basis of the number of days during such Expense Year that each such Tenant's Share was in effect. It is estimated that Tenant's Share will be approximately 17.53%.

4.4 Definitions.

4.4.1 Expense Year. Each calendar year during the Term (or partial calendar year if the Term commences or ends on other than the provided first (1st) or last day of a calendar year); provided, however, that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Operating Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.4.2. Operating Expenses or Operating Costs. For purposes hereof, Operating Expenses or Operating Costs are intended to be inclusive of all costs of operating and maintaining The BLVD Retail (defined as the property shown of record by the County Assessor's office as of the date of this Lease as 102-57-247) except franchise, estate, inheritance, net income, gift, corporate and excess profit taxes of Landlord, interest on and capital retirement of Landlord's mortgage loans, if any, and costs charged by Landlord directly to specific tenants (including any utilities separately metered and charged to specific tenants). Landlord agrees to make reasonable efforts to minimize operating costs insofar as such efforts are not inconsistent with Landlord's intent to operate and maintain the Project in the first- class manner. Operating Expenses shall be limited to the following.

4.4.2.1 Tax Expenses. Tax Expenses which, for purposes hereof, shall mean, collectively, any and all general and special taxes and impositions of every kind and

nature whatsoever levied, assessed, or imposed upon, or with respect to The BLVD Retail, any leasehold improvements, fixtures, installations, additions, and equipment, whether owned by Landlord or Tenant, or either because of or in connection with Landlord's ownership, leasing and operation of The BLVD Retail, including, without limitation, real estate taxes, personal property taxes, sewer rents, water rents, general or special assessments, duties or levies charged or levied upon or assessed against The BLVD Retail and related personal property, transit taxes, all costs and expenses (including legal fees and court costs) charged for the protest or reduction of property taxes or assessments in connection with the BLVD Retail, or any tax or excise on rent or any other tax (however described) on account of rental received for use and occupancy of any or all of The BLVD Retail (except Landlord's net income taxes), whether any such taxes are imposed by the United States, the State of Arizona, the County of Maricopa, or any local governmental municipality, authority, or agency or any political subdivision of any thereof. **Tax expenses shall include a pro rata share of any in lieu payment made by the City to compensate for taxes that would be imposed on the Property if owned by a party subject to the assessment of real property and or personal property taxes which is anticipated to include assessments relating to a special district being formed for maintenance improvements used by all of the common area.**

4.4.2.2. Insurance. All costs and expenses to Landlord in maintaining fire and extended coverage insurance, property damage, liability and rent loss insurance and any other insurance maintained by Landlord covering the use and operation of The BLVD Retail which is customary in comparable projects in the area or which is reasonably deemed prudent by Landlord.

4.4.2.3. Heating, Ventilating and Air Conditioning System. All costs and expenses of repairing, operating and maintaining the heating, ventilating and air conditioning system for the BLVD Retail, including the cost of all utilities required in the operation thereof, except those paid directly by tenants of The BLVD Retail and including the cost of replacements of equipment used in connection with such repair and maintenance work and all costs and expenses incurred in making alterations or additions to the heating, ventilating and air conditioning system in order to comply with governmental rules, regulations and statutes.

4.4.2.4. Required Capital Improvements. The costs of capital improvements and structural repairs and replacements made in or to The BLVD Retail in order to conform to changes subsequent to completion of the original construction of The BLVD Retail in any applicable laws, ordinances, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction over The BLVD Retail (herein "**Required Capital Improvements**") and the costs of any capital improvements and structural repairs and replacements designed primarily to reduce Operating Expenses or to reduce the rate of increase in Operating Expenses (herein "**Cost Savings Improvements**"). The expenditures for Required Capital Improvements and Cost Savings Improvements shall be reimbursed to Landlord in equal installments over the useful life of such capital improvement or structural repair or replacement (as reasonable determined by Landlord) together with interest on the balance of the unreimbursed expenditure at a rate equal to the floating commercial loan rate announce from time to time by US Bank, a national banking association, or its successor, as its prime rate plus two percent (2%) per annum (the "**Prime Rate**") which is in effect on the date the expenditure was incurred by Landlord;

provided, however, the amount to be reimbursed for any Cost Savings Improvements shall be limited in any year to the estimated reduction or estimated savings in Operating Expenses as a result thereof.

4.4.2.5. Standard Services and Utilities. All costs and expenses incurred by Landlord in providing standard services and utilities to tenants of the BLVD Retail, including office janitorial services, such as to clean the public areas, remove garbage, and do minor repairs, window washing and utilities not separately metered and not charged by Landlord directly to specific tenants; together with the cost of replacement of non-building standard electric light bulbs and fluorescent tubes and blasts, which Landlord shall have the exclusive right to provide and install.

4.4.2.6. Management Fees. Included in the Operating Expenses and reconciled annually paid to a third-party management company not affiliated with Landlord. Management Fees shall be capped at no more than ten percent (10%) of the total Operating Expenses.

4.4.2.7. General Maintenance and Repairs. All costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the BLVD Retail, including all sums expended in connection with the Common Areas for general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services as defined in Paragraph 4.4.2.5, window washing, maintenance and repair of elevators, stairways, sidewalks, curbs, sprinkler systems planting and landscaping, lighting and other utilities, maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems, emergency back-up utility systems, storm drainage systems and any other utility systems, personnel to implement such services and to police the Common Areas, rental of machinery and equipment used in such maintenance and services, police and fire protection services, trash removal services, all costs and expenses pertaining to security systems, utilities, premiums and other costs for workers' compensation insurance, wages, withholding taxes, social security taxes, personal property taxes, fees for required licenses and permits, supplies, and charges for management of the BLVD Retail. Costs and expenses incurred by Landlord in operating, managing, repairing and maintaining The BLVD Retail which are incurred exclusively for the benefit of specific tenants of The BLVD Retail will be billed accordingly and will not be included within the general Operating Expenses.

4.4.3 Non-Operating Expenses. Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall NOT include the following.

4.4.3.1 Other Capital Improvements. Costs of items considered capital improvements, capital repairs, capital replacements, and/or capital equipment, all as determined in accordance with Landlord's standard real estate accounting practices, except as permitted in Sections 4.4.2.3, 4.4.2.4 above and 4.4.2.7 above.

4.4.3.2 Depreciation and Amortization. Depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation and amortization would otherwise have been included in the charge for such third party's services, all as determined in accordance with standard real estate

accounting practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life as determined by Landlord in the manner described in Section 4.4.2.4 above, together with interest on the unamortized costs at the Prime Rate.

4.4.3.3 Interest, Points and Fees. Interest, points, fees and principal payments on any mortgages encumbering the BLVD Retail, and other debt costs, if any, except as specifically included in Sections 4.4.2.4 above and 4.4.2.7 above.

4.4.3.4 Reimbursement for Insurance Proceeds. Costs of any items (including, but not limited to, costs incurred by Landlord for the repair of damage to the BLVD Retail) to the extent Landlord received reimbursement from insurance proceeds or from a third party (except that any deductible amount under any insurance policy shall be included within Operating Expenses).

4.4.3.5 Broker's Commission. Brokerage commissions, space planning costs, finders' fees and attorneys' fees incurred by Landlord in connection with leasing or attempting to lease space within The BLVD Retail (including all such fees and costs incurred in connection with the negotiation and execution of this Lease).

4.4.3.6 Permits and Licensing. Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for any tenants in The BLVD Retail or incurred in renovating or otherwise improving, preparing, decorating, painting or redecorating vacant space for tenants or other occupants of the BLVD Retail.

4.4.3.7 Penalties. Interest, penalties or other costs arising out of Landlord's failure to make timely payment of its obligations under this Lease, including, without limitation, Landlord's failure to make timely payment of any item that is included in Operating Expenses or Tax Expenses.

4.4.3.8 Attorney's Fees. Attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of The BLVD Retail (including costs incurred due to violations by tenants of the terms and conditions of their leases), or any other attorneys' fees incurred in connection with The BLVD Retail (including, without limitation, any financing, sale or syndication of the BLVD Retail), except (A) as specifically enumerated as an Operating Expense in this Lease, or (B) to the extent the expenditure of such attorneys' fees general benefits the tenants of the BLVD Retail.

4.4.3.9 Overhead Costs. Costs and overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to The BLVD Retail to the extent the same exceeds typical costs and overhead and profit increment of such goods and/or services rendered by qualified unaffiliated third parties on a competitive basis.

4.4.3.10 Sales Tax. Under the Arizona Municipal Tax Code, commercial leases are subject to the Transaction Privilege (Sales) Tax imposed by the City of Avondale and under state law transaction privilege taxes (Sales) are imposed by the state and

Maricopa County. This tax will be charged to the Tenant above the Base Lease amount.

4.4.3.11 **Other Costs.** Costs of acquisition of sculptures, painting and other objects of art; and any other costs not specifically set forth in Section 4.4.2.

4.5 Calculation and Payment of Operating Expenses.

4.5.1 **Statement of Estimated Operating Expenses.** Prior to that date which is thirty (30) days prior to the first day of a new Expense Year, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "Estimate Statement") which shall set forth Landlord's reasonable estimate (the "Estimate") of what the total amount of Operating Expenses for the new Expense Year shall be. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights under this Article 4. Tenant shall pay Tenant's Share of the Estimated Expenses (defined below) with installments of Rent in monthly installments of one-twelfth (1/12) thereof on the first day of each calendar month during such year, except that the monthly installment of Tenant's Share of the Estimated Expenses for the first full calendar month of the Initial Term shall start at the Commencement Date of this Lease. Tenant hereby acknowledges that prior to the execution of this Lease by Landlord and Tenant, Landlord provided to Tenant the Estimate Statement for calendar year 2021. As shown on the Estimate Statement for calendar year 2021, Tenant's Share of the Estimated Expenses are Seven Thousand, three hundred and Twenty Dollars and no/cents (\$7,320.00) (approximately \$4.88 per square foot times 1,500 square feet of Floor Area within the Premises), and the monthly Estimate installment due herein shall be six hundred ten dollars and no/cents (\$610.00). Tenant's pro rata share with controllable elements of Operating Costs over Base Year 2021 to be capped at growth rate of no more than five percent (5%) per annum on a cumulative basis for calendar years 2022 through 2026. For lease years after 2027, the growth rate shall be capped at one and one-half percent (1.5%) of the prior year's expenses.

4.5.2 **Estimated Expenses** for any particular year shall mean Landlord's estimate of Operating Expenses for a calendar year. If at any time Landlord determines that Operating Expenses are projected to vary from the then Estimated Expenses, Landlord may, by notice to Tenant, revise such Estimated Expenses, and Tenants monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Share of the revised Estimated Expenses for such year. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the monthly Minimum Rent installments, an amount equal to one-twelfth (1/12) of Tenant's Share of the Estimated Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5.3 **Payment.** Landlord shall endeavor to give to Tenant on or before the first day of February following the end of each Expense Year, a statement (the "**Statement**") which shall state the Operating Expenses incurred or accrued for such preceding Expense Year ("**Actual Expenses**"), and the amount of the Estimated Expenses paid by Tenant for such preceding Expense Year and shall indicate the amount, if any, of the difference between the Actual Expense and the Estimated Expenses (the "**Excess**") for such Expense Year. If an Excess is present, Tenant shall pay, within forty-five (45) days after receipt of said Statement, the full amount of the Excess for such Expense Year. If any Statement reflects that Tenant has overpaid Tenant's Share of Operating Expenses for such Expense Year, Landlord shall refund the amount of the overpayment to Tenant within forty-five (45) days after completing the Statement. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this **Article 4**. Even though the Term has expired and Tenant has vacated the

Premises, when the final determination is made of Tenant's Share of the Operating Expenses for the Expense Year in which this lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord an amount as calculated pursuant to the provisions of Section 4.5.1 of this Lease. The provisions of this Section shall survive the expiration or earlier termination of the Term.

4.6 **Audit Rights.** Within thirty (30) days after receipt of the Statement by Tenant ("**Review Period**"), if Tenant disputes the amount set forth in such statement, an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm), designated by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records (pertaining to Landlord's calculation of Operating Expenses) at Landlord's offices, provided that Tenant and such accountant or representative shall, and each of them shall cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Landlord shall cooperate in good faith with Tenant and accountant to provide Tenant and the accountant with the information upon which the certification is to be based. However, if such certification by the accountant proves that the total amount of Operating Expenses set forth in the year end statement were overstated by more than three percent (3%), then the actual, documented and reasonable cost of the accountant and such certification shall be paid for by Landlord. Promptly following the parties' receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification.

4.7 **Security Services.** Except for Landlord's negligence, Landlord shall not be liable in any manner whatsoever to Tenant or any third party by reason of any act or omission of Landlord in providing or maintaining Security Services (or electing not to provide or maintain Security Services) in the Common Areas.

4.8 **Trash.** Tenant shall be solely responsible for the removal of all trash and garbage from its Premises to a common trash receptacle for removal from the property by the Landlord.

ARTICLE 5 [INTENTIONALLY OMITTED]

ARTICLE 6 [INTENTIONALLY OMITTED]

ARTICLE 7 Real Estate Taxes

7.1 **Real Estate Taxes.** The City is the fee owner of The BLVD Retail and will not be assessed real property taxes. Pursuant to the Government Property Lease Excise Tax Statutes ARIZ. REV. STAT. §§ 42-6201 The BLVD Retail is instead subject to the assessment or levy of an excise tax ("**GPLET**"). The GPLET is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42-6203. The Tenant may be exempt from paying the GPLET if they qualify under ARIZ. REV. STAT. § 42-6208. However, assessments (both special and general) imposed in connection with any financing district, transportation development district, special assessment district, special benefit district, sanitary improvement district, local improvement district or any similar district of which The BLVD Retail (or any portion thereof) is a part are not covered under Operating Costs and are instead treated as "**Special Assessments**" according to the terms of this section and **Section 7.2** below. Tenant covenants and agrees to pay to Landlord as Additional Rent any costs for these Special Assessments and in no event shall Tenant contest or appeal or have any right

to contest or appeal these Special Assessments levied or assessed against the Premises or the BLVD Retail. Tenant shall pay all taxes applicable to all other property in the Premises that is Tenant's personal property not taxed, as set forth in **Section 21.1** (captioned "**Tenant's Property**").

7.2 Tenant's Proportionate Share of Special Assessments. Tenant's "**Proportionate Share of Special Assessments**" Shall be calculated by dividing the floor acreage of the premises against the total property owned by the City in the BLVD Retail District and establishing an estimated value per square foot. The estimated full cash value shall be used to set the assessed value in the same manner and method as other commercial property and the tax rate for the Maintenance Improvement District which has been created to provide for maintenance of common area facilities contained within the BLVD development which benefits all of the property within the BLVD development including the property that is the subject of this Lease and shall be applied against the assessed value established under this paragraph and in accordance with paragraph 4.4.2.1.

ARTICLE 8

Liens

8.1. In no event shall any material or equipment that is incorporated in or affixed to the Premises be subject to any notice of lien, lien, encumbrance or security interest; PROVIDED, HOWEVER, the foregoing shall not preclude Tenant from granting a security interest in Tenant's Property. Notice is hereby given that Landlord shall not be liable for any work or materials furnished to Tenant on credit and that no notice of lien or mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to Tenant or anybody claiming through Tenant. Tenant shall not permit any notice of lien or lien to be filed against the Premises or any portion of The BLVD Retail for labor, services or materials claimed to have been performed for or furnished to Tenant, its contractors and subcontractors. If such a notice of lien or lien is filed, Tenant shall discharge the notice of lien or lien within ten business days after the filing thereof (the "**Lien Cure Period**"). Tenant hereby acknowledges its failure to discharge or "bond over" such a notice of lien or lien prior to the expiration of the Lien Cure Period shall cause Landlord to incur expenses not contemplated by this Lease, the exact amount of which is difficult to ascertain. Accordingly, if Tenant fails to "bond over" or discharge any such notice of lien or lien within the Lien Cure Period, then in addition to Landlord's other rights and remedies under this Lease, at law or in equity, Tenant shall pay to Landlord liquidated damages in the amount of \$25.00 for each day between the expiration of the Lien Cure Period and the date such notice of lien or lien is removed or "bonded over." In addition, should Tenant fail to pay or "bond over" any liens within the Lien Cure Period, Landlord may (but shall not be obligated to) "bond over" such lien or pay the lien claimant and obtain a release of the lien after reasonably inquiring into the validity thereof, and offset any reasonable costs so incurred against any amount owed Tenant, and Tenant shall, upon demand and as Additional Rent, reimburse Landlord for the amount so paid together with all reasonable attorneys' fees incurred by Landlord. In addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord, arising from or connected in any way with any notice of lien or lien. Nothing in this Lease shall be construed as a consent or request by Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor at or the furnishing of any materials to the Premises.

ARTICLE 9

Parking & Public Rights of Way

9.1 **Parking.** Tenant and its employees, customers and invitees may have the non-exclusive right, together with Landlord and all other tenants and occupants of the BLVD Retail, to park on a first come first serve basis, in the public parking spaces located on N. 114th Avenue, W. Dale Earnhardt Drive and The BLVD. Neither Tenant, nor its employees shall use any parking spaces marked or designated as reserved parking spaces for other tenants of Landlord. Tenant shall, within five days after request from Landlord, furnish to Landlord the automobile license numbers of all automobiles owned or used by Tenant or its employees. If there is a violation of the foregoing requirement by any employee of Tenant, Landlord shall give Tenant notice thereof, and if such violation continues following notice to Tenant, Landlord shall have the right, at Landlord's option, to tow any vehicle parked in violation of the terms hereof, or to charge Tenant the sum of \$35.00 per day for each violation.

9.2 **Parking Fees.** At some time in the future the Landlord may convert all or some of the surface parking to structured parking. However, Landlord agrees to make reasonable efforts to minimize the need for structured parking if initial development does not warrant the installation of a parking structure. Such parking structure will not change Tenant's parking rights described herein during or after construction.

9.3 **Public Rights-of-Way.** The public rights-of-way may from time to time at the sole discretion of the City, be temporarily closed for events so long as Tenant is still able to reasonably operate its business, including parking and access. The City or Landlord is under no obligation to temporarily or permanently replace the loss of parking due to closure of public rights-of-way. The City or Landlord is responsible for maintenance and cleaning of public rights-of-way after any such event.

ARTICLE 10

Construction of the Premises

10.1 **Construction of the Premises.** Landlord and Tenant agree that the Premises shall be constructed in a good and workmanlike manner in accordance with the terms and provisions of **ITEM 9** and **Exhibit B-2** hereto. Tenant agrees that Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease. All Tenant's work shall be completed by licensed contractors holding a valid registration from the Arizona Registrar of Contractors.

ARTICLE 11

Alterations; Roof Penetration; Signs; Indemnification

11.1 **Interior Non-Structural Alterations.** After the Tenant's Work is completed, Tenant shall have the right to make interior, non-structural alterations or additions to the Premises without Landlord's consent. Tenant shall provide 30 days' prior notice to Landlord before the commencement of any interior, non-structural alterations or additions to be made to the Premises.

11.2 **Structural and Exterior Alterations.** Tenant shall not make any structural or exterior modifications, improvements, alterations, additions or installations in or to the Premises (the "**Alterations**") without Landlord's prior, written consent. Along with any request for Landlord's consent and before commencement of any Alterations or delivery of any materials to be used in any Alterations, Tenant shall furnish Landlord with a complete set of plans and specifications,

names and addresses of contractors, copies of permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord and, if required by Landlord, a performance bond executed by a commercial surety reasonably satisfactory to Landlord, and in an amount equal to the cost of the Alterations and the payment of all liens for labor and material arising therefrom. All Alterations shall be done only by licensed, bondable contractors or subcontractors reasonably approved by Landlord, and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all Alterations (including a reasonable charge for Landlord's services and for Landlord's inspection, architectural and engineering time), and also the cost of painting, restoring or repairing any portion of the Premises and The BLVD Retail required because of Tenant's Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with contractor's affidavits and full final, unconditional waivers of liens and a reasonably detailed breakdown of the costs of all labor and materials employed in such Alterations. All Alterations shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities (including, without limitation, the Americans With Disabilities Act) and shall be constructed in a good and workmanlike and lien free manner. Tenant shall permit Landlord to inspect construction operations in connection with any Alterations. Tenant shall not be allowed to make any modifications, improvements, Alterations, additions or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord's operation of the BLVD Retail. Subject to applicable federal and state law, in the event any Alterations result in a labor dispute, Tenant shall cause work to be halted immediately, remove the workers, contractors or mechanics responsible for such dispute and replace them with workers, contractors and mechanics acceptable to Landlord and whose work shall not (in the sole and absolute discretion of Landlord) result in a labor dispute.

11.3 Roof Penetration. Tenant must obtain prior, written approval from Landlord before accessing the roof of The BLVD Retail for any type of roof puncture/penetration or for attaching any items to the roof, and such work must be performed by Landlord's roofing contractor at a competitive market price or by a contractor approved by Landlord. Tenant shall be responsible for any damage to the Premises, the roof or the building containing the Premises or The BLVD Retail caused by Tenant, its agents or contractors, including, but not limited to, any roof puncture/penetration. Tenant shall be responsible for the roof above the Premises in the event it makes an alteration, with or without Landlord permission, and any damage to the Premises occurs. Notwithstanding the foregoing, Landlord approves of Tenant installing a satellite dish on the roof of the Premises and will reasonably cooperate with Tenant in such planning and installation thereof so as not to penetrate the roof or roof membrane; provided, however, that Tenant submit to Landlord its plans for the installation of the satellite for Landlord's approval and that Tenant does not cause any roof warranties to be rendered null and void or inapplicable.

11.4 Tenant's Signs. Tenant shall comply at all times with the provisions of **Exhibit C** with respect to Tenant's interior signs. All of Tenant's signs shall comply with all Legal Requirements for the BLVD Retail. Tenant shall be responsible for the costs of designing, manufacturing, installing, illuminating, operating and maintaining its signs. Upon the termination of this Lease, Tenant shall remove its signs and restore and repair all parts of the Premises and The BLVD Retail affected by the installation or removal of its signs, to the condition existing prior to installation or to a condition reasonably acceptable to Landlord. If Tenant fails or refuses to remove its sign as herein required, Landlord may, but shall not be obligated to, remove such signs and repair and restore all damage caused by their removal, and Tenant shall pay to Landlord the costs of all such removal, repair and restoration, together with an amount equal to 10% of such costs, within ten days after receipt of an invoice therefor. Landlord reserves the right to place

signage on the exterior of the Premises, including, without limitation, building identification signage, directional signage and signage for other tenants and occupants of the BLVD Retail.

11.5 **Indemnification.** Tenant agrees to indemnify, defend and hold Landlord harmless, utilizing legal counsel reasonably acceptable to Landlord, for, from and against any and all third party claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord to the extent arising from Tenant's interior non-structural alterations, Alterations, roof puncture/penetrations, Tenant's signs, or any other work performed by or on behalf of Tenant on the Premises unless caused by Landlord's negligence or willful misconduct in which event Landlord shall be solely liable. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 12

Repair and Maintenance

12.1 **Landlord Repairs and Maintenance.** Landlord agrees to maintain the Building and the Common Areas in good repair and maintenance consistent with the terms of this Lease and to make or cause to be made the following repairs and maintenance (which shall include replacements, if necessary) (collectively, "**Landlord Repairs**") within a reasonable period of time after receipt of notice from Tenant of the need therefor:

A. **Structural Repairs.** Structural portions of the Premises ("**structural portions**") consist, without limitation, of the foundation, roof, floor slab and members supporting the roof), the cost of which shall not be included in Operating Costs; PROVIDED, HOWEVER, notwithstanding the foregoing, in no event shall Landlord be responsible for the repair or replacement of the floor covering in the Premises. In the event Landlord fails to perform its maintenance obligations herein, Tenant shall have the right to perform such maintenance and Landlord shall reimburse Tenant for the cost thereof within thirty (30) days after receipt of an invoice therefor.

B. **Utility Repairs.** All repairs to and replacements of utility systems and sewer lines up to the point of the meters located in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises, the cost of which shall not be included in BLVD Retail Operating Costs. PROVIDED, HOWEVER, in the event any damage is caused by one or more acts or omissions of Tenant, its agents, employees, customers or invitees (or any other person other than Landlord), Tenant shall pay the cost of such repairs within 30 days after receipt of an invoice therefor. Additionally, Landlord shall include in Operating Costs the costs of repair(s) to plumbing and utility lines from the entrance points of the utility lines into The BLVD Retail to the mechanical room(s) or, if there is no mechanical room, to the point at which they are stubbed to the Premises. In addition, Landlord shall repair utility lines to the Premises during the time period from the Effective Date through the one-year anniversary of the Commencement Date of this Lease except when caused by the negligence of Tenant.

C. **HVAC.** All the replacement of the HVAC System serving the Premises, including maintenance of all fixtures, equipment, ducts, air filters, machinery, machinery controls, appliance and utility lines as are used for, in connection with or which are part of the electrical, plumbing, heating, air conditioning, ventilation or other mechanical systems.

12.2 **Tenant Repairs.** Except as is Landlord's obligation under this Article, Tenant agrees, at its own cost and expense, to take good care of the Premises and Tenant's trash area

and to keep them in good and first-class order, condition and state of repair (which shall include replacements, if necessary) including, without limitation, the following:

A. **Interior Repairs.** Any and all interior repairs, including but not limited to all repairs to its trade fixtures and electrical equipment and fixtures, plumbing fixtures, lines and equipment and other utility lines (including sewer and utility lines within and exclusively serving the Premises), from the point of the meters in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises), and wiring (including that within walls or ceilings, or under flooring or floor covering, or in or under the slab).

B. **Storefront Repairs.** All storefront repairs, including glass and doors, door frames, locks, lifts, openers and hardware. Notwithstanding any other provision of this Lease, Landlord shall make any storefront repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the negligence of Tenant.

C. **Window Repairs.** All repairs to windows (including sashes, frames, locks and hardware) and all Tenant's signs (including replacement of signs). Notwithstanding any other provision of this Lease, Landlord shall make any window repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the negligence of Tenant.

D. **HVAC.** All the repair and maintenance of the HVAC System serving the Premises, including maintenance of all fixtures, equipment, ducts, air filters, machinery, machinery controls, appliance and utility lines as are used for, in connection with or which are part of the electrical, plumbing, heating, air conditioning, ventilation or other mechanical systems.

ARTICLE 13

Inspections; Self Help; Construction in the BLVD Retail

13.1 **Inspections.** Landlord shall have the right, upon reasonable prior notice, except in the event of an emergency (in which case only such notice as is practicable shall be required), to enter upon the Premises for any purpose, including to determine Tenant's compliance with this Lease or to maintain and repair any pipes, conduits or ducts, whether used in the supply of services to Tenant or to other occupants of the BLVD Retail. Landlord shall further have the right, on at least 48 hours prior notice, to enter the Premises in connection with the following: **(A)** construction on the Premises; or **(B)** completing any work, repairs, alterations, or improvements in and about the Premises.

13.2 **Landlord's Right to Self Help.** If Tenant neglects or refuses to make repairs to or to maintain the Premises as required under this Lease, or to fulfill any other obligation (or any part thereof) as required under this Lease, then in addition to all other rights and remedies of Landlord as a result of such failure, Landlord and/or its agents shall have the right, upon giving Tenant reasonable notice of its election to do so, except in the event of an emergency (in which case only such notice as is practical shall be required), to make the repairs or perform the maintenance or other obligations on behalf of and for the account of Tenant. The cost of the work so done or obligations performed by Landlord or its agents, together with an amount equal to 15% of such costs, shall be paid for by Tenant within ten days after Tenant's receipt of a bill therefor. If Tenant fails to pay such amount within such 10-day period, the amount shall accrue interest at the Interest Rate upon the expiration of such 10-day period until paid. Nothing herein shall imply any duty on the part of Landlord to do any work which Landlord is not specifically and expressly required to

perform under this Lease or which, under any provisions of this Lease, Tenant is required to perform, and the performance of such work by Landlord shall not constitute a waiver of Tenant's default. Landlord shall have no liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, replacements or action.

13.3 Construction in the BLVD Retail. In connection with any construction, excavation or other building operations related to changes to the BLVD Retail, Landlord, its agents, employees and contractors shall have the right of access to enter the Premises on reasonable prior notice to Tenant and to strengthen, add to or shore the foundations, walls, columns or supporting members thereof, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Premises, in Landlord's sole discretion, and Landlord shall use reasonable efforts to complete all construction in the Premises as promptly as possible (considering the nature and extent of the construction and subject to prudent construction practices). Tenant's obligations under this Lease shall not be affected by any such changes, construction, excavation or other building operations, and so long as Landlord acts reasonably, Landlord shall not be liable for any inconvenience, disturbance, loss of business or any other annoyance arising therefrom, subject to Tenant's exclusivity right, right to Quiet Enjoyment and other rights hereunder.

ARTICLE 14

Utilities/Meters; Interruption of Service

14.1 Utilities/Meters. Tenant agrees to obtain directly from the provider thereof and pay all charges for electricity, air conditioning, heating, gas, water, sanitary sewer and other utility bills relating to the Premises from and after the Delivery Date. If any utility services are not separately metered to the Premises, Landlord may require Tenant (as part of Tenant's Work or at any time during the Term of this Lease), at Tenant's sole cost and expense (but subject to inclusion in the Tenant Improvement Allowance), to install check or sub-meters to measure Tenant's consumption of such utilities, and shall pay Landlord as Additional Rent, a share of the cost of such utilities (based on Tenant's consumption thereof as evidenced by such check or sub-meter and the rate for such utilities paid by Landlord). Additionally, if any utility service (whether separately or jointly metered to the Premises) is required to be maintained in Landlord's name, Tenant shall either pay all charges for such utility if separately metered to the Premises, or a proportionate share thereof (as set forth in this paragraph above) if jointly metered with other premises. Tenant shall pay any tap, connection and hook-up fees, and any security and other deposits, payable in connection with the utilities serving the Premises except for such development impact fees or hook-up fees charged by the City. All utilities (if separately metered) shall be transferred into Tenant's name on or before the Delivery Date (or such earlier date as Tenant may enter the Premises to perform Tenant's Work). If Tenant installs any electrical equipment that overloads the lines in the Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of codes and ordinances of the City or any governing body having jurisdiction.

14.2 Interruption of Service. No reasonable interruption in, or temporary stoppage of (not to exceed one business day), any of the services or utilities furnished to the Premises is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation under this Lease, render Landlord liable for damages or entitle Tenant to any Rent abatement. If Tenant is reasonably unable to operate its business for more than 5 business days, Tenant will be entitled to a rent abatement after such week until the Tenant is able to resume operations.

ARTICLE 15

Tenant's Insurance; Landlord's Insurance; Mutual Release and Waiver of Subrogation

15.1 **Tenant's Insurance.** Tenant, at its sole cost and expense, shall obtain and keep in force commencing as of the Delivery Date, the following insurance with an insurance company authorized to do business in Arizona or alternatively through an actuarially sound self-insurance program:

A. **"Special Form Causes of Loss" Property Insurance.** Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of Tenant's Property, plate glass and all **"Leasehold Improvements"** (as defined in **Article 21**) in the Premises made and paid for by Tenant (including, without limitation, Leasehold Improvements paid for with the Construction Allowance, if any), in an amount equal to the full replacement cost thereof.

B. **Business Interruption Insurance.** Business interruption insurance using ISO form CP0030 (or its equivalent) and including equipment breakdown, with a deductible or waiting period of no greater than 72 hours, in an amount that shall reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against in the previous Subsection or attributable to the prevention of access to the Premises by civil authority; and sufficient to reimburse Tenant for Rent in the event of a casualty to, or temporary taking of, The BLVD Retailor the Premises.

C. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, including Dram Shop or host liquor liability (if alcoholic beverages are sold or served in, from or about the Premises), written on an occurrence basis, with policy limits of not less than \$1,000,000.00 per occurrence, unless Landlord agrees to a lesser amount.

D. **Environmental Insurance.** Without limiting the provisions of **Article 32**, in the event Tenant's use of the Premises does or might result in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants (including, without limitation, any Hazardous Materials) into or upon land, the atmosphere or any watercourse or body of water, then Tenant shall obtain environmental insurance insuring against any loss for bodily injury, property damage, cleanup costs and defense expenses resulting from any of the above-described causes with limits of not less than \$2,000,000.00 inclusive per occurrence and \$2,000,000.00 annual aggregate, per location.

E. **Employer's Liability Insurance and Workers Compensation.** Employer's Liability insurance, with minimum limits of not less than \$500,000.00, bodily injury each accident, \$500,000.00 bodily injury by disease policy limit, and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation in form and amount as required by applicable law.

F. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident).

15.2 Policies of Insurance. Tenant shall have the right to satisfy the insurance required by this Article by means of blanket insurance policy(ies). All general liability policies of insurance or certificates thereof shall name Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear. Any and all deductibles or co-insurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance of the insurance policies as required by this Agreement, issued by Tenant's insurance 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. The Landlord 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. Tenant agrees to further provide Landlord evidence of renewals of policies upon request. The required coverage and/or limits referred to herein shall in no way affect or limit Tenant's liability with respect to its duties and obligations under this Lease.

15.3 Uses Which Affect Insurance. Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or BLVD Retail, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises or the BLVD Retail, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. If any invalidation of coverage or increase in the rate of insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to the act of Tenant, and Tenant shall be liable for the increase and such amount shall be considered Additional Rent payable with the next monthly installment of Minimum Rent due under this Lease unless Tenant cures such act or omission after receiving written notice of same.

15.4 Landlord's Insurance. Landlord shall, at all times during the Term, carry a policy or policies of commercial general liability insurance covering the Common Areas in The BLVD Retail and special form causes of loss insurance covering Landlord's improvements in the BLVD Retail, all in such forms and amounts and with such deductibles and self-insured retentions as Landlord reasonably deems appropriate. Landlord shall not be required to carry insurance of any kind on Tenant's Property, and Tenant hereby acknowledges and agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If insurance coverages generally maintained by landlords of similar space in similar buildings in the area in which The BLVD Retail is located increase or otherwise change, Landlord may similarly change the insurance coverages Landlord maintains under this Lease.

ARTICLE 16

Non-Liability of Landlord; Tenant Indemnification; Landlord Indemnification; Third Party Claims; Tenant's Risk

16.1 RESERVE

16.2 Tenant Indemnification. Tenant hereby agrees to indemnify, defend, and hold Landlord and its affiliates, owners, appointed and elected officers, agents and employees (collectively, the "**Landlord Indemnified Parties**") harmless for, from and against any and all "**Losses**" (as defined in this Section), to the extent arising from any or all of the following (collectively, "**Tenant's Indemnified Matters**"): (A) the conduct or management by Tenant or

Tenant's officers, directors, members, partners, agents, employees, or representatives ("**Tenant Parties**") of the Premises or any business therein, or any work or Alterations done, or any condition created by Tenant or any Tenant Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; **(B)** any misconduct, omission or negligence of any or all of Tenant and Tenant Parties; **(C)** any accident, injury or damage whatsoever occurring in, at or upon either or both of The BLVD Retail and the Premises and caused by Tenant and/or Tenant Parties; **(D)** any breach by Tenant of any of its warranties and representations under this Lease; **(E)** any violation by any or all of Tenant and/or any Tenant Parties of any law, code, ordinance or other governmental regulation; **(F)** any breach or default on the part of Tenant in the performance of any covenant or obligation contained in this Lease; **(G)** claims for work or labor performed for or materials supplied or furnished to Tenant and/or any Tenant Parties; and **(I)** the violation of any "**Environmental Law**" (as defined in **Article 32**) or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant Parties with respect to the Premises during the Term; excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors. In case any action or proceeding is brought against any or all of Landlord and Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord shall defend such action or proceeding by counsel reasonably satisfactory to Landlord. For purposes of this Article, the term "**Losses**" shall mean all third party claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing obligations. The provisions of this Section shall survive the expiration or termination of this Lease.

16.3 Landlord Indemnification. To the extent permitted by law, Landlord hereby agrees to indemnify, defend, and hold harmless Tenant, its officers, agents and servants, for, from and against any and all claims, actions, suits, judgments, decrees, orders, liability and expense in connection with loss of life, bodily injury and/or damage to property using counsel reasonably acceptable to Tenant **(A)** arising from or out of any occurrence in or upon any of the Common Areas, except to the extent the same is caused by the willful misconduct or negligent act or omission of Tenant and/or Tenant Parties; and/or **(B)** occasioned wholly or in part by any willful misconduct or negligent act of Landlord, its agents, employees or servants or breach of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or earlier termination.

16.4 RESERVE

16.5 Tenant's Risk. All personal property in the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any damage done to, or loss of, such personal property, or for damage or loss suffered by the business income or occupation of Tenant arising from any act of neglect of third parties, or from bursting, overflowing, or leaking of water, sewer or steam pipes, rain, wind, tornadoes, floor or other surface or subsurface water, from overflow of drainage facilities or backup or stoppage of any drain, sewer or other water runoff facility or device or from the heating or plumbing fixtures, noise, dust, or from electric wires, or from gas, odors, natural disaster, riot or act of violence, leaking roofs or caused in any other manner. Tenant shall give Landlord prompt notice of any accident to, defect in or problem in the Premises or Building of which Tenant has knowledge or notice. Tenant, for itself and its agents, employees,

representatives, expressly assumes all risks of injury or damage to person or property, resulting from the condition of The BLVD Retailor any part thereof.

ARTICLE 17

Assignment and Subletting

17.1 Consent of Landlord. Tenant shall not assign this Lease or sublet the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease any operating department therein, whether by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law or otherwise, and whether voluntary or involuntary, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold, condition or delay) which consent shall be evidenced by the signature of the City Manager thereon. Any attempt to do any of the foregoing, without the prior written consent of Landlord, shall be void and of no force or effect. This prohibition shall be construed to include a prohibition against an assignment or subletting by operation of law.

17.2 Corporate, Partnership or Limited Liability Company Transfer. Any transfer of Tenant's interest in this Lease by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the "**voting stock**" (as defined in this Section) or majority in interest in Tenant, if Tenant is a corporation or limited liability company, or any transfer of this Lease by transfer of any other ownership interest of Tenant, or any Guarantor, during the Term shall constitute an assignment for the purpose of this Lease, and shall not be permitted unless Tenant obtains the express consent of Landlord. For purposes of this Section, the term "**voting stock**" means shares of stock or interest of any kind, regularly entitled to vote for the election of directors, managing partners, or managers or their equivalent of the corporation, limited liability company, partnership or other entity involved.

17.3 Assignment; Pledging. If this Lease is assigned or if the Premises are subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Premises or if the Premises are occupied in whole or in part by anyone other than Tenant in violation of the terms of this Article, Landlord shall have the right to do the following: **(A)** collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the Rent payable hereunder without being deemed to have approved or consented to such action by Tenant; and/or **(B)** reenter the Premises, assume and take possession of the whole or any part thereof, and remove all persons or personal property therefrom, by direct or summary action, or in a different type of suit or proceeding, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for damages therefor or in connection therewith, and after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law.

17.4 Event of Assignment or Subletting. If Tenant wishes to assign this Lease or sublet all or any part of the Premises, it shall first give written notice of such intention to Landlord, furnishing Landlord with a copy of the final proposed assignment or sublease document and with full information as to the identity and financial status of the proposed assignee or subtenant. Any proposed assignment document shall provide, without limitation, the following: **(A)** that the assignee thereunder shall be liable for all of the obligations of Tenant under this Lease (including, without limitation, the payment of any and all amounts paid or to be paid by Tenant under this Lease on an estimated basis and reconciled on an annual basis, regardless of whether such

reconciliation occurs subsequent to such assignment); and **(B)** that any security deposit paid to Landlord under this Lease is transferred to such assignee. Within 60 days after receipt of such notice and documentation from Tenant, Landlord shall have the right, by notice to Tenant, to either: **(1)** permit Tenant to terminate this Lease upon notice of its election to do so to Landlord, in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; **(2)** approve or reject such assignment or subletting in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; or **(3)** convert the assignment or sublease into a direct lease between Landlord and such proposed assignee or sublessee and receive all of the rents in which case Tenant shall be relieved of further liability hereunder and under the direct lease. Notwithstanding the foregoing, Tenant may not attempt to assign or sublease this Lease until 12 months after the commencement of this Lease.

17.5 Permitted Transfer. Notwithstanding anything contained in this Lease to the contrary, Tenant may assign the Lease, upon Landlord's prior consent, which shall not be unreasonably withheld (a "**Permitted Transfer**") to a legal entity (a "**Permitted Transferee**") which is either: **(A)** the successor, by merger or otherwise, to all or substantially all of Tenant's assets and liabilities; or **(B)** controls or is controlled by or is under common control with Tenant. For purposes of this Section, the term "**control**" (including the terms "controls," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. However, any Permitted Transfer, shall not in any way relieve Tenant of liability as to any term or condition of this Lease without the express approval of Landlord.

17.6 Miscellaneous Provisions. Landlord agrees to give a reasonable estoppel letter to any assignee or sublessee to which Landlord consents or in the event of a Permitted Transfer, upon request from such assignee or sublessee. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article shall be void and of no further force or effect. All rentals paid to Tenant by an unapproved assignee or unapproved sublessee shall be received by Tenant in trust for Landlord and forwarded immediately to Landlord without offset or reduction, or, at Landlord's election, such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's Rent obligations). All consideration paid to Tenant for an approved assignment, sublease or other right to use the Premises shall be retained by Tenant. Tenant shall pay all costs up to \$500.00 incurred by Landlord in connection with any proposed assignment or sublease, including reasonable attorneys' fees, and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

17.7 No Release or Waiver. Notwithstanding anything contained in this Lease to the contrary, no consent or action by Landlord, and no assignment or subletting permitted by Landlord, shall be deemed a waiver or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder unless otherwise set forth in this Agreement.

ARTICLE 18

Landlord Transfer

18.1 Landlord Transfer. Landlord reserves the right to sell or otherwise assign its interest in this Lease or the Premises and the acquisition of title or of Landlord's interest in this Lease by a subsequent owner shall not affect or impair this Lease. However, Landlord may not sell, assign, or otherwise transfer the Building or this Lease with Tenant without also selling,

assigning, or otherwise transferring any and all of Landlord's liabilities and/or responsibilities under this Lease. If Landlord conveys or transfers its entire interest in the Premises, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer. Upon notice of such transfer, Tenant shall attorn to the new owner as landlord. If Landlord conveys or transfers its entire interest in the Premises, it shall convey the Security Deposit to the new owner.

ARTICLE 19

Permitted Use; Prohibited Uses; Future Restriction; Rules and Regulations; Legal Requirements; Radius Restriction

19.1 **Permitted Use.** It is understood and agreed between the parties hereto that during the Term of this Lease, the Premises shall be used and occupied only for the Permitted Use as defined in **ITEM 3** of the Cover Sheet and for no other purpose or purposes without the prior written consent of Landlord (which may be withheld in Landlord's sole and absolute discretion). In the event Landlord elects (in the exercise of its sole and absolute discretion) to permit Tenant to use all or any portion of the Premises for a use other than the Permitted Use described in **ITEM 3** of the Cover Sheet, then such approved use shall constitute a "**Permitted Use**" for purposes of this Lease.

19.2 **Prohibited Uses; Future Restrictions.** Tenant shall promptly comply with all encumbrances of record affecting the Premises from time to time, all laws, ordinances and lawful orders, the rules adopted by the Declarant, or, if applicable, any rules and regulations of the BLVD Retail, as may be amended or promulgated in the future so long as there is not material adverse effect to Tenant, affecting the Premises and the cleanliness, safety, occupation and use of the same. In addition to other restrictions on the use of the Premises, Tenant shall not use or permit the Premises to be used for, and the Premises are subject to, and Tenant shall abide by, the "**BLVD Retail Rules and Regulations**" (as defined in this Article). In the event Tenant violates any of the provisions of this Section, Landlord shall have all rights and remedies provided in this Lease, in addition to all rights and remedies available to Landlord at law or in equity, including, but not limited to, injunctive relief.

19.3 **BLVD Retail Rules and Regulations.** In addition to the restrictions contained in this Lease, Landlord may from time to time promulgate reasonable and non-discriminatory rules and regulations which further govern the operation of Tenant's business in the Premises and in and about The BLVD Retail and which do not have a materially adverse effect on Tenant ("**BLVD Retail Rules and Regulations**"). Tenant agrees to abide by and comply with all such reasonable and non-discriminatory rules and regulations. A copy of The BLVD Retail Rules and Regulations currently in effect for The BLVD Retail is attached hereto as **Exhibit C** and incorporated herein by this reference.

19.4 **Legal Requirements.** Tenant shall be obligated (and shall be responsible) to comply with any Legal Requirements, which pertain to Tenant's use and occupancy of the Premises, whether such Legal Requirements are structural or nonstructural in nature. The term "**Legal Requirements**" means all applicable current or future statutes, ordinances, orders, rules, regulations, judgments and requirements of public authorities with jurisdiction over The BLVD Retail and/or the Premises, and all other matters of record affecting the Premises from time to time. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or

keep anything therein which is not within the Permitted Use of the Premises which shall in any way increase the existing rate of or affect any fire or other insurance upon the Premises or The BLVD Retailor any of its contents, or cause a cancellation of any insurance policy covering said Premises or The BLVD Retailor any part thereof or any of its contents. Further, Tenant shall furnish and maintain an adequate number of fire extinguishers in good operating condition as may be reasonably required by Landlord or any governmental authority, and in any event, not less than one such extinguisher for each floor or level of the Premises or as may be required under the adopted fire code of the city.

ARTICLE 20

Bankruptcy and Other Actions

Any Event of Default of the type described in **Subsection 23(D)** (captioned "**Bankruptcy**") under the Default provisions of this Lease (a "**Bankruptcy Event**") shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

A. No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

B. It is understood and agreed that this is a lease of real property in a shopping center as such a lease is described in Section 365(b)(3) of the Bankruptcy Code, that Landlord is entitled to all rights and benefits of a landlord thereunder, and that nothing contained herein shall be deemed a waiver of any such right or benefit.

C. Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: **(1)** the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; **(2)** the deposit of an additional sum equal to three months of Minimum Rent and Additional Rent to be held as security; **(3)** the use of the Premises as set forth in this Lease with the quality and quantity of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; **(4)** the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; **(5)** the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and **(6)** the Premises, at all times, remains a single store and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE 21

Tenant's Property; Personal Property Taxes; Leasehold Improvements

21.1 **Tenant's Property.** Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's furniture, trade fixtures (including kitchen equipment), signage (including both interior and exterior signage, but excluding signage required by law [e.g., "EXIT" signage]), merchandise, inventory, displays and other personal property paid

for by Tenant (i.e., excluding any property or improvements paid for by Landlord either directly or with the Construction Allowance) located in the Premises (collectively, "**Tenant's Property**"). Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Center resulting from such removal and shall repair any damage to the Premises or Center caused by the removal of Tenant's Property, and all utility lines shall be professionally capped or plugged and Tenant shall leave the Premises in broom clean condition. Tenant hereby agrees that, in addition to any other work required to comply with the provisions of this Section, the foregoing shall require Tenant to repair all damage to the exterior of the Premises resulting from the removal of Tenant's signage and other improvements therefrom, and to repaint all areas beneath such signage and improvements to the extent required for such areas to match the color and materials of the remainder of the exterior of the Premises. If, after ten (10) day written notice, Tenant fails to remove any of Tenant's Property, such property shall become the property of Landlord and Landlord shall have the right to dispose of such property as it deems appropriate, and Tenant shall reimburse Landlord for any costs thereby incurred on demand. This requirement shall survive the Term of this Lease to the extent necessary to give effect hereto. Notwithstanding anything contained in this Lease to the contrary, in addition to Tenant's obligation to pay its Proportionate Share of Special Assessments as set forth in **Article 7** above, during the Term of this Lease Tenant acknowledges and agrees that it shall pay all taxes, impositions, assessments and similar charges levied or imposed by any governmental or taxing authority against Tenant's Property or any other property or fixtures located in the Premises and used in connection with the operation of Tenant's business therein that are not taxed as real property, whether owned by Landlord or Tenant and to the extent such Taxes are applicable to Tenant (collectively, "**Personal Property Taxes**"). Tenant shall pay all Personal Property Taxes directly to the applicable governmental authority (or, if Landlord receives the bill with respect to any Personal Property Taxes, Tenant shall pay to Landlord within 20 days after receipt of an invoice therefor from time to time, in which event Landlord shall remit such Personal Property Taxes to the applicable governmental authority).

21.2 Leasehold Improvements Remain. Notwithstanding anything to the contrary set forth in this Lease, all alterations, decorations, installations, additions or improvements upon or to the Premises attached or affixed to the real estate by either party, which are not trade fixtures, including, but not limited to, all paneling, millwork, decorations, partitions, air conditioning units, heating equipment, hot water heaters, light fixtures, railings, mezzanine floor, galleries, elevators, stairways, vault doors, and the like (collectively, the "**Leasehold Improvements**"), shall immediately become the property of Landlord upon installation and shall remain upon, and be surrendered with the Premises, as a part thereof, at the termination of this Lease. The value or cost of the Leasehold Improvements constructed by Tenant shall in no way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent. Further that upon the end of Five years, such leasehold improvements unless affixed to the premises shall become the property of tenant

ARTICLE 22

Eminent Domain

22.1 Definition/General. In the event of a taking of all or any part or of any interest in the Premises, the Building, The BLVD Retail buildings, the Common Areas or any other part of the property by reason of any exercise of the power of eminent domain, or if there is a transfer thereof or of any interest therein, made in avoidance of an exercise of the power of eminent domain (all of the foregoing being hereinafter collectively referred to as a "**Taking**"), the following provisions shall apply. Landlord shall notify Tenant of any pending or threatened Taking and of all related proceedings including the settling of any award.

A. **Total Taking.** In the event of a Taking of all of the Premises, this Lease shall terminate as of the date of such Taking and all of Tenant's obligations hereunder, including its obligation to pay Rent accruing from and after the date of the Taking shall terminate as of the date of such Taking. To the extent that compensation for a complete taking of the premises includes the value of the Tenants Improvements, such compensation for value of the Tenant improvements shall be provided to Tenant

B. **Partial Taking.** In the event of a Taking of the following: **(1)** more than 20% of the Premises; **(2)** more than 40% of the Building or The BLVD Retail buildings; **(3)** more than 35% of the Common Areas (including the parking areas); or **(4)** more than two of the accessways serving The BLVD Retail without replacement thereof, then Tenant or Landlord may terminate this Lease by notice to the other within 60 days after possession is taken by the condemning authority; PROVIDED, HOWEVER, in the event Tenant elects to terminate this Lease pursuant to Clause (3) above, Landlord shall have the right to nullify such election by giving Tenant notice of its election to promptly restore the Common Areas so taken or furnish substitute facilities which are functionally equivalent to or better than the Common Areas so taken and within a reasonable distance from those portions taken.

22.2 **Restoration.** In the event this Lease is not canceled as herein provided, then Landlord shall: **(A)** restore, if the condemnation award proceeds are available and sufficient to do so, the affected portion and, if applicable, so much of the remainder of the Premises to a complete architectural unit to the extent that they existed on the date physical delivery thereof was initially delivered to Tenant prior to the Commencement Date (in any event subject to then existing code); and **(B)** turn over to Tenant (for restoration purposes by Tenant) that portion of Landlord's award applicable to Tenant's Work initially installed by Tenant and additional Tenant Improvements that was awarded to Landlord (rather than to Tenant) and not otherwise received by Tenant from the condemning authority or pursuant to **Section 22.3** (captioned "**Award**") for such element of damage; PROVIDED, HOWEVER, Landlord may terminate this Lease, if no condemnation award proceeds are available or the condemnation award proceeds are insufficient to restore such affected portion or remainder of the Premises as provided above, by written notice to Tenant within 60 days after the date the condemning authority notifies Landlord of the amount of the condemnation award proceeds (if any). Following the physical delivery of the Premises to Tenant, Tenant shall commence and complete restoration of the Premises to at least the extent of Tenant's Work initially installed by Tenant and additional Tenant Improvements, subject to Tenant receiving enough award proceeds to pay for such Improvements (if there is not enough award, Tenant will have the option to terminate the Lease). During the period of restoration in the Premises only, the Rent shall be equitably abated in accordance with the nature and extent that Tenant's use and enjoyment of the Premises has been affected.

22.3 **Award.** All damages awarded for any Taking shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; PROVIDED, HOWEVER, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord. Notwithstanding the foregoing provisions of this Article, Landlord may terminate this Lease with no further liability to Tenant in the event that following any Taking of any part of the BLVD Retail, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in The BLVD Retail elects to require the application of an award or

payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

ARTICLE 23

Default

23.1 Default Definition. The occurrence of all or any of the following shall constitute an “Event of Default” by Tenant:

A. **Non-payment of Rent or other sums.** Any installment of Rent, Additional Rent or any other sum(s) required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid following the due date and after five days written notice thereof as herein provided.

B. **Vacation or Abandonment of Premises.** Tenant has “**vacated or abandoned**” (as defined in this Subsection) the Premises, and such conditions continues for a period of more than fifteen days after Tenant's receipt of written notice thereof. For purposes of this subsection, the term “**vacated or abandoned**” shall mean that Tenant has: **(1)** ceased operating for business in the Premises, and **(2)** has either: **(a)** verbally or in writing expressed to Landlord or its agent its intention to cease performing all or any of its obligations under this Lease; or **(b)** removed such items of Tenant's Property from the Premises so as to render the Premises unsuitable for the operation of Tenant's business therein; or **(c)** tendered the keys to the Premises to Landlord or its agent; PROVIDED, HOWEVER, Tenant hereby agrees that no acceptance of notice or of the keys to the Premises by Landlord or any agent of Landlord shall constitute an acceptance of surrender of the Premises or terminate this Lease or Tenant's liability hereunder.

C. **Non-performance.** There is any default or breach on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default or breach shall continue for a period of 30 days after notice thereof from Landlord to Tenant (or, if such default cannot reasonably be cured within 30 days, if Tenant shall fail to commence to cure the default within such 30-day period or thereafter fails to diligently pursue such cure to completion).

D. **Bankruptcy.** If: **(1)** Tenant or any Guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; **(2)** Tenant or any Guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant or any Guarantor of Tenant's obligations under this Lease is granted in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease; or **(3)** a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

E. **Attachment.** This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within 15 days after its levy.

F. **Failure to Take Possession.** Tenant fails to take possession of the Premises on the Commencement Date as required hereunder.

23.2 Remedies. Upon an Event of Default of Tenant hereunder Landlord, at its option, may exercise any of the following remedies, which shall be in addition to the exercise of all rights and remedies of Landlord under this Lease, at law or in equity, with respect to such Event of Default:

A. **Terminate.** Cancel and terminate this Lease and all rights of Tenant hereunder and enter the Premises and take possession thereof.

B. **Take Possession.** Without terminating the Lease, re-enter and take possession of the Premises and remove all persons and property therefrom. Tenant hereby grants to Landlord a lien and security interest as security for payment of all Rent, Additional Rent, or any other charges now or hereafter payable by Tenant hereunder, upon all equipment, fixtures, and inventory (and the proceeds thereof within the Premises, including all improvements, equipment, fixtures, inventory, merchandise, and other personal property now or hereafter placed on or in the Premises, to the full extent of Tenant's and any assignee's, or subtenant's interest herein, and such lien shall include the right to prevent removal of the property from the Premises and may be enforced, upon nonpayment of rent to other charges as aforesaid, or any other default by Tenant hereunder, without any type of notice to Tenant, unless notice is required by some other provision of this Lease by the re-entry, taking and sale, lease or other disposition of such property. Landlord shall also have all other rights and remedies upon default provided by law, including those set forth in the Uniform Commercial Code. The sale, lease, or other disposition of the property shall be either public or private after at least ten days' notice to Tenant at his last known address, and Landlord shall have the right and privilege to be a purchaser at any such sale. Landlord and Tenant agree that ten days' notice of such sale, lease, or other disposition of the property is reasonable under the circumstances. Landlord shall not be deemed guilty of trespass or liable for any loss or damage occasioned thereby. Should Landlord elect to re-enter, as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law or by this Lease, Landlord may either cancel this Lease pursuant to the rights reserved elsewhere in this Lease, or Landlord may, from time to time, without canceling this Lease, make such alterations and repairs as may be necessary in order to relet the Premises; and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorneys' fees, third, to the payment of costs of any alterations and repairs necessary to relet the Premises, fourth, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent or damage as such amounts may become due and payable hereunder during the entire term of the Lease. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to cancel this Lease unless a notice of such intention is given to Tenant or unless the cancellation thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to cancel this Lease for such previous Event of Default.

C. **Locks/Security Devices.** Alter locks and other security devices at the Premises in accordance with applicable law.

D. **Tenant Improvement Allowance.** Withhold payment of any unpaid portion of the Tenant Improvement Allowance, if any, regardless of whether Tenant has already paid for all or any portion of the cost of the work, materials or labor to be paid for with the Tenant Improvement Allowance.

E. **Injunctive Relief.** Without limitation, exercise any other right at law or in equity, including specifically, but not by way of limitation, the pursuit of temporary or permanent injunctive relief.

23.3 **Additional Provisions.** If Tenant shall after default voluntarily give up or tender possession of the Premises to Landlord, by delivering the keys to the Premises to Landlord or its agent or property manager, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord shall not be deemed to constitute a surrender of the Premises or otherwise affect Landlord's rights in connection with such default; it being understood and agreed that such surrender may be effected only by the written agreement of Landlord and Tenant. In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a Landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this Section are commercially reasonable.

ARTICLE 24 Subordination; Estoppels

24.1 **Subordination.** Tenant covenants and agrees that **(A)** this Lease is and shall automatically and without further act or deed by Tenant be and remain subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of The BLVD Retail (each a "**Mortgage**") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, **(B)** any mortgagee, grantee, master lessor, beneficiary or trustee (each a "**Mortgagee**") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by Landlord or such Mortgagee to Tenant to that effect, this Lease shall without further act or deed by Tenant be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage, and **(C)** Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises (each

a "**Foreclosure**") Tenant shall attorn to such successor and shall recognize that successor as Landlord under this Lease and that successor shall recognize Tenant as the tenant under this Lease. Tenant agrees that such successor shall not be **(1)** liable for any act or omission of Landlord under this Lease occurring prior to such Foreclosure, **(2)** subject to any offset accruing to Tenant against Landlord prior to such Foreclosure, or **(3)** bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with such successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

24.2 **Estoppel.** The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Lease shall be deemed unreasonable, and shall not establish any rights or obligations on the part of either party. Within 20 days after the request of the other party at any time and from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other party a written instrument in form reasonably acceptable to Landlord and Tenant, duly executed, acknowledged: **(A)** certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified; **(B)** specifying the dates to which the Minimum Rent, Additional Rent and other charges hereunder have been paid; **(C)** stating whether or not, to the knowledge of the party executing such instrument, the other party is in default and, if so, stating the nature of such default; **(D)** stating the Commencement Date; **(E)** stating whether the option to extend the Term has been exercised; and **(F)** affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be required by the other party.

ARTICLE 25

Notices

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, or **(D)** if transmitted by electronic mail to the address for each party set forth below if no return error message or delivery failure message is received by the sender thereof :

If to Tenant:	Desert Tap, LLC D/B/A: Tap2 David Quintana 3605 N. Canary Circle Avondale, AZ 85392
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With Copy to:
If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Economic Development Director
kchapa@avondaleaz.gov

With copies to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Manager

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

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 **(1)** when delivered to the party, **(2)** three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or **(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. 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.

ARTICLE 26

Surrender of Premises

Tenant shall surrender the Premises in broom clean condition and in good order, condition and repair, reasonable wear and tear and insured casualty damage excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 27

Holding Over

If Tenant remains in possession of the Premises after the expiration of the Term or earlier termination of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month holdover Tenant, subject to all the provisions of this Lease insofar as they are applicable to a month-to-month tenancy, but at a daily rental of 125% per day Minimum Rent and Additional Rent provided under this Lease, computed on the basis of a 30 day month, plus a like daily amount of Percentage Rent.

ARTICLE 28

Casualty

28.1 **Removal of Debris.** In the event of a casualty, Tenant shall be responsible for the prompt removal of all debris resulting from Tenant Improvements installed in the Premises by Tenant, including Tenant's furniture and fixtures.

28.2 **Termination.** If at any time during the Term, the Premises or any material portion of The BLVD Retail should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion of the Premises and/or The BLVD Retail to substantially the condition which existed at the time of Landlord's tender of possession of the Premises to Tenant or alternatively, to terminate this Lease. Landlord shall notify Tenant of its election within 20 days after receipt of notice from Tenant of such damage or destruction. In the event Landlord elects to terminate this Lease pursuant to this Section, Rent shall be apportioned on a per diem basis and be paid to the date of such damage or destruction and neither party shall have any further rights or obligations hereunder. Rent shall be abated for the period Tenant is unable to operate in the Premises.

28.3 **Repair.** If Landlord elects to repair and restore the Premises: **(A)** this Lease shall continue in full force and effect; **(B)** such repairs shall be made by Landlord within a reasonable period of time; and **(C)** Rent shall abate proportionately only during the period and to the extent that the Premises are unfit for use, and are not otherwise used, by Tenant to operate its business. Notwithstanding the foregoing, if the damage is due to the negligence of Tenant or its employees, there shall be no abatement of Rent. If Landlord elects to repair and restore the Premises, Tenant hereby covenants and agrees to restore the interior of the Premises, pursuant to Landlord's standard construction procedures, and reopen fully stocked and staffed in the Premises promptly thereafter.

28.4 **Notice.** Tenant shall give notice to Landlord within five business days after Tenant learns of any accident, damage or destruction at the Premises.

ARTICLE 29

Waiver

One or more waivers of any covenant or condition of this Lease by Landlord shall not be construed as a waiver of a further breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar act by Tenant. No receipt of money by Landlord after a Tenant default has been declared shall, without the consent of Landlord, in any way reinstate, continue or extend the Term of this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance of surrender of the Premises without Landlord's acknowledgment thereof.

ARTICLE 30

Quiet Possession

Landlord agrees that, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall peaceably and quietly have, hold and enjoy the Premises free from molestation by Landlord or any party claiming by, through or under Landlord.

ARTICLE 31
Broker's Commission

Landlord and Tenant agree that no brokers have been involved in these lease negotiations. No commission is due and payable.

ARTICLE 32
Asbestos and Other Hazardous Materials

32.1 Definitions. For purposes of this Lease:

A. **"Environmental Laws"** means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

B. **"Hazardous Materials"** means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law.

C. **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaking, dumping, discarding, burying, abandoning, using, generating, permitting, producing, introducing, maintaining, disposing or releasing into the Premises, The BLVD Retailer the environment.

D. **"Environmental Authorities"** means the United States, the State and any political subdivision thereof, the United States Environmental Protection Agency and any and all governmental authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction under any Environmental Law.

E. **"Notice"** means any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the

Release of Hazardous Material, and shall include the imposition of any liens on The BLVD Retailor revenues or assets of Landlord.

32.2 Tenant Requirements. Landlord is unaware of Hazardous Substances on the Premises. If this is a material concern to the Tenant, this shall be investigated by the Tenant prior to Lease Execution. Landlord will comply with all Environmental Laws as to the Premises and Common Areas. Neither Tenant, nor its agents, employees, contractors, servants, subtenants, concessionaires or invitees, shall Release any Hazardous Materials in or about any portion of the Premises or the BLVD Retail, or transport any Hazardous Materials to or from the Premises or the BLVD Retail, except construction materials (other than asbestos or polychlorinated biphenyls), office equipment, cleaning solutions, other maintenance materials and oil and other petroleum products that are or contain Hazardous Materials may be used, handled or stored on the Premises, provided such materials, equipment, solutions and products are used in de minimis amounts and are used only incidental to and as reasonably necessary for the operation and maintenance of the Premises for the Permitted Use hereunder and in compliance with all applicable Environmental Laws. In addition, neither Tenant, nor its agents, employees, contractors, servants or subtenants, shall install, use or permit the installation or use of storage tanks or other subterranean structures, on, under or adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws applicable to Tenant's operations in the Premises and the BLVD Retail, and make all submissions to, provide all information required by, and comply with all requirements of all Environmental Authorities. If there is any Release or transportation by Tenant of Hazardous Materials at or from the Premises or the BLVD Retail by Tenant or at Tenant's direction, or which arises at any time from Tenant's use or occupancy of the Premises or the BLVD Retail, and Landlord, any Environmental Authority or any third party demands that a remediation be undertaken, then Tenant, at Tenant's sole cost and expense, shall prepare and submit remediation plans for the demanding party's approval, and Tenant shall carry out all such remediation in accordance with such approved plans. In addition, Tenant shall promptly provide all information regarding the Release or transportation of Hazardous Materials that is requested by Landlord. If remediation is required by Tenant pursuant to the provisions of this Article, then Tenant shall continue to pay any and all Rent that comes due during such remediation and no abatement of Rent shall apply. If Tenant fails to fulfill or begin to fulfill any obligation imposed under this Section within 30 days after receipt of written notice from Landlord, Landlord may, in its sole discretion, undertake the remediation of such Hazardous Materials from the Premises and/or the BLVD Retail, in which event Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and the BLVD Retail, and Tenant's use thereof and for compliance therewith. In addition, Tenant shall execute all documents promptly upon Landlord's request, and reimburse Landlord for all reasonable expenses incurred by Landlord in fulfilling Tenant's obligations set forth in this Section, together with an additional amount equal to 15% of such expenses, within ten days after receipt of an invoice therefor. Notwithstanding the foregoing, Tenant shall have no obligation to undertake any remediation or incur any costs or expenses (as required in this Section) as a result of Hazardous Materials **(A)** existing in the Premises on or before the Delivery Date and not Released by Tenant, or its agents, employees, contractors, servants, subtenants, concessionaires or invitees; or **(B)** Released in the Premises or The BLVD Retail by Landlord, its agents, contractors or employees, or a third party unrelated to Tenant.

32.3 Tenant Indemnification. Tenant shall indemnify, protect and save Landlord, its officers, members, managers, agents and servants, and any Encumbrance Holder and management company (collectively, "**Landlord's Indemnitees**"), harmless for, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or

expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any of the Landlord Indemnitees, arising out of, or in any way connected with, any breach or violation of the requirements set forth in this Article by Tenant or any of its agents, employees, contractors, servants, subtenants, concessionaires or invitees. In connection with Tenant's indemnification hereunder: **(A)** upon receipt of written notice from Landlord, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord or the Landlord Indemnitees by counsel reasonably satisfactory to Landlord, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding; and **(B)** Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord, or any of the Landlord Indemnitees, arising out of any such claim, demand, action, petition or order.

Landlord will comply with all Environmental Laws as to the BLVD Retail and the Common Areas.

32.4 Survival. The provisions of this Article shall extend to and be enforceable by Landlord's liability, health, disability and worker's compensation insurers, and shall survive the expiration or sooner termination of the Term.

ARTICLE 33

Security Deposit; Conflicts; Access; Relationship; Headings & Miscellaneous

33.1 Security Deposit. On or before the Effective Date, Tenant shall deposit with Landlord the sum specified in **ITEM 11** of the Cover Sheet (the "**Security Deposit**"). The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any of the Rent or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit, or so much thereof as may be necessary to compensate Landlord for Minimum Rent, Additional Rent, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the rentals when due and all other sums payable by Tenant to Landlord, said Security Deposit shall be refunded in full to Tenant at the expiration or earlier termination of this Lease as mutually agreed to by both parties. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, as specified in **Article 20**, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due Landlord for the earliest periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Premises in the event that such interest is transferred and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section shall also apply to any subsequent transfer of Landlord's interest in the Premises.

33.2 Governing Item. Notwithstanding anything contained in the Lease to the contrary, in the event of a conflict between Tenant's approved Construction Documents, as set forth in **Exhibit B-2**, and the terms and conditions of this Lease, including, but not limited to, **Exhibit B-2**,

Tenant's approved Construction Documents, as approved by Landlord in accordance with **Exhibit B-2**, shall govern.

33.3 Landlord Access to Rent. Landlord may, at any time during the last 6 months of the Term, upon reasonable notice to Tenant, enter the Premises at all reasonable hours for the purpose of offering them for rent and may place and keep on the windows and doors of the Premises signs advertising the Premises for rent. Such actions will not disturb Tenant's use of the Premises for its operations.

33.4 Relationship. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of landlord and tenant.

33.5 Submission. The submission of this Lease for examination does not constitute a reservation or any option for the Premises and this Lease becomes effective only upon its execution and delivery by both parties hereto.

33.6 Headings. The Article headings used throughout this Lease 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 Lease.

33.7 Construction. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

33.8 Independent Covenants. The doctrine of independent covenants shall apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. All obligations of Tenant which by their nature involve performance after the end of the Term, or which cannot be ascertained to have been performed until after the end of the Term of this Lease, shall survive the expiration or earlier termination of this Lease.

33.9 Holiday Lights. Tenant agrees to allow Landlord's representative to install and maintain holiday lights on the Premises during the holiday season, if such lights shall not interfere with Tenant's signs or obstruct Tenant's entrance. During the holiday season, holiday lights may be placed upon the outline of the roofline of the buildings located at the BLVD Retail.

33.10 INTENTIONALLY DELETED.

33.11 Time of Essence & Binding Nature. Time is of the essence of all of the terms and provisions of this Lease, and the terms and conditions hereof shall extend to and be binding upon the heirs, executors, successors and assigns of the parties hereto and mention of the singular shall include the plural and the plural shall include the singular.

33.12 Memorandum of Lease. In accordance with ARIZ. REV. STAT. § 42.6202(C), the City shall record a memorandum of this Lease in the Maricopa County Recorder's Office.

33.13 Trial Waiver. THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY

AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

33.14 **Governing Law.** This Lease shall be subject to the laws of the State of Arizona.

33.15 **Attorneys' Fees.** In the event either party to this Lease brings any legal action to enforce the provisions hereof, the prevailing party in any such action shall be entitled to recover from the non-prevailing party all attorneys' fees and other fees and costs incurred by such prevailing party in connection with any such action.

33.16 **Force Majeure.** In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, governmental law or regulations that require closure of Tenant's Business for more than Sixty consecutive days, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("**Force Majeure**"), then performance of such act shall be excused for the number of calendar days of such delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless Landlord or Tenant shall have notified the other of the delay within 20 days after cessation of the event giving rise to such delay setting forth the nature of such Force Majeure and the duration of such delay. The provisions of this Section shall not: **(A)** operate to excuse Tenant from prompt payment of Minimum Rent, Additional Rent or any other payment required by the terms of this Lease; nor **(B)** be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds. Notwithstanding the foregoing, if a Force Majeure event caused by operation of a government order which requires Tenant to cease the operation of Tenant's business in the Premises, and Tenant does completely cease its business operation in the Premises, for such time that Tenant completely ceases its business operation from the Premises due to a governmental mandate, Tenant shall not be required to pay the Rent or other amounts due under this Lease. For every day during which Tenant is not obligated to pay Rent and other amounts due under this Lease based upon the government mandate, an equal number of days shall be added to the term of this Lease.

33.17 **RESERVE**

33.18 **Guaranty.** This Lease is guaranteed by the parties set forth in ITEM 10 of the Cover Sheet, and such Guarantor(s) shall execute a Guaranty in the form attached hereto as Exhibit E ("Form of Lease Guaranty"). If Landlord consents to a Tenant assignment of the Lease, the Guarantors shall be released from all liability with respect to the performance of any obligations of the Lease.

33.19 **Tenant Liability; Authority.** If this Lease is executed by more than one person or entity as "**Tenant**", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "**Tenant**" (herein individually referred to as "**Signatory**") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("**Future Instrument**") and bind each such Signatory who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is

duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity.

33.20 Homeland Security. Tenant represents, certifies and warrants to Landlord as follows: **(A)** Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; **(B)** Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and **(C)** none of the proceeds used to pay Minimum Rent and Additional Rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic Event of Default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

33.21 Limitation of Landlord's Liability. Notwithstanding any other provision of this Lease, Tenant agrees that neither Landlord nor any of Landlord's officers, directors, partners, shareholders, members or employees shall have any personal liability hereunder. Landlord is a governmental entity and can only be obligated to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease 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 Landlord shall be relieved of any subsequent obligation under this Lease. Landlord shall in its reasonable discretion determine the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation of Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 31.21.

33.22 Legal Representation of the Parties. This Lease was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

33.23 Agreement; Amendment. This Lease (including all Riders, Exhibits, Addenda and Guaranty, if any) is the complete agreement between Landlord and Tenant concerning the Premises and the BLVD Retail. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings, if any, between the parties hereto with respect to the Premises and the BLVD Retail, shall be of no force or effect and shall not be used to interpret this Lease. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. This Lease shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Lease or a counterpart hereof shall be admissible into evidence in any proceeding as though it were an original.

33.24 Subsequent Commencement. This Lease shall be effective as of the day and year first above written notwithstanding that the Term shall commence at a date subsequent thereto and Landlord and Tenant intend that each shall have vested rights immediately upon the full execution signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by the last to sign of Landlord and Tenant.

33.25 Severability. If any provision of this Lease or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Lease shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Lease.

33.26 Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

33.27 Incorporation of Exhibits. All Exhibits identified in this Lease, including, but not limited to the following listed Exhibits, shall be and are hereby incorporated into this Lease by this reference:

EXHIBIT A	SITE PLAN
EXHIBIT B-1	DELIVERY DATE CERTIFICATE
EXHIBIT B-2	CONSTRUCTION GUIDELINES
EXHIBIT C	BLVD RETAIL RULES AND REGULATIONS
EXHIBIT D	FORM OF COMMENCEMENT DATE MEMORANDUM
EXHIBIT E	GUARANTY

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Lease the day and year first above written.

LANDLORD:
CITY OF AVONDALE,
an Arizona municipal corporation

TENANT:
DESERT TAP, LLC, D/B/A TAP2,
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

By: _____

Name: _____

Title: Owner

Date Executed: 8-9-21

ATTEST:

Marcella Carrillo, City Clerk

Date Executed: _____

EXHIBIT A

SITE PLAN

Tenant hereby acknowledges that the attached Site Plan is intended to show the approximate layout of The BLVD Retail and location of the Premises, and Landlord has the right at any time to expand, reduce, remove, demolish, renovate or construct any existing or new improvements in the BLVD Retail, including, without limitation, the right to change the shape, size, configuration, number, design or extent of such improvements, provided the approximate location, size and configuration of the Premises shall not be materially changed.

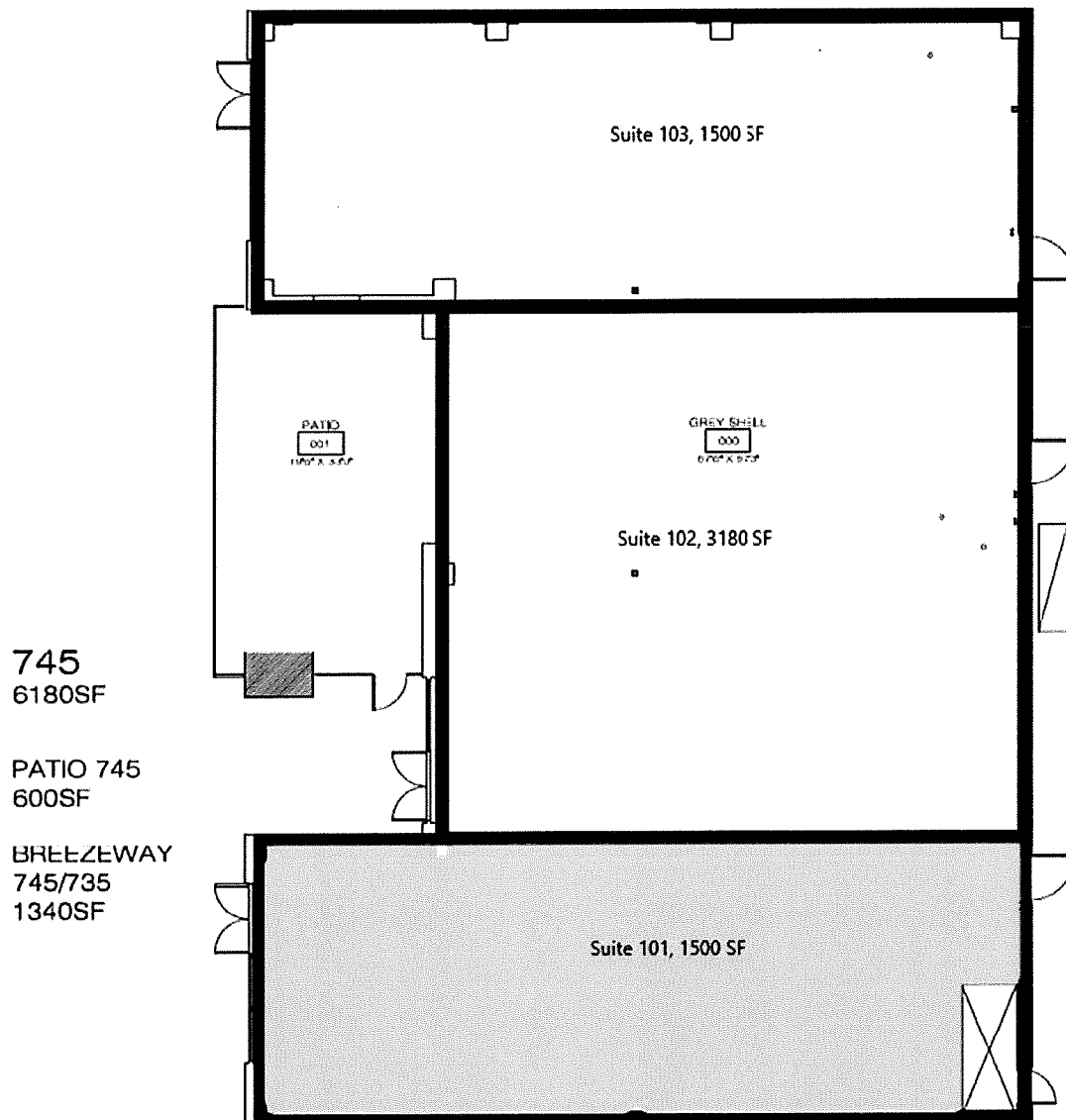


EXHIBIT B-1

DELIVERY DATE CERTIFICATION

[DATE]

VIA FEDERAL EXPRESS

Tenant: Desert Tap, LLC
D/B/A: Tap2
c/o David Quintana
3605 N. Canary Circle
Avondale, AZ 85392

Re: Lease Agreement, dated _____ (the "**Lease**"), between THE CITY OF AVONDALE, an Arizona municipal corporation ("**Landlord**"), and DESERT TAP, LLC, D/B/A TAP2, an Arizona limited liability company ("**Tenant**"), with respect to those certain premises contemplated to contain approximately 1,500 square feet, as more particularly depicted and described in **Exhibit A** to the Lease (the "**Premises**") and located at 745 N. 114th Avenue, Suite 101, Avondale, Arizona 85323

Dear Tenant:

In accordance with the provisions of the Lease, Landlord and Tenant acknowledge that the Delivery Date (as such term is defined in the Lease) will be deemed to be _____. This notice shall constitute the Delivery Date Certificate from Landlord to Tenant.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carrillo, City Clerk

TENANT:

DESERT TAP, LLC, D/B/A TAP2
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the "**Construction Guidelines**") supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as "**Landlord's Work**" in **ITEM 9** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall perform all work necessary to complete the Premises and to prepare them for the operation of Tenant's business therein (collectively, "**Tenant's Work**"). The parties acknowledge that Tenant will not be required to comply with the public procurement laws with respect to Tenant's Work or other alterations hereunder. Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of The BLVD Retail or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of finish drawings ("**Tenant's Drawings**") prior to commencing the Tenant's Work.

3.2 **Approval of Tenant's Drawings.** Landlord shall have 15 days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications at 100% design development ("**Construction Documents**") prior to commencing the Tenant's Work. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents.** Landlord shall have 15 days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within 15 days. Landlord shall have 5 days after receipt of the resubmitted Construction Documents to approve or

disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction Documents. Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs and, in its reasonable discretion, the City may approve or disapprove Tenant's Contractor, specifying in detail any reasons for disapproval. If the Tenant's Contractor is not approved, the City has authority to request that Tenant solicit a different contractor to perform any and all work according to the specifications of this lease.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$2,000,000.00 inclusive, per occurrence, and \$2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the

insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. Employer's Liability Insurance and Workers Compensation.

Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. Umbrella Liability Insurance.

Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$2,000,000.00 inclusive per occurrence, and \$2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. Builder's Risk Insurance.

Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in The BLVD Retail and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. Insurance Changes.

Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 Policies of Insurance.

Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the BLVD Retail. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance 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. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the

certificates of insurance and declaration page(s) of the insurance policies 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. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 Conditions to Commencement of Tenant's Work. On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including technical data **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 Construction of Tenant's Work. Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punch list items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site cleanup is required.

4.5 [INTENTIONALLY DELETED]

4.6 Violations by Tenant's Contractors. In addition to any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days' notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the BLVD Retail.

5. Allowance. In consideration of the performance by Tenant of Tenant's Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant the Construction Allowance, as described in the Lease, applicable to those costs as defined in **ITEM 9(E)** of the Lease for Tenant's permanent leasehold improvements for the Premises. The Construction Allowance shall be applicable only to Tenant's Work actually performed and completed to the Premises and shall be paid according to the provisions of **ITEM 9 (E)** of the Cover Sheet of this lease. Landlord further agrees to pay Tenant any and all remaining retainage within 21 days of the Certificate of Occupancy, provided **all** of the following have occurred:

5.1 Opened. Tenant has opened for business in the Premises as required by this Lease and has paid to Landlord the first and any subsequently owed Rent payment(s) or other amounts due under this Lease.

5.2 Commencement Date Memorandum. Tenant has executed and delivered to Landlord a Commencement Date Memorandum in the form attached to the Lease as **Exhibit D**;

5.3 No Default. Tenant is not in default after notice and the lapse of any applicable cure period.

5.4 **Work Completed.** Tenant's Work is completed in accordance with approved Construction Documents.

5.5 **Debris.** The Premises and the Common Areas surrounding the Premises are free of Tenant's debris, all contractor equipment and materials have been removed from the Premises, and any damage to The BLVD Retailor the Common Areas caused by Tenant, its agents or contractors, has been repaired.

5.6 **Liens, Judgments, Levies, or Tax Liens.** The Premises, including all installations therein, are free and clear of all liens and there are no judgments, levies, attachments, liens or tax liens pending or in effect with respect to Tenant's Work in the Premises.

5.7 **Required Documentation.** Tenant has submitted the following completed documentation to Landlord:

A. **Lien Waivers.** Full, final and unconditional lien waivers and releases in favor of Landlord, Landlord's lender, any proposed purchaser, or any other person/entity reasonably requested by Landlord, from Tenant's general contractor and from all Tenant's subcontractors having contracts in excess of \$5,000.00.

B. **Certificates.** A copy of the permanent Certificate of Occupancy and any temporary Certificates of Occupancy.

C. **Contractor's Final Billing.** A copy of the final billing from Tenant's general contractor (broken down in reasonable detail and showing the cost of work performed at the Premises adequate to componentized for tax purposes under either generally accepted accounting principles or Internal Revenue guidelines).

D. **Architect Certificate.** Tenant's architect's certificate certifying that Tenant's Work is completed in accordance with the approved Construction Documents, including all items on Landlord's representative's punch list.

[Balance of this page intentionally left blank.]

EXHIBIT C

THE BLVD RETAIL DEVELOPMENT RULES AND REGULATIONS

Landlord agrees to use its reasonable efforts to cause compliance by tenants of The BLVD Retail with these Rules and Regulations, as they may be revised or amended by Landlord from time to time in its commercially reasonable discretion so long as there is no material adverse effect on Tenant (as amended, the "**Rules and Regulations**"), Landlord will assist with reasonable enforcement of these Rules and Regulations on all property in the BLVD Retail Development. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Lease. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of this Lease, the provisions of the Lease shall control. In the event Tenant violates any of the Rules and Regulations and such violation continues for more than 24 hours after Tenant's receipt of notice thereof from Landlord, then Tenant shall pay Landlord, as liquidated damages, an amount equal to \$50.00 per day so long as such violation continues. Tenant recognizes that its violation of the Rules and Regulations will result in damages to Landlord and that the nature and amount of such damages is difficult or impossible to quantify, and that the foregoing amount represents a reasonable approximation of the actual damages Landlord would suffer in the event Tenant violates the Rules and Regulations.

1. Business Hours. Unless otherwise specified in this Lease, Tenant agrees to remain open during standard business hours. Standard business hours generally commence at 8:00 a.m. through 10:00 p.m. Retail establishments are expected to be open for not less than seventy-five (75) percent of standard business hours.

2. Common Areas. Tenant shall not use the Common Areas, including areas adjacent to the Premises (except any outdoor seating area approved by Landlord pursuant to Section 8 below), for any purpose other than ingress and egress, and in accordance with all other applicable provisions of this Lease, including these Rules and Regulations. Without limiting the generality of the foregoing, Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants, occupants or invitees of the BLVD Retail, without the express written consent of Landlord. Tenant shall not allow anything to remain in or to obstruct any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping area, or other area outside the Premises (except as set forth in Section 8 below). Janitorial closets, utility closets, telephone closets, broom closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.

3. Deliveries. Deliveries of furniture, inventory and all other items shall be brought into The BLVD Retail in compliance with all Legal Requirements and at Tenant's sole risk. All such deliveries shall be made prior to 10:00 am and only through the service entrances of Tenant's Premises and service entrances of the BLVD Retail, when available. Landlord may inspect items brought into The BLVD Retail Premises with respect to weight or dangerous nature or compliance with this Lease or applicable laws. Tenant shall move all inventories, supplies, furniture, equipment and other items directly into the Premises immediately upon receipt.

4. Trash; Recycling Program. All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to the Section in the Lease concerning Hazardous Substances. Tenant shall not burn any trash or garbage of any kind in or about the Premises or

BLVD Retail. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord. If Tenant is permitted under this Lease to handle foodstuffs, garbage and refuse shall be stored and daily removed from the Premises in leak proof, airtight containers. If any leakage occurs, Tenant shall promptly clean and remove any evidence of such leakage at its expense. Tenant shall immediately clean up and remove spills and debris in connection with its disposal of waste at or from the Premises.

5. **Pest Control.** Tenant shall, at its sole cost, arrange for pest control at such intervals as may reasonably be required by Landlord. Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five days after Landlord's written request. If, however, Landlord shall provide or arrange for such pest control, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) on or before the first day of each calendar month in advance, or Landlord may include such charges in Operating Costs.

6. **Sign and Display Windows.** Tenant will be permitted to install a sign(s) on its suite, window line and will be properly identified on the Building monument, directory and will have the right to lighted exterior building signage as approved by the City of Avondale. Tenant will obtain all required permitting and approvals from the City of Avondale prior to installing any signage and will pay for all costs associated with sign installation. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises or The BLVD Retail and shall comply with the sign criteria developed by Landlord as set forth in the Lease. The term "**sign**" for purposes of this Section shall mean any sign, placard, picture, name, direction, lettering, insignia, trademark, advertising material, advertising display, awning or other similar item, including Tenant's storefront sign. Blinds, shades, drapes and other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, designs, color, material and make thereof is first approved by Landlord in writing. During such periods as Tenant is required to operate its store hereunder, Tenant shall keep the display window(s) and signs, if any, in the Premises well lit during business hours and daily until at least 11:00 p.m., at Landlord's discretion.

7. **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or other item or display any merchandise: **(A)** outside of the Premises; or **(B)** anywhere inside the Premises within six feet of any entrance to the Premises (except that, with respect to any recessed entry of the Premises, Tenant shall not place or maintain any such fixtures or other item within three feet of any entrance). All displays of merchandise shall be tasteful and professional.

8. **Outdoor Seating.** Any outdoor seating area (the "**Outdoor Seating Area**"), including the placement and quantity of furniture, fixtures and equipment in, and the design and materials of, the Outdoor Seating Area, must be approved by Landlord. The Outdoor Seating Area shall be installed and maintained at Tenant's sole cost and expense, in accordance with all applicable laws and at all times clean and free of debris. When not in use, Tenant shall store the Outdoor Seating Area furniture, fixtures and equipment in an appropriate location, which, if on the Premises, shall be approved by Landlord in the exercise of its sole and absolute discretion.

9. **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed, and no foreign substance of any kind shall be deposited therein. The expense incurred due to any breakage, stoppage or damage resulting from a violation

of this provision shall be borne by Tenant, who shall, or whose employees, invitees or agents shall, have caused such breakage, stoppage or damage.

10. **Exhaust System; Grease Traps; Odor Control.** If Tenant operates a business on the Premises in which smoke and/or odor cannot be avoided by an exhaust termination location design, Tenant shall, at Tenant's sole cost and expense, provide an exhaust air pollution control system approved by Landlord.

11. **Roof; Awnings and Projections.** Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls or Common Areas of The BLVD Retail without obtaining Landlord's prior written consent, provided that Tenant shall be permitted to install, at Tenant's sole cost and expense, cable television service to the Premises. Tenant may install as applicable and have access to the HVAC System only to the extent approved in writing or required by Landlord from time to time in connection with Tenant's obligations under this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the Building. Any item set forth in this Section installed without the prior written consent of Landlord shall be subject to removal by Landlord without notice to Tenant all at Tenant's sole cost and expense.

12. **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises, Building or BLVD Retail, including any public corridors or elevators therein, and Landlord may designate the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

13. **Locks and Keys.** Upon termination of this Lease or Tenant's right to possession, Tenant shall: **(A)** return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items, shall pay Landlord therefor; and **(B)** advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

14. **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

15. **Heating Facilities.** If the Premises are equipped with heating facilities separate from those in the remainder of the BLVD Retail, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

16. **Food and Beverages; Game and Vending Machines.** Except to the extent expressly permitted under this Lease, Tenant shall not: **(A)** or **(B)** install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services, including, but not limited to, pay lockers, pay toilets, scales and amusement devices; PROVIDED, HOWEVER, that Tenant may install vending machines for the sale of non-alcoholic beverages, food and candy in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

17. **Landlord's Trade Name and Trademarks.** No symbol, design, name (other than the name of The BLVD Retail in Tenant's advertising as permitted or required by this Lease), mark or insignia adopted by Landlord for The BLVD Retail or picture or likeness of The BLVD Retail shall be used by Tenant without the prior written consent of Landlord.

18. **Prohibited Activities.** Tenant shall not: **(A)** use strobe, flashing lights or rotating spotlights in or on the Premises (or other areas of the BLVD Retail) or in any signs for the Premises; **(B)** use, sell or distribute leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas of the BLVD Retail); **(C)** operate any loudspeaker, telephone set, phonograph, radio, CD player or other musical or sound producing instrument or device that can be heard outside the Premises; **(D)** operate any electrical or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception from or in The BLVD Retail elsewhere; **(E)** make or permit objectionable noise, vibration, smoke, fumes, vapors or odors to emanate from the Premises unless, in the case of smoke, fumes, vapors, or odors, Tenant installs and maintains a grease containment system or, if applicable, skin and hair salon odor control system, approved by Landlord in writing; **(F)** do or permit anything in or about the Premises or any other areas of The BLVD Retail that is unlawful, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the BLVD Retail; **(G)** use or permit upon the Premises or other areas of The BLVD Retail anything that violates the certificates of occupancy issued for the Premises or the BLVD Retail, or causes a cancellation of Landlord's insurance policies or increases Landlord's insurance premiums (and Tenant shall comply with all requirements of Landlord's insurance carriers, the American Insurance Association, and any board of fire underwriters); **(H)** use the Premises for any purpose, or permit upon the Premises or any areas of The BLVD Retail anything that may be dangerous to parties or property (including, but not limited to, flammable oils, fluids, paints, chemicals, firearms or any explosive articles or material(s); **(I)** cause, conduct, permit or advertise any auction or closing-out or wholesale business in the Premises; or any distress sale, fire sale, bankruptcy sale, liquidation, relocation sale, closing sale, going-out-of-business sale, sheriff's sale, receiver's sale, or any other sale that, in Landlord's opinion, adversely affects the reputation of The BLVD Retail or suggests that the business operations are to be discontinued in the Premises; nor **(J)** do or permit anything to be done upon the Premises or any other areas of The BLVD Retail in any way tending to disturb, bother or annoy any other tenant at The BLVD Retail or the occupants of neighboring property.

19. **Responsibility for Compliance.** Tenant shall be responsible for requiring compliance with these Rules and Regulations, as they may be amended from time to time, by Tenant's employees and, as applicable, by Tenant's agents, invitees, contractors, subcontractors and suppliers.

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EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

THIS COMMENCEMENT DATE MEMORANDUM ("**Memorandum**") dated as of _____, 202__, by and between, **CITY OF AVONDALE, an Arizona municipal corporation ("Landlord")**, and, **DESERT TAP, LLC D/B/A TAP2, an Arizona limited liability company ("Tenant")**.

RECITALS:

A. By that certain Center Lease dated as of _____ between Landlord and Tenant (the "**Lease**"), Landlord leased to Tenant and Tenant leased from Landlord the Premises, subject to the conditions and limitations therein contained.

B. **ITEM 6** of the Cover Sheet of the Lease provides that, upon determination of the Commencement Date, Landlord and Tenant shall execute a memorandum which shall set forth, among other things, the Commencement Date, the exact Floor Area of the Premises, the date when Tenant may exercise its Option Term pursuant to **ITEM 7** of the Cover Sheet of the Lease, and the date on which the initial term of the Lease shall expire (subject to Tenant's right, if any, to extend the Term of the Lease as provided therein), and shall evidence Tenant's acceptance of the Premises and agreement that Landlord has fully complied with Landlord's covenants and obligations.

C. The Commencement Date and such other dates have been determined and, accordingly, the parties desire to enter into this Memorandum.

D. Unless otherwise provided herein, all capitalized words and terms in this Memorandum shall have the same meanings ascribed to such words and terms in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Delivery Date was _____.
2. The Commencement Date is _____. Tenant's obligation to pay Minimum Rent and other charges payable by Tenant under the Lease shall commence as of the Commencement Date set forth above.
3. The Floor Area of the Premises is 1,500 square feet.
4. Tenant shall exercise its right to the Option Term, if at all, six (6) months prior to the lease termination date, set forth in the Lease.
5. The date on which the initial Term of the Lease shall expire, unless such Term is extended by Tenant as provided in the Lease, is _____.
6. Tenant hereby acknowledges Tenant's acceptance of possession of the Premises and agrees that Landlord has fully complied with Landlord's covenants and obligations under the Lease.

7. Tenant acknowledges that all Rent is payable to Landlord at the following address, unless further notified:

City of Avondale
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323
Attn: Accounts Receivable

8. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carrillo, City Clerk

TENANT:

DESERT TAP, LLC, D/B/A TAP2
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

EXHIBIT E

FORM OF LEASE GUARANTY

In order to induce **THE CITY OF AVONDALE**, an Arizona municipal corporation, its successors and assigns, ("**Landlord**") to enter into that certain Lease Agreement dated _____, (the "**Lease**") between Landlord and **Desert Tap, LLC D/B/A: Tap2**, an Arizona limited liability company ("**Tenant**"), and **David Quintana** (collectively, jointly and severally "**Guarantors**"), and in consideration of the benefits inuring to the undersigned under said Lease, the receipt and sufficiency of which are represented by the Guarantor to Landlord to be sufficient and adequate, the Guarantors hereby jointly and severally and unconditionally guarantees the performance of all of Tenant's obligations under the Lease, including, without limitation, the payment of rental as provided therein. This Guaranty shall remain in full force throughout the original lease term and any renewals thereof and any extension or renewal hereinafter agreed upon by Tenant and Landlord.

Guarantor hereby waives notice of acceptance of this Guaranty agreement and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to it of default by Tenant under the Lease, and hereby waives diligence, presentment, protest and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor(s) hereby waive the provisions of Section 12-1641 et. Seq. of the Arizona Revised Statutes.

Guarantor further agrees that Landlord shall not be first or concurrently required to enforce against Tenant or any other person, any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. The liability of Guarantor shall not be affected by any indulgence, compromise, settlement, or variation of terms which may be extended to Tenant by Landlord, or agreed upon by Landlord or Tenant, and shall not be affected by any assignment or sublease by Tenant of its interest in the Lease, nor shall the liability of the Guarantor be affected by the insolvency, bankruptcy (voluntary or involuntary), or reorganization of Tenant, nor by the voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of Tenant or by action of Landlord, including but not limited to any assignment, pledge, conveyance or transfer of the Lease. Landlord and Tenant, without notice to or consent by Guarantor, may at any time or times enter into such modifications, extensions, amendments, or other covenants respecting the Lease as they may deem appropriate and Guaranty shall not be released thereby, but shall continue to be fully liable for the performance of all obligations and duties of Tenant under the Lease as so modified, extended or amended.

Guarantor further agrees: (A) to indemnify, defend and hold Landlord harmless from and against any claims, damages, expenses or losses, including to the extent permitted by law, the reasonable fees of an attorney, resulting from or arising out of any breach of the Lease or any term of the Lease by Tenant or by reason of Tenant's failure to perform any of its obligations thereunder; and (B) to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by Landlord in enforcing this Guaranty or the Lease. The Guarantor acknowledges that Landlord shall or may assign its rights under the Lease to anyone as security for a loan to be made by such institutional investor to Landlord OR FOR ANY OTHER REASON, and as long as any indebtedness of Landlord shall be outstanding AND/OR such assignment of the Lease shall exist, such lender or any assignee shall be entitled to bring any suit, action or proceeding against the undersigned for the enforcement of any provision of this Guaranty and it shall not be necessary in any such suit, action or proceeding to make Landlord a party thereto. This Guaranty may not be modified or amended without the prior written consent of such assignee of

Landlord's interest in the Lease and any attempted modification or amendment without such consent shall be void. This Guaranty shall be binding upon Guarantor, his heirs, legal representatives, successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. If there is more than one Guarantor, the liability of each Guarantor shall be joint and several.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed this _____ day of _____, 2021.

"GUARANTOR"

David Quintana

Address: _____

SSN: _____

Date Executed: _____

CITY COUNCIL REPORT

SUBJECT: Ordinance 2034-0821 - Lease Agreement with West Valley Institute LLC dba Aveda Institute of Avondale

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kenneth Chapa, Economic Development Director, 623-333-1411

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

The approval of this agenda item will help increase visitor traffic to Avondale.

PURPOSE:

City Council will consider a request to adopt Ordinance 2034-0821, approving the Lease Agreement with West Valley Institute LLC dba Aveda Institute of Avondale for the properties located at 775 North 114th Avenue and 745 North 114th Avenue, Suite 102, and authorize the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents. Council will take appropriate action.

BACKGROUND:

The City of Avondale (Landlord) and West Valley Institute dba Aveda Institute of Avondale (Tenant) desire to enter into a Lease Agreement for the use of City properties (the Premises) located at 775 N. 114th Avenue, and 745 N. 114th Avenue Suite 102, containing approximately 5,935 and 3,180 square feet respectively.

DISCUSSION:

The term of the lease is ten (10) years with two (2) ten (10) year options to extend. The lease provides for a purchase option prior to the first anniversary of the commencement date.

The tenant will receive six (6) months abated rent beginning with the first full month on or after the commencement date, but not later than January 1, 2022. Thereafter, the Tenant will pay \$17.00 per square foot (the Base Rent) the first two (2) years, then \$1.00/per square foot increases every two years. At the option term the lease rate will be \$23.00 per square foot with \$2.00 per square foot increases every two (2)

years.

The City will pay a maximum of \$910,445.00 for Tenant Improvements (TIs) and \$82,718.63 for Real Estate Commission to:

i. provide a catalyst for The BLVD Retail and increase daytime and evening population to feed new retail in the Park Avenue District and further development in this area, and

ii. create new opportunities for employment in Avondale.

The City has determined, by a review of comparable rental rates, that the Base Rent and Allowance are within market value for a similar type of tenant in the area.

BUDGET IMPACT:

Total Rent: Initial Term	\$1,654,372.50
City's Costs: (Real estate Commission)	- \$ 82,718.63
City's Costs: (Tenant Improvements)	- \$ 910,445.00
Net Initial Term Cumulative Rent	= \$ 661,208.87

Total Rent: First Option Term	\$1,602.450.00
Total Rent: Second Option Term	+ \$2,195,950.00
Net Options Terms Cumulative Rent	= \$ 3,798,400.00

TOTAL Net Cumulative Rent: \$4,459,608.88

City's costs to be paid through the Economic Opportunities Fund and it is included in the plan for that fund, which has \$2 million in appropriations in FY2022.

RECOMMENDATION:

Staff recommends approval of the Lease Agreement between the City of Avondale and West Valley Institute dba Aveda Institute of Avondale.

ORDINANCE NO. 2034-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A LEASE AGREEMENT AND PURCHASE OPTION BETWEEN THE CITY OF AVONDALE AND WEST VALLEY INSTITUTE, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SUCH CONTRACT, AND TO TAKE SUCH ACTIONS AS ARE NECESSARY TO LEASE ADDITIONAL SPACE AT THE SAME PROPERTY TO WEST VALLEY INSTITUTE, LLC.

WHEREAS, the City of Avondale owns approximately ninety-one hundredths (0.91) of an acre of improved real property at The BLVD and 114th Avenue, assigned Assessor's Parcel Number 102-57-247 (the "Property"); and

WHEREAS, the City Council of the City of Avondale (the "City Council") desires to rent two suites in the buildings on the Property to West Valley Institute, LLC ("Tenant") for retail and other uses; and

WHEREAS, as part of its approval of the written Lease Agreement ("Lease"), attached hereto as Exhibit A, between the City and Tenant, the City Council also desires to grant Tenant a purchase option on the Property, which Tenant may exercise under the terms and conditions set forth in the Lease; and

WHEREAS, the City Council also desires to authorize the City Manager to enter into additional leases with Tenant to rent additional space in buildings on the Property, provided that such additional leases are on the same or similar terms as the Lease, and provided further that Tenant pays rent for such additional space at the market rate for retail space.

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

SECTION 1. The Lease Agreement between the City of Avondale and West Valley Institute, LLC, is hereby approved in the form attached hereto as Exhibit A.

SECTION 2. The City Council hereby authorizes the City Manager to negotiate and execute additional leases with West Valley Institute, LLC, using the Exhibit A Lease as a template.

SECTION 3. Such additional leases, if negotiated and executed, shall be for other space in the buildings located on the Property, and Tenant shall pay rent for such additional leases at the market rate for retail space.

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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2034-0821

[Lease Agreement]

See following pages.

DATE: August __, 2021

LEASE AGREEMENT
By and Between

THE CITY OF AVONDALE,
an Arizona municipal corporation, as Landlord

and

WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

LEASE AGREEMENT

This Cover Sheet (this "**Cover Sheet**") is hereby incorporated by reference into and made a part of the attached Lease. Each reference in the Lease to any term of this Cover Sheet shall have the meaning as set forth in this Cover Sheet for such term. In the event of a conflict between the terms of this Cover Sheet and the Lease, the terms of the Lease shall prevail. Any initially capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Lease.

COVER SHEET

LANDLORD NAME: THE CITY OF AVONDALE
an Arizona municipal corporation

TENANT NAME: WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

TENANT ADDRESSES: 745 N. 114th Avenue, Suite 102
Avondale, Arizona 85323

775 N. 114th Avenue
Avondale, Arizona 85323

TRADE NAME: AVEDA INSTITUTE OF AVONDALE

ITEM 1. **PREMISES:** Those certain premises at 775 N. 114th Avenue, Avondale, Arizona 85323, containing approximately 5,935 rentable square feet of **Floor Area** (as defined herein) specifically located at The BLVD and 114th Avenue, in the retail component of the mixed-use development, owned by the City of Avondale ("Parcel 1"). The approximate layout Parcel 1 and location of the Premises, including, therein are shown on the site plan attached hereto as **Exhibit A-1** (the "**Site Plan**").

Those certain premises at 745 N 114th Avenue, Suite 102, Avondale, Arizona 85323, containing approximately 3,180 rentable square feet of **Floor Area** (as defined herein) specifically located at The BLVD and 114th Avenue, in the retail component of the mixed-use development, owned by the City of Avondale ("Parcel 2"). The approximate layout Parcel 2 and location of the Premises, including, therein are shown on the site plan attached hereto as **Exhibit A-1**.

2,028 rentable square feet of patio space connected to Parcel 1, approximately 600 rentable square feet of patio space connected to Parcel 2, and approximately 2,862 rentable square feet of mezzanine space, collectively referred to as the "**Patio and Mezzanine Space**." The approximate layout of the Patio and Mezzanine Space and layout of the Premises, including, therein are shown on the site plan attached hereto as **Exhibit A-2**. The Patio and Mezzanine Space currently are not built. Tenant may at its election construct the Mezzanine space. The Tenant shall not pay any charge or Rent for the right to use that portion of the Premises hereunder.

Parcel 1 and Parcel 2 shall constitute the Subject Retail (the "**Subject Retail**"). Parcel 1, Parcel 2, and the Patio and Mezzanine Space, containing approximately 15,208

rentable square feet, shall constitute the Premises (the “**Premises**”). However, for purposes of calculating price and amounts under this Agreement, the Mezzanine Space shall not be included unless specified.

Landlord owns: (a) approximately ninety-one hundredths (0.91) acres of real property in Avondale, Maricopa County (the “**County**”), Arizona, consisting of Parcel No. 10257247 (the “**Land**”), which is more particularly described on **Exhibit A-3** and depicted on **Exhibit A-4** hereto, together with improvements located on and any easements, rights-of-way, privileges, or other appurtenant interests in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on or across, in front of, abutting or adjoining, such real property (collectively, the “**Real Property**”); and (b) any and all intangible personal property associated with the Real Property, including, without limitation: (i) all land use, entitlements, business use permits, and other entitlements associated with the Real Property; (ii) all right, title and interest of the Seller in and to any and all leases of all or any portion of the Real Property where the Seller is the owner or landlord and has granted a leasehold interest to a third party; and (iii) all of Seller’s documents, approvals, disclosures, reports, studies, plans, and warranties (collectively the “**Property**”).

- ITEM 2. **FLOOR AREA:** The Floor Area of the Premises is subject to remeasurement as provided in **Section 1.1** of the Lease. With respect to each building or structure in the Subject Retail, the number of square feet of floor space intended for exclusive tenant occupancy at each level or story lying within the exterior faces of exterior walls thereof (except party walls, as to which the center line, not the exterior faces, shall be used), whether or not leased or occupied (“**Floor Area**”). If such space is office space, **Floor Area** shall refer to the rentable area of the space in question. Floor area shall consist of that space identified on **Exhibit A-2**.
- ITEM 3. **PERMITTED USE:** Subject to the other provisions of this Lease, Tenant shall use the Premises for the purpose of operating therein a salon, spa, and educational and instructional facility and for any other lawful use reasonably appurtenant to any of the foregoing permitted by applicable zoning ordinances and laws (“**Permitted Use**”), and for no other use or purpose and under the Trade Name set forth above and under no other trade name, without Landlord’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Tenant shall use best efforts to not commit, omit or permit any act, condition or event that is contrary to any Legal Requirement or Insurance Requirement, as defined below.
- ITEM 4. **INITIAL TERM:** The term of this Lease (the “**Initial Term**”) shall commence on the Commencement Date (as defined in **ITEM 6** below) and shall end on the last day of the one hundred and twentieth (120th) full calendar month after the Commencement Date. The term “**Lease Years**” is defined in **Article 2**, which also sets forth the calculation thereof.

The Initial Term of this Lease, and any extension thereof, are sometimes herein referred to as the “**Term**.”

OPTION TERM: At the end of the Initial Term, provided that the Tenant is not in default of any material terms of this Lease, and the Lease is in good standing, shall have an option to extend (the “**Option Term**”) the lease for up to two (2) additional periods of ten (10) years. The Option Term shall be on the terms, covenants, and conditions set for in this lease, except that the first year of Rent for the Option Term shall be adjusted to

twenty three dollars (\$23.00) per square foot, followed by increases for every two (2) years thereafter of two dollars (\$2.00) per square foot. Option Term Rent increases shall commence biennially on the anniversary date of the Option Term renewal. Nothing in this term shall preclude the parties from mutually agreeing to modifications of the Lease at the time of exercising the option. The Mezzanine shall not be counted as additional square footage unless approved by the Landlord

- ITEM 5. **DELIVERY DATE:** Landlord shall deliver possession of the Premises upon mutual Lease execution (the “**Delivery Date**”); provided that, Tenant may commence “**Tenant's Work**” (as defined in **Exhibit B-2**) in the Premises, without substantial interference from Landlord or its contractor, no later than the Effective Date. Tenant shall acknowledge delivery of the Premises by executing the Delivery Date Certificate in the form attached hereto as **Exhibit B-1**.
- ITEM 6. **COMMENCEMENT DATE:** Subject to the provisions of this Lease, the Initial Term of this Lease and Tenant's obligation to pay “**Rent**” (as defined in **Article 3**) shall commence on the date (the “**Commencement Date**”) that is the later of the following: (i) the day the Tenant receives a certificate of Occupancy from the City of Avondale; or (ii) Tenant's opening of business. Within thirty (30) days after the Commencement Date has been determined, Landlord and Tenant shall execute and deliver to each other a commencement date memorandum in the form attached hereto as **Exhibit D** and incorporated herein by this reference (“**Form of Commencement Date Memorandum**”). The parties agree that the Commencement Date shall not be later than January 1, 2022, unless agreed to by both parties in writing.
- ITEM 7. **RENT:** The Rent payable by Tenant pursuant to this Lease shall include all the following:
- A. During the Initial Term and the Option Term (if applicable), an amount, per month, as set forth below, provided that Landlord shall provide six (6) months of abated rent beginning with the first full month on or after the Commencement Date:

Initial Term:		
Months	0-6	\$0.00 per SF
Months	7-24	\$17.00 per SF
Months	25-48	\$18.00 per SF
Months	49-72	\$19.00 per SF
Months	73-96	\$20.00 per SF
Months	97-120	\$21.00 per SF

Tenant shall only pay Rent for Parcel 1 and Parcel 2. Tenant shall not pay Rent for Patio and Mezzanine Space unless improved by the Landlord, which shall not alter or reduce the Tenant's right to use all of the Premises hereunder, including the Patio and Mezzanine Space. As used in the table above, the term “**Month**” means each full calendar month following the Commencement Date. If the Commencement Date does not occur on the first day of a calendar month, the period from the Commencement Date to the first day of the next calendar month shall be included in the first Month for purposes of determining the duration of the Initial Term and the monthly Rent rate applicable for such partial month.

- ITEM 8. **PERCENTAGE RENT: INTENTIONALLY OMITTED**

ITEM 9. **IMPROVEMENTS BY LANDLORD AND TENANT:**

A. Landlord's Work.

1. **"Landlord's Work"** shall mean the following: The Landlord shall deliver the Premises to Tenant professionally cleaned and in good order. The Landlord will inspect the HVAC, plumbing, gas, and electric systems and certify that all are in operating order, the Landlord will perform any maintenance repairs on the aforementioned if needed prior to the Delivery Date. Landlord shall warranty the good working condition and function of all building systems, including HVAC, mechanical, plumbing, and sewer, for the first six (6) months of the Term. Notwithstanding the foregoing, Landlord is not required to perform any additional improvements to the Premises prior to the Commencement of the Lease. Tenant agrees to accept the Premises in its "AS IS" condition.

2. If for any reason, Landlord cannot deliver possession of the Premises to Tenant on the Delivery Date, (a) this Lease will not be void or voidable and Landlord will not be liable to Tenant for any resultant loss or damage and (b) the Commencement Date, Delivery Date and Expiration Date shall each be delayed by one day for each day of such delay; provided, however, if the Commencement Date is delayed by more than ninety (90) days, Tenant, by written notice to Landlord prior to the Commencement Date, may terminate this Lease. Tenant will execute the Form of Commencement Date Memorandum attached to this Lease as **Exhibit D** within fifteen (15) days of Landlord's request.

B. Tenant's Work.

1. Tenant shall, at its sole cost and expense, install fixtures and stock the Premises and perform all work designated as **"Tenant's Work"** in **Exhibit B-2** in the manner set forth in this Lease. Tenant shall, at its sole cost and expense, cause an architect licensed in the state of Arizona to prepare interior plans and specifications for Tenant's Work. Tenant shall be responsible at its expense for the removal of all kitchen equipment in the premises.

2. Tenant agrees to furnish to Landlord, for Landlord's prior review and approval, the Plans and Specifications (as such term is referred to in **Exhibit B-2**) with respect to the Premises prepared in the manner and within the time periods required in the Construction Guidelines. If such Plans and Specifications are not furnished by Tenant to Landlord within the required time period in a form to permit approval by Landlord, then Landlord may avail itself of its options under the Construction Guidelines. Once Landlord receives the Plans and Specifications, Landlord may not unreasonably withhold its approval of the same. Landlord's approval of Tenant's Plans and Specifications or any modifications thereof shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency or their conformity with applicable laws, and Tenant shall be solely responsible therefor. In addition to conforming to the requirements specified in the Construction Guidelines, Tenant shall schedule its work so as not to unreasonably interfere with any work being performed by Landlord or by any other tenant in The BLVD Retail, or with the operation of The BLVD Retail and its tenants. It is further understood and agreed that: **(a)** Landlord shall have no responsibility or liability

whatsoever for any loss of, or damage to, any fixtures, equipment, merchandise, or other property belonging to Tenant or its agents, employees and contractors, installed or left in the Premises, unless such loss or damage is caused by Landlord or its agents, employees or contractors, in which case Landlord shall be solely liable; and (b) Tenant's entry upon and occupancy of the Premises prior to the Commencement Date shall be governed by and subject to all the provisions, covenants and conditions of this Lease.

3. Tenant shall have access and may improve or modify the waste disposal facilities designated for this address.

4. Additional alterations to the interior and/or exterior of the Premises shall be approved in accordance with provisions of the Lease.

C. Performance of Tenant's Work

1. Tenant shall not perform Tenant's Work without providing to Landlord, according to the time requirements set forth in the Construction Guidelines, any drawings or specifications required by Landlord, and without Landlord's prior written consent. In the event Landlord grants such consent, such Work shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and all drawings or specifications approved by Landlord. Any work performed by Tenant shall be subject to Landlord's inspection and approval after completion.

2. Tenant shall timely obtain at its sole cost all certificates and approvals with respect to work done and installations made by Tenant that may be required for the issuance of a non-temporary certificate of occupancy for the Premises, and shall immediately deliver to Landlord a copy of all such certificates and approvals. Promptly upon the completion of its work, Tenant shall repair, clean and restore to their prior condition all portions of the Subject Retail affected by any work of Tenant. In the event that any mechanic's, materialman's or other lien is filed against the Subject Retail as a result of any work or act of or on behalf of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's, materialman's or other lien, Landlord may bond or pay the same without inquiring into the validity or merits of such lien and all reasonable sums so advanced and fees incurred (including reasonable legal fees) shall be paid by Tenant on demand as Additional Rent. It shall be Tenant's continuing obligation to keep and maintain the Premises and all other parts of the Subject Retail free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant. In addition, Tenant shall replace any bonds posted by Landlord pursuant hereto with a suitable bond of equivalent amount within seven days after Landlord's demand therefor. Tenant shall have the right to contest the correctness or the validity of any such lien provided Tenant is diligently pursuing the matter to resolution and further provided that Landlord, in its reasonable judgment, concludes that there is no jeopardy to Landlord's title to the Premises or The Subject Retail. In the event Landlord concludes that its title to the Premises or the Subject Retail is jeopardized hereunder, Tenant shall, within thirty (30) days of notice from Landlord, procure and record a lien release bond meeting the requirements of Ariz. Rev. Stat. § 33-1004, as amended, or any successor statute.

D. **Removal by Tenant.** All of Tenant's Work made by Tenant shall at once when made become part of the leasehold and become property of Landlord. Upon the expiration or sooner termination of this Lease, Tenant shall not remove any of such alterations, additions and improvements, except that trade fixtures, furniture, and equipment installed by Tenant may be removed if: **(1)** such trade fixtures, furniture and equipment are not integral to the operation of the Building or the Premises (by way of example only and not a limitation, HVAC and plumbing systems may not be removed); **(2)** all undisputed Rents hereunder are paid in full; and **(3)** Tenant has performed all of its material obligations hereunder. Tenant hereby acknowledges and agrees that any property remaining in the Premises after the expiration or earlier termination of this Lease, shall be deemed abandoned by Tenant and Landlord may dispose of such personal property as it deems appropriate, at Tenant's cost, and Tenant shall reimburse Landlord for such costs within fifteen (15) days after being billed for the same.

E. **Allowance for Tenant Improvement Costs.**

1. Tenant's Work and together with all architectural mechanical, engineering, construction documents, general contractor fees, signage, structural floor enhancements, construction management or consulting fees incurred by the Tenant shall be referred to herein as the Tenant Improvements ("**Tenant Improvements**"). Landlord and Tenant agree that Landlord will provide Tenant an amount not to exceed sixty-three (\$63.00) dollars per square foot of space rented by Tenant for Tenant Improvements (the "**Parcel 1 Tenant Improvement Allowance**") or the "**Parcel 1 Allowance**") for Parcel 1.

2. Landlord and Tenant agree that Landlord will provide Tenant an amount not to exceed one hundred and fifty three (\$153.00) dollars per square foot of space rented by Tenant for Tenant Improvements (the "**Parcel 2 Tenant Improvement Allowance**" or the "**Parcel 2 Allowance**") for Parcel 2.

3. Landlord and Tenant agree that Landlord will provide Tenant a lump sum amount of fifty thousand dollars (\$50,000.00) (the "**Lump Sum Allowance**") within sixty (60) days after all of the Tenant Improvements are complete and the final Certificate of Occupancy is issued with respect to the Tenant Improvements.

The City desires to provide the Parcel 1 Allowance, the Parcel 2 Allowance and the Lump Sum Allowance (collectively the "**Tenant Allowance**") to:

- (i) provide a catalyst for the Subject Retail and increase daytime population to attract new retail in the Park Avenue District and further development in this area; and
- (ii) create new opportunities for employment in Avondale.

The City has determined, by a review of comparable rental rates, that the Rent and Tenant Allowance are within market value for a similar type of tenant in the area. The Tenant shall be entitled, in the Tenant's sole discretion, to apply, allocate, and use all or any portion of the Tenant Allowance for Tenant Improvements in all or any portion of the Premises, as determined in the Tenant's sole discretion.

F. Draw Requests.

Any cost for the Tenant Improvements above the Tenant Allowance shall be solely borne by Tenant. Subject to the availability of the Tenant Improvement Allowance under the Milestones described below, Landlord shall disburse to Tenant's contractor, as directed by Tenant, the Tenant Improvement Allowance only upon a delivery to the Landlord by Tenant of a monthly draw request ("**Draw Request**") which is accompanied by (a) a certification by the Tenant's construction manager that the Tenant Improvements described in the Draw Request has been completed in accordance with plans and specs therefor, (b) final mechanic's lien waivers (i.e., conditional only upon receipt of payment) for all labor, suppliers, materialmen, contractors and subcontractors to the extent included in such Draw Request, (c) copies of any related invoices, billing statements, or other documentation supporting Developer's request of the amount requested pursuant to such Draw Request and (d) for the final draw request, a valid certificate of occupancy. Landlord shall, with reasonable promptness, but in no event later than thirty (30) days after receipt of the above listed items submitted by Tenant, (a) inspect the Tenant Improvements so submitted and approve or disapprove the completion of it as in compliance with Tenant's plans and specs and (b) if the Tenant Improvements so submitted is approved by Landlord, then Landlord will pay the actual paid amounts not to exceed the Tenant Improvement Allowance subject to the limitations set forth in herein. If the Tenant Improvements are not approved by Landlord, Landlord shall designate the specific reason(s) for the disapproval in writing. If Landlord does not approve the Tenant Improvements, Tenant, at its option, may: (i) resubmit its Draw Request at such time as Tenant has corrected the deficiencies specified by Landlord for approval. Notwithstanding anything to the contrary contained herein, the Landlord shall retain ownership of all improvements, equipment or other property paid by the Tenant Improvement Allowance and Landlord shall be under no obligation to pay the Tenant Improvement Allowance if the Tenant is in material default under this Lease. Fifty percent (50%) of the Tenant Improvement Allowance shall become available to Tenant upon the City's issuance of a building permit for the Tenant Improvements, or such portion thereof which require a building permit; twenty-five percent (25%) of the Tenant Improvement Allowance shall become available to Tenant upon the installation of a meter for electric power supplied to the Premises and clearance thereof by the applicable electric utility provider; and twenty-five percent (25%) of the Tenant Improvement Allowance shall become available to Tenant upon the City's issuance of a Certificate of Occupancy for the Premises, with respect to the Tenant Improvements (each of the foregoing, a "**Milestone**"). Tenant shall provide City with an itemized invoice for each stage of the Tenant Improvements.

G. Design Services and Fees. The Tenant will pay for all professional fees associated with the design and review of the Tenant Improvements, subject to application of the Tenant Improvement Allowance as provided above.

H. Development Services and Fees. The Landlord will pay for all municipal development and infrastructure hookup and impact fees associated with the Premises.

ITEM 10. **GUARANTEE:** None.

ITEM 11. **SECURITY DEPOSIT:** \$12,912.92 (the “**Security Deposit**”). Requirements set forth in Sections 17.4, and 33.1.

ITEM 12. **TENANT'S CONTACTS:**

Name:	West Valley Institute
Address:	c/o Dale LeMonds 801 Kalamath Street Denver, CO 80204
Telephone:	(303) 995-5958
Email:	dlemonds@avedadenver.com

ITEM 13. **CITY:** The City of Avondale, an Arizona municipal corporation (the “**City**”).

ITEM 14. **STATE:** The State of Arizona (the “**State**”).

ITEM 15. **BUILDING:** The buildings designated as Parcels 1 and 2 in the Subject Retail in which the Premises are located (collectively, the “**Building**”).

ITEM 16. **CONTROLLABLE ELEMENTS:** “Controllable Elements” shall be deemed to include all Operating Expenses except (i) Taxes, (ii) utility costs or charges (including without limitation any utility taxes which may be imposed on any of the same), (iii) any weather-related clean-up or damage (including without limitation any snow, ice, or water removal or similar cost), (iv) expenses attributable to an event of Force Majeure, (v) insurance costs and charges, and (vii) any other charges or expenses for which Landlord does not reasonably have an opportunity to select a vendor or negotiate rates.

LEASE AGREEMENT

This Lease Agreement (the “**Lease**”) is made and entered into as of _____, 2021, (the “Effective Date”), by and between the City of Avondale, an Arizona municipal corporation (the “**Landlord**”) and West Valley Institute, LLC an Arizona limited liability company (the “**Tenant**”).

ARTICLE 1

Lease of Premises; Use of Common Areas; Reservation of Rights

1.1 **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which Landlord and Tenant hereby mutually agree.

1.2 **Use of Common Areas.** Except as otherwise specifically set forth by the Landlord in subsequent documents governing the use of The BLVD Retail Common Areas, Landlord grants to Tenants and its agents, employees and invitees, the non-exclusive right, together with all of the occupants of The BLVD Retail and their agents, employees and invitees, to use the Common Areas.

1.3 **Landlord's Reservation of Rights.** Landlord reserves “as-is”: **(A)** the exclusive use of the exterior walls (other than the storefront), the roof, the airspace above the roof and the space below the floor slab; and **(B)** the right to install, maintain, use, repair and/or replace pipes, ducts, conduits, utility lines and wires in the space above the interior surfaces of the ceilings, below the finished floor, within the demising walls of the Premises, in a manner, in locations and at a time which will not unreasonably interfere with Tenant’s use, and in all of the “**Common Areas**” (as defined in **Article 4**) of The BLVD Retail. Landlord reserves the right to affect such other tenants in The BLVD Retail as Landlord may elect in its sole business judgment, subject to the exclusivity requirements herein and Tenant’s quiet enjoyment.

ARTICLE 2

Lease Year; Option Term; Obligation to Open and Continuously Operate

2.1 **Lease Year.** For purposes of this Lease, the term “**Lease Year**” shall mean a period of twelve (12) full, consecutive calendar months. The first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth full calendar month following the Commencement Date. If the Commencement Date occurs on a date other than the first day of the month, then the first Lease Year shall include the partial month between the Commencement Date and the last day of the month during which the Commencement Date occurs, and the Minimum Rent and other charges payable during such partial month shall be appropriately prorated based on the number of days in such month. Any Lease Year which is for any reason shorter than a full 12-month calendar year is sometimes herein referred to as a “**Partial Lease Year**”. For purposes of calculating and paying the Minimum Rent, Percentage Rent and all recurring “**Additional Rent**” (as defined in **Article 3**) payable under this Lease during any partial Lease Year, such charges shall be appropriately prorated based on the number of days in such partial Lease Year.

2.2 **Option Term.** Provided, (A) Tenant is fully operating its business for the Permitted Use in all portions of the Premises; and (B) no “Event of Default” (as defined in Article 23) exists,

Tenant may provide written notice (the "Option Notice") to Landlord not less than one hundred eighty (180) days prior to the expiration of the lease of Tenant's desire to exercise the option to extend the lease for the Option Term. Landlord shall have thirty (30) days after receipt of the Option Notice to respond to Tenant's request. The parties reserve the right to amend the terms of the Lease as part of the exercise of the Option Term. The right to exercise the Option Term is personal to the named Tenant herein and may not be exercised by any person or entity other than Tenant or a permitted assignee. The Minimum Rent payable by Tenant during the Option Term shall be as set forth in **ITEM 4** of the Cover Sheet.

2.3 Tenant Obligation to Open and Continuously Operate. Tenant agrees to open for business to the public in the Premises after the completion of the Tenant Improvements and the receipt of the Certificate of Occupancy and any other requirements to reasonably open the Premises and to continuously operate in both parcels comprising the Subject Retail thereafter throughout the remainder of the Term. It is intended that Tenant shall open on or before April 30, 2022. Tenant shall operate during commercially reasonable hours and on commercially reasonable dates, in accordance with Tenant's usual and customary retail, salon, spa, and educational and instructional facility, unless it is illegal, inadvisable, or reasonably impossible to operate, due to remodeling or alterations as described herein or due to municipal, county, state, or federal pandemic restrictions. Tenant shall maintain in the Premises all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein. For purposes of this Section, the term "**ceases operating**" shall mean and refer to any period when Tenant has not been open for business with the public in either parcel constituting the Premises in accordance with the provisions of this Lease for thirty (30) or more consecutive days (exclusive of reasonable periods during which the Premises are being restored following casualty damage thereto) or a "**Taking**" (as defined in **Article 22**) thereof, and periods during which the Premises are being remodeled or altered in accordance with this Lease or when it is inadvisable, illegal, or reasonably not possible to operate.

ARTICLE 3

Rent; Payment of Rent; Late Charge

3.1 Rent. The term "**Rent**" shall mean all amounts required to be paid by Tenant to Landlord under this Lease. Commencing as of the Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Rent in equal monthly installments (as set forth in **ITEM 7** of the Cover Sheet), in advance or on the first day of each month. Rent shall be prorated for any partial calendar month. If the Commencement Date is a date other than the first day of a calendar month: **(1)** Rent for the month containing the Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month; and **(2)** the initial monthly rental period shall include the month in which the Commencement Date occurs and the following full calendar month (unless the Commencement Date is the first day of a calendar month, in which event the initial monthly rental period shall include only the month containing the Commencement Date). Notwithstanding the aforementioned, Landlord shall provide six (6) months of abated rent to Tenant beginning on the first day of the first full month after the Commencement Date. The term "**Additional Rent**" means all amounts required to be paid by Tenant to Landlord hereunder, other than Rent, whether or not such amount is specifically designated Additional Rent.

3.2 Payment of Rent. Tenant shall pay all sums required to be paid to Landlord, without prior notice, demand, setoff or deduction at the office of Landlord, City of Avondale, 11465 W. Civic Center Drive, Suite 250, Avondale, Arizona 85323, Attention: Accounts Receivable, or with prior written notice, at such other place or places as Landlord may designate from time to time. In the

event Landlord designates a property manager to manage this Lease, the Tenant shall be notified in writing and shall pay all rents directly to the property management firm designated in the official notice. The obligation of Tenant to pay any amount due to Landlord hereunder shall be independent of any obligation of Landlord under this Lease.

3.3 **Late Charge.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent shall cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent due from Tenant under this Lease is not received by Landlord when due, then, in addition to the required payment, Tenant shall also pay to Landlord a "**Late Charge**" equal to \$25.00 per day, after a seven (7) calendar day grace period, not to exceed \$200, to reimburse Landlord for the costs of collecting the overdue payment. Tenant agrees that the Late Charge represents a fair and reasonable estimate of the expenses that Landlord shall incur by reason of a late payment by Tenant. Acceptance of the Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any past due amounts, nor prevent Landlord from exercising any other rights and remedies granted to Landlord under this Lease or at law or in equity. The Late Charge on past due amounts shall be considered Additional Rent.

ARTICLE 4

Common Areas; Control of Common Areas; Common Area Costs; Trash

4.1 **Common Areas.** The Common Areas shall be operated and maintained by the Landlord. The term "**Common Areas**" means all portions of the area depicted on Exhibit A-1 Site Plan attached hereto designated by Landlord from time to time for the common or joint use and benefit of Landlord, Tenant and the occupants of The BLVD Retail and their employees, agents, servants, customers and other invitees, including, without limitation, storage areas not within the Premises, public restrooms other than those within the Premises, offices not within the Premises, utility rooms other than those within the Premises, the parking areas serving The BLVD Retail (the use of which is subject to the fees, rules and regulations established therefor by the operator of the parking facility from time to time), access roads, corridors, balconies, stairs, elevators, escalators, driveways, retaining walls, exterior boundary walls and fences, water, sanitary and storm sewers (including, without limitation, any on or off-site sewer lines), on-site water retention and drainage facilities serving The BLVD Retail and which Landlord is required to maintain (however, Landlord shall only maintain as part of the Operating Costs, sanitary sewers up to the Premises), gas, electric, telephone and other utilities lines, systems, conduits and facilities to the perimeter walls of any building within The Subject Retail and those serving more than one premises within a building, and any of the foregoing within The BLVD Retail which serve the Common Areas, plantings, landscaped areas, truck service ways, loading dock areas and facilities, courts, ramps, sidewalks, any drinking fountains, and the facilities appurtenant to the foregoing and within The BLVD Retail. The Common Areas are set forth on Exhibit A-1 Site Plan.

4.2 **Control of Common Areas.** Subject to the Landlord's subsequent documents relating to use of the Common Areas, it is agreed that: **(A)** all Common Areas shall be subject to the exclusive control and management by Landlord, and Landlord shall have the right at any time (either before, during or after the initial arrangement of the entrances, access roads, parking areas and other Common Areas), to construct buildings and other improvements thereon and therein, and to permit the owners and occupants of land located outside The BLVD Retail and Premises and their invitees to use the Common Areas; **(B)** Landlord shall have the right to demolish and make alterations and additions to the buildings in The BLVD Retail (including the construction of additional buildings therein), and to add and exclude areas from The BLVD Retail, and to relocate

improvements so long as they do not have a material adverse effect on Tenant; and **(C)** Landlord shall have the right to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable, in its sole and absolute discretion, so long as such acts do not have a material adverse effect on Tenant. The rights of Landlord as reserved in this Lease shall be subject to the condition that no exercise of such rights by Landlord shall alter the physical dimensions of the Premises or change their location or relative proximity to other stores, or otherwise materially or unreasonably interfere with the conduct of Tenant's business in the Premises.

4.3 Tenant's Obligations. In addition to the Rent provided herein above, for each Expense Year during the Term, Tenant shall pay to Landlord Tenant's Share of Operating Expenses allocated to the tenants of The BLVD Retail (pursuant to Section 4.4.2. below) which are incurred by Landlord on account of operation and maintenance of The BLVD Retail during such Expense Year. For purposes hereof, "**Tenant's Share**" shall mean the percentage determined by dividing the Floor Area of each parcel of the Subject Retail as set forth above by the total Floor Area within The BLVD Retail, approximately 26,294 rentable square feet. Landlord reserves the right, in its sole discretion, to increase or decrease from time to time the total Floor Area of The BLVD Retail based upon Landlord's standard Floor Area measurement standards used for The BLVD Retail. Notwithstanding anything contained herein to the contrary, in no event shall Tenant's Share increase due to any decrease in the total Floor Area of The BLVD Retail caused by or consented to by Landlord. Unless Landlord has paid for the Mezzanine improvements for additional usable space for benefit of Tenant

4.4 Definitions.

4.4.1 Expense Year. Each calendar year during the Term (or partial calendar year if the Term commences or ends on other than the provided first (1st) or last day of a calendar year); provided, however, that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Operating Expenses shall be equitably adjusted for any Expense Year involved in any such change. Landlord shall calculate the Operating Expenses separately for Parcels 1 and 2.

4.4.2. Operating Expenses or Operating Costs. For purposes hereof, "Operating Expenses" or "Operating Costs" are intended to be inclusive of all costs incurred by Landlord in operating and maintaining the Subject Retail, except franchise, estate, inheritance, net income, gift, corporate and excess profit taxes of Landlord, interest on and capital retirement of Landlord's mortgage loans, if any, and costs charged by Landlord directly to specific tenants (including any utilities separately metered and charged to specific tenants). Landlord agrees to make reasonable efforts to minimize operating costs insofar as such efforts are not inconsistent with Landlord's intent to operate and maintain The BLVD Retail in a first-class manner. Operating Expenses may include, but shall not necessarily be limited to, the following.

4.4.2.1 Tax Expenses. Tax Expenses which, for purposes hereof, shall mean, collectively, any and all general and special taxes and impositions of every kind and nature whatsoever levied, assessed, or imposed upon, or with respect to the Subject Retail, any leasehold improvements, fixtures, installations, additions, and equipment, whether owned by Landlord or Tenant, or either because of or in connection with Landlord's ownership, leasing and operation of the Subject Retail, including, without limitation, real estate taxes, personal property taxes, sewer rents, water rents, general or special assessments, duties or levies charged or levied upon

or assessed against the Subject Retail and related personal property, transit taxes, or any tax or excise on rent or any other tax (however described) on account of rental received for use and occupancy of any or all of the Subject Retail (except Landlord's net income taxes), whether any such taxes are imposed by the United States, the State of Arizona, the County of Maricopa, or any local governmental municipality, authority, or agency or any political subdivision of any thereof. Tax expenses shall include a pro-rata share of any in lieu of payment made by the City to compensate for taxes that would be imposed on the Property if owned by a party subject to the assessment of real property and or personal property taxes which is anticipated to include assessments relating to a special district being formed for maintenance improvements used by all of the common area.

4.4.2.2. Insurance. All costs and expenses to Landlord in maintaining fire and extended coverage insurance, property damage, liability and rent loss insurance and any other insurance maintained by Landlord covering the use and operation of the Subject Retail which is customary in comparable projects in the area or which is reasonably deemed prudent by Landlord.

4.4.2.3. Heating, Ventilating and Air Conditioning System.

The costs and expense of operating and maintaining the heating, ventilating and air conditioning system for the Common Areas, if any such HVAC system exists, including the costs of utilities required in the operation thereof, shall be included. Tenant shall be responsible for the operation and maintenance costs for the heating, ventilating and air conditioning system, including the cost of utilities required in the operation thereof necessary to serve the Premises. The cost of replacement of an air conditioning unit serving the Common Area or serving the Subject Retail shall be a responsibility of Landlord.

4.4.2.4. Required Capital Improvements. The costs of capital improvements and structural repairs and replacements made in or to the Subject Retail designed primarily to reduce Operating Expenses or to reduce the rate of increase in Operating Expenses (herein "**Cost Savings Improvements**"). The expenditures for Cost Savings Improvements shall be reimbursed to Landlord in equal installments over the useful life of such capital improvement or structural repair or replacement (as reasonable determined by Landlord) together with interest on the balance of the unreimbursed expenditure at a rate equal to the floating commercial loan rate announce from time to time by US Bank, a national banking association, or its successor, as its prime rate plus two percent (2%) per annum (the "**Prime Rate**") which is in effect on the date the expenditure was incurred by Landlord; provided, however, the amount to be reimbursed for any Cost Savings Improvements shall be limited in any year to the estimated reduction or estimated savings in Operating Expenses as a result thereof.

4.4.2.5. Standard Services and Utilities. All costs and expenses incurred by Landlord in providing standard services and utilities to all tenants of the Subject Retail, including office janitorial services, such as to clean the public areas, remove garbage, and do minor repairs, window washing and utilities not separately metered and not charged by Landlord directly to specific tenants; together with the cost of replacement of non-building standard electric light bulbs and fluorescent tubes and blasts, which Landlord shall have the exclusive right to provide and install.

4.4.2.6. **Management Fees.** Included in the Operating Expenses and reconciled annually paid to a third-party management company not affiliated with Landlord for management of the common areas of the BLVD retail, serving the Subject Retail.

4.4.2.7. **General Maintenance and Repairs.** All costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the Subject Retail, including all sums expended in connection with the Common Areas for general maintenance and repairs, resurfacing (excluding pavement resurfacing), painting, restriping, cleaning, sweeping and janitorial services as defined in Paragraph 4.4.2.5, window washing, maintenance and repair of elevators, stairways, sidewalks, curbs, sprinkler systems planting and landscaping, lighting and other utilities, maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems, emergency back-up utility systems, storm drainage systems and any other utility systems, personnel to implement such services and to police the Common Areas, rental of machinery and equipment used in such maintenance and services, police and fire protection services, trash removal services, all costs and expenses pertaining to security systems, utilities, premiums and other costs for workers' compensation insurance, wages, withholding taxes, social security taxes, personal property taxes, fees for required licenses and permits, supplies, and charges for management of the BLVD Retail. Costs and expenses incurred by Landlord in operating, managing, repairing and maintaining The BLVD Retail which are incurred exclusively for the benefit of specific tenants of The BLVD Retail shall not be included within the Operating Expenses.

4.4.3 **Non-Operating Expenses.** Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall NOT include the following.

4.4.3.1 **Other Capital Improvements.** Costs of items considered capital improvements, capital repairs, capital replacements, and/or capital equipment, all as determined in accordance with Landlord's standard real estate accounting practices, except as permitted in Section 4.4.2.3, 4.4.2.4 above.

4.4.3.2 **Depreciation and Amortization.** Depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation and amortization would otherwise have been included in the charge for such third party's services, all as determined in accordance with standard real estate accounting practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life as determined by Landlord in the manner described in Section 4.4.2.4 above, together with interest on the unamortized costs at the Prime Rate.

4.4.3.3 **Interest, Points and Fees.** Interest, points, fees and principal payments on any mortgages encumbering the BLVD Retail, and other debt costs, if any, except as specifically included in Section 4.4.2.4 above.

4.4.3.4 **Reimbursement for Insurance Proceeds.** Costs of any items (including, but not limited to, costs incurred by Landlord for the repair of damage to the BLVD

Retail) to the extent Landlord received reimbursement from insurance proceeds or from a third party (except that any commercially reasonable deductible amount under any insurance policy shall be included within Operating Expenses).

4.4.3.5 Broker's Commission. Brokerage commissions, space planning costs, finders' fees and attorneys' fees incurred by Landlord in connection with leasing or attempting to lease space within The BLVD Retail. The parties agree that Tenant is represented by Century 21 and upon mutual Lease execution, Landlord shall pay a commission of five (5%) of the aggregate rents of the original ten year leasing period for which rent is charged.

4.4.3.6 Permits and Licensing. Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for any tenants in The Subject Retail or incurred in renovating or otherwise improving, preparing, decorating, painting or redecorating vacant space for tenants or other occupants of the Subject Retail.

4.4.3.7 Penalties. Interest, penalties or other costs arising out of Landlord's failure to make timely payment of its obligations under this Lease or otherwise in connection with The Subject Retail, including, without limitation, Landlord's failure to make timely payment of any item that is included in Operating Expenses or Tax Expenses.

4.4.3.8 Attorney's Fees. Attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of The BLVD Retail (including costs incurred due to violations by tenants of the terms and conditions of their leases), or any other attorneys' fees incurred in connection with The BLVD Retail (including, without limitation, any financing, sale or syndication of the BLVD Retail), except (A) as specifically enumerated as an Operating Expense in this Lease, or (B) to the extent the expenditure of such attorneys' fees general benefits the tenants of the BLVD Retail.

4.4.3.9 Overhead Costs. Costs and overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to The BLVD Retail to the extent the same exceeds typical costs and overhead and profit increment of such goods and/or services rendered by qualified unaffiliated third parties on a competitive basis.

4.4.3.10 Sales Tax. Under the Arizona Municipal Tax Code, commercial leases are subject to the Transaction Privilege (Sales) Tax imposed by the City of Avondale this tax will be charged to the Tenant above the Base Lease amount.

4.4.3.11 Other Costs. Costs of acquisition of sculptures, painting and other objects of art.

4.5 Calculation and Payment of Operating Expenses.

4.5.1 Statement of Estimated Operating Expenses. Prior to that date which is thirty (30) days prior to the first day of a new Expense Year, Landlord shall give Tenant a yearly expense estimate statement (the "Estimate Statement") which shall set forth Landlord's reasonable estimate (the "Estimate") of what the total amount of Operating Expenses for the new Expense Year shall be for each parcel in the Subject Retail. The failure of Landlord to timely furnish the Estimate

Statement for any Expense Year shall not preclude Landlord from enforcing its rights under this Article 4. Tenant shall pay Tenant's Share of the Estimated Expenses (defined below) with installments of Rent in monthly installments of one-twelfth (1/12) thereof on the first day of each calendar month during such year, except that the monthly installment of Tenant's Share of the Estimated Expenses for the first full calendar month of the Initial Term shall start at the Commencement Date of this Lease. Tenant hereby acknowledges that prior to the execution of this Lease by Landlord and Tenant, Landlord provided to Tenant the Estimate Statement for calendar year 2021. Beginning with 2022 and continuing through and including 2026, the amount payable as Tenant's Share of Controllable Elements of Operating Costs shall not increase by more than three percent (3%) per annum over the amount of Tenant's Share of Controllable Elements, on a cumulative basis for the previous year.

4.5.2 Estimated Expenses. Estimated Expenses for any particular year shall mean Landlord's estimate of Operating Expenses for a calendar year. If at any time Landlord determines that Operating Expenses are projected to vary from the then Estimated Expenses, Landlord may, by notice to Tenant, revise such Estimated Expenses, and Tenants monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Share of the revised Estimated Expenses for such year. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the monthly Minimum Rent installments, an amount equal to one-twelfth (1/12) of Tenant's Share of the Estimated Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5.3 Payment. Landlord shall endeavor to give to Tenant on or before the first day of February following the end of each Expense Year, a statement (the "**Statement**") which shall state the Operating Expenses incurred or accrued for such preceding Expense Year ("**Actual Expenses**"), and the amount of the Estimated Expenses paid by Tenant for such preceding Expense Year and shall indicate the amount, if any, of the difference between the Actual Expense and the Estimated Expenses (the "**Excess**") for such Expense Year. If an Excess is present, Tenant shall pay, within thirty (30) days after receipt of said Statement, the full amount of the Excess for such Expense Year. If any Statement reflects that Tenant has overpaid Tenant's Share of Operating Expenses for such Expense Year, Landlord shall refund the amount of the overpayment to Tenant, within thirty (30) days after receipt of said Statement, the full amount of overpayment. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this **Article 4**. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of the Operating Expenses for the Expense Year in which this lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord an amount as calculated pursuant to the provisions of Section 4.5.1 of this Lease. The provisions of this Section shall survive the expiration or earlier termination of the Term. Notwithstanding anything contained herein to the contrary, Tenant shall not be obligated to pay any Excess for any Expense Year more than two (2) years after the expiration of such Expense Year.

4.6 Audit Rights. Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records (pertaining to Landlord's calculation of Operating Expenses) at Landlord's offices, provided that Tenant and its accountant or representative shall, and each of them shall cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Landlord shall cooperate in good faith with Tenant and accountant to provide Tenant and the accountant with the information upon which the certification is to be based. However, if such certification by the accountant proves that the total amount of Operating Expenses for the applicable period were overstated by more than five percent (5%), then the actual, documented and reasonable cost of the accountant and such certification shall be paid

for by Landlord. Promptly following the parties' receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification.

4.7 **Security Services.** Except for Landlord's negligence, Landlord shall not be liable in any manner whatsoever to Tenant or any third party by reason of any act or omission of Landlord in providing or maintaining security services (or electing not to provide or maintain security services) in the Common Areas.

4.8 **Trash.** Tenant shall be solely responsible for the removal of all trash and garbage from its Premises to a common trash receptacle for removal from the property by the Landlord.

ARTICLE 5

PURCHASE OPTION

5.1 **Purchase Option.** Effective upon the Commencement Date of this Lease, Landlord hereby grants to Tenant the exclusive right (the "**Purchase Option**") to purchase the Property in accordance with and subject to all of the terms and conditions contained herein. Tenant may exercise the Purchase Option any time prior to the first anniversary of the Commencement Date (the "**Option Expiration Date**"). The Purchase Option may only be assigned (i) to a limited liability company or other entity in which the shareholders in Tenant own at least a majority interest or (ii) in connection with an assignment of this Lease under Article 17.

5.2 **Exercise of Option.** In order to exercise the Purchase Option, Tenant shall deliver to Landlord (i) written notice of exercise; and (ii) within 30 days of the receipt of such Notice, Landlord shall provide to Tenant a purchase agreement and standard escrow instructions for review. Upon execution of a purchase agreement and Standard escrow instructions containing terms and conditions that are mutually acceptable to Landlord and Tenant, the parties shall deliver a copy of the same to Escrow Holder within ten (10) business days after execution. Thereafter, each of the parties shall promptly execute any and all further instructions or other documents including a bill of sale and assignment of intangible rights which may be reasonably required to permit the close of said escrow within the period provided herein.

5.3 **Purchase Price.** The purchase price for the Property shall be Five Million and no/100 dollars (\$5,000,000.00) (the "**Purchase Price**"), which shall be payable in immediately available funds upon the close of escrow for the sale of the Property.

5.4 **Sale to Third Party.** Landlord shall not sell the Property to any third party prior to the Option Expiration Date without prior written consent from Tenant.

5.5 **Expiration of Option.** The Purchase Option granted to Tenant hereunder shall automatically expire upon the first to occur of (i) the Option Expiration Date, or (ii) the expiration or earlier termination of this Lease, including without limitation, any termination of the Lease by reason of a breach of Tenant hereunder.

5.6 **Sale Commission.** The parties agree that Tenant is represented by Century 21 and Landlord shall pay a commission of five (5%) of the Purchase Price, minus the commission described in Section 4.4.3.5 if Tenant exercises the Purchase Option.

5.7 **Tenant Due Diligence.** Prior to such closing, the Tenant shall have the right to complete such due diligence as it deems appropriate and may, after exercising the Purchase Option, elect not to complete the closing of such purchase of the Property.

ARTICLE 6 RESERVED

ARTICLE 7 Real Estate Taxes

7.1 **Real Estate Taxes.** The City is the fee owner of The Subject Retail and will not be assessed real property taxes. Pursuant to the Government Property Lease Excise Tax Statutes ARIZ. REV. STAT. § 42-6201 the Subject Retail is instead subject to the assessment or levy of an excise tax (“**GPLET**”). The GPLET is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42-6203. The Tenant may be exempt from paying the GPLET if they qualify under ARIZ. REV. STAT. § 42-6208. However, assessments (both special and general) imposed in connection with any financing district, transportation development district, special assessment district, special benefit district, sanitary improvement district, local improvement district or any similar district of which the Subject Retail (or any portion thereof) is a part are not covered under Operating Costs and are instead treated as “**Special Assessments**” according to the terms of this section and **Section 7.2** below. Tenant covenants and agrees to pay to Landlord as Additional Rent any costs for these Special Assessments and in no event shall Tenant contest or appeal or have any right to contest or appeal these Special Assessments levied or assessed against the Premises or the Subject Retail. Tenant shall pay all taxes applicable to all other property in the Premises that is Tenant’s personal property not taxed, as set forth in **Section 20.1** (captioned “**Tenant’s Property**”).

7.2 **Tenant’s Proportionate Share of Special Assessments.** Tenant’s **Proportionate “Share of Special Assessments”** shall be calculated by dividing the acreage of the tax parcel on which the Subject Retail is located (i.e., APN 102-57-247) by the total acreage of the property contained within the BLVD Retail District, and multiplying the foregoing fraction, expressed as a percentage, by Tenant’s Share, also expressed as a percentage. The estimated full cash value shall be used to set the assessed value in the same manner and method as other commercial property and the tax rate for the Maintenance Improvement District which has been created to provide for maintenance of common area facilities contained within the BLVD development which benefits all of the property within the BLVD development including the property that is the subject of this Lease and shall be applied against the assessed value established under this paragraph and in accordance with paragraph 4.4.2.1.

ARTICLE 8 RESERVED

ARTICLE 9 Parking & Public Rights of Way

9.1 **Parking.** Tenant and its employees, customers and invitees may have the non-exclusive right, together with Landlord and all other tenants and occupants of the BLVD Retail, to park on a first come, first served basis, in the public parking spaces located on N. 114th Avenue, W.

Dale Earnhardt Drive and the BLVD, subject to rules established by the City for the BLVD Retail. City reserves the right to punish violations of such rules.

9.2 **Parking Fees.** At some time in the future the Landlord may convert all or some of the surface parking to structured parking. However, Landlord agrees to make reasonable efforts to minimize the need for structured parking if initial development does not warrant the installation of a parking structure. Such parking structure will not change Tenant's parking rights described herein during or after construction.

9.3 **Public Rights-of-Way.** The public rights-of-way may from time to time at the sole discretion of the City, be temporarily closed for events so long as Tenant is still able to reasonably operate its business, including parking and access. The City or Landlord is under no obligation to temporarily or permanently replace the loss of parking due to closure of public rights-of-way. The City or Landlord is responsible for maintenance and cleaning of public rights-of-way after any such event.

ARTICLE 10

Construction of the Premises

10.1 **Construction of the Premises.** Landlord and Tenant agree that the Premises shall be constructed in a good and workmanlike manner in accordance with the terms and provisions of **ITEM 9** and **Exhibit B-2** hereto. Tenant agrees that Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease. All Tenant's work shall be completed by licensed contractors holding a valid registration from the Arizona Registrar of Contractors.

ARTICLE 11

Alterations; Roof Penetration; Signs; Indemnification

11.1 **Interior Non-Structural Alterations.** After the Tenant's Work is completed, Tenant shall have the right to make interior, non-structural alterations or additions to the Premises without Landlord's consent.

11.2 **Structural and Exterior Alterations.** Tenant shall not make any structural or exterior modifications, improvements, alterations, additions or installations in or to the Premises (the "**Alterations**") without Landlord's prior, written consent. Along with any request for Landlord's consent and before commencement of any Alterations or delivery of any materials to be used in any Alterations, Tenant shall furnish Landlord with a complete set of plans and specifications, names and addresses of contractors, copies of permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord and, if required by Landlord, a performance bond executed by a commercial surety reasonably satisfactory to Landlord, and in an amount equal to the cost of the Alterations and the payment of all liens for labor and material arising therefrom. All Alterations shall be done only by licensed, bondable contractors or subcontractors reasonably approved by Landlord, and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all Alterations and also the cost of painting, restoring or repairing any portion of the Premises and the Subject Retail required because of Tenant's Alterations, but not the costs of repair for normal wear and tear. Upon completion of the Alterations, Tenant shall furnish Landlord with contractor's affidavits and full final, unconditional waivers of liens and a reasonably detailed breakdown of the costs of all labor and materials employed in such Alterations. All Alterations shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities

(including, without limitation, the Americans With Disabilities Act) and shall be constructed in a good and workmanlike and lien free manner. Tenant shall permit Landlord to inspect construction operations in connection with any Alterations. Subject to applicable federal and state law, in the event any Alterations result in a labor dispute, Tenant shall cause work to be halted in a timely manner, remove the workers, contractors or mechanics responsible for such dispute and replace them with workers, contractors and mechanics acceptable to Landlord and whose work shall not (in the sole and absolute discretion of Landlord) result in a labor dispute.

11.3 Roof Penetration. Tenant must obtain prior, written approval from Landlord before accessing the roof of The Subject Retail for any type of roof puncture/penetration or for attaching any items to the roof, and such work must be performed by Landlord's roofing contractor at a competitive market price or by a contractor approved by Landlord. Tenant shall be responsible for any damage to the Premises, the roof or the building containing the Premises, or The BLVD Retail caused by Tenant, its agents or contractors, including, but not limited to, any roof puncture/penetration. Tenant shall be responsible for the roof above the Premises in the event it makes an alteration, with or without Landlord permission, and any damage to the Premises occurs. Notwithstanding the foregoing, Landlord approves of Tenant installing a satellite dish on the roof of the Premises and will reasonably cooperate with Tenant in such planning and installation thereof so as not to penetrate the roof or roof membrane; provided, however, that Tenant submit to Landlord its plans for the installation of the satellite for Landlord's approval and that Tenant does not cause any roof warranties to be rendered null and void or inapplicable.

11.4 Tenant's Signs. Landlord shall provide Tenant with use of all storefront signage and other available signage within the project at no additional charge to the Tenant. Tenant shall comply at all times with the provisions of **Exhibit C** with respect to Tenant's interior signs. All of Tenant's signs shall comply with all Legal Requirements for the BLVD Retail. Tenant shall be responsible for the costs of designing, manufacturing, installing, illuminating, operating and maintaining its signs. Upon the termination of this Lease, Tenant shall remove its signs and restore and repair all parts of the Premises and The BLVD Retail affected by the installation or removal of its signs, to a condition reasonably acceptable to Landlord; however, Tenant shall not be required to fix any superficial damage cause by ordinary wear and tear, including fading. If Tenant fails or refuses to remove its sign as herein required, Landlord may, but shall not be obligated to, remove such signs and repair and restore all damage caused by their removal, and Tenant shall pay to Landlord the costs of all such removal, repair and restoration, together with an amount for the cost thereof plus an administrative fee of fifteen percent (15%) of Landlord's reasonable costs incurred, within thirty (30) days after receipt of an invoice therefor. Landlord reserves the right to place signage on the exterior of the Premises, including, without limitation, building identification signage, directional signage and signage for other tenants and occupants of the BLVD Retail.

11.5 Tenant Indemnification. Tenant agrees to indemnify, defend and hold Landlord harmless, utilizing legal counsel reasonably acceptable to Landlord, for, from and against any and all third party claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord to the extent arising from Tenant's interior non-structural alterations, Alterations, roof puncture/penetrations, any lien placed upon the property by a contractor performing improvements on behalf of Tenant, Tenant's signs, or any other work performed by or on behalf of Tenant on the Premises, unless caused by Landlord's negligence or willful misconduct, in which event Landlord shall be solely liable. The provisions of this Section shall survive the expiration or termination of this Lease. Tenant shall be fully responsible for clearing any liens placed upon the property due to work performed, or

materials supplied, as requested by Tenant, and Landlord may seek indemnification for any costs in curing such liens not paid by Tenant.

ARTICLE 12

Repair and Maintenance

12.1 **Landlord Repairs.** Landlord agrees to maintain the Building and the Common Areas in good repair consistent with the terms of this Lease and to make or cause to be made the following repairs (which shall include replacements, if necessary) (collectively, "**Landlord Repairs**"). Upon Notice from Tenant, Landlord shall have three (3) days to acknowledge receipt of notice. Within five (5) days of receipt of Notice from Tenant, Landlord shall provide Tenant with a schedule on the Completion of Landlord Repairs. Tenant retains all rights under subsections A-B of this Section should Landlord fail to make such repairs or any other such repairs the responsibility of Landlord and necessary to make the Premises habitable for Tenant's purposes under this Lease.

A. **Structural Repairs.** Structural portions of the Premises ("**structural portions**") consist, without limitation, of the foundation, roof, floor slab and members supporting the roof), the cost of which shall be included in Operating Costs; PROVIDED, HOWEVER, notwithstanding the foregoing, in no event shall Landlord be responsible for the repair or replacement of the floor covering in the Premises. In the event Landlord fails to perform its maintenance obligations herein within thirty (30) days after such notice or the failure to repair has materially interfered with Tenant's use of the Premises, Tenant shall have the right to perform such maintenance and Landlord shall reimburse Tenant for the cost thereof plus an administrative fee of fifteen percent (15%) of Tenant's reasonable costs incurred, within thirty (30) days after receipt of an invoice therefor.

B. **Utility Repairs.** All repairs to and replacements of utility systems and sewer lines up to the point of the meters located in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises, the cost of which shall be included in BLVD Retail Operating Costs. PROVIDED, HOWEVER, in the event any damage is caused by one or more acts or omissions of Tenant, its agents, employees, customers or invitees, Tenant shall pay the cost of such repairs within thirty (30) days after receipt of an invoice therefor. Additionally, Landlord shall include in Operating Costs the costs of repair(s) to plumbing and utility lines from the entrance points of the utility lines into The BLVD Retail to the mechanical room(s) or, if there is no mechanical room, to the point at which they are stubbed to the Premises. In addition, Landlord shall repair utility lines to the Premises during the time period from the Commencement Date through the one year anniversary of the Commencement Date of this Lease except when caused by negligence of Tenant.

12.2 **Tenant Repairs.** Except as is Landlord's obligation under this Article, Tenant agrees, at its own cost and expense, to take good care of the Premises and Tenant's trash area and to keep them in good and first-class order, condition and state of repair (which shall include replacements, if necessary) including, without limitation, the following:

A. **Interior Repairs.** Any and all interior repairs, including but not limited to all repairs to its trade fixtures and electrical equipment and fixtures, plumbing fixtures, lines and equipment and other utility lines (including sewer and utility lines within and exclusively serving the Premises), from the point of the meters in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises), elevators, if added to the Premises

by Tenant with the purpose of providing service to the Mezzanine level, and wiring (including that within walls or ceilings, or under flooring or floor covering, or in or under the slab).

B. **Storefront Repairs.** All storefront repairs, including glass and doors, door frames, locks, lifts, openers and hardware. Notwithstanding any other provision of this Lease, Landlord shall make any storefront repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the gross negligence or willful misconduct of Tenant.

C. **Window Repairs.** All repairs to windows (including sashes, frames, locks and hardware) and all Tenant's signs (including replacement of signs). Notwithstanding any other provision of this Lease, Landlord shall make any window repairs needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the gross negligence or willful misconduct of Tenant.

D. **Maintenance Repair.** All the maintenance and repair (but not replacement which shall be Landlord's responsibility) of the HVAC System located in and exclusively serving the Premises, including maintenance of all fixtures, equipment, ducts, machinery, machinery controls, appliance and utility lines as are used for, in connection with or which are part of the electrical, plumbing, heating, air conditioning, ventilation or other mechanical systems in and exclusive to the Premises. Tenant shall, within thirty (30) days after the Delivery Date, enter into and provide Landlord a copy or certificate of, and thereafter maintain, a preventative maintenance contract on the HVAC System in the Premises, which contract shall provide for periodic maintenance in accordance with the manufacturer's specifications. In the event Tenant fails to maintain such preventative maintenance contract, Landlord, at its option, may arrange for such a preventative maintenance contract for the HVAC System on terms reasonably acceptable to Tenant; PROVIDED, HOWEVER, Landlord has notified Tenant of this failure of Tenant to comply with the maintenance requirements set forth herein and Tenant has failed to cure such noncompliance within thirty (30) days after receipt by Tenant of Landlord's notice, in which event the cost of such preventative HVAC System maintenance shall be billed directly to Tenant and shall be paid within thirty days after receipt of an invoice therefor. Notwithstanding any other provision of this Lease, Landlord shall make any HVAC System repairs described in this Section needed during the period from the Effective Date through the first anniversary of the Commencement Date of the Lease except those caused by the gross negligence or willful misconduct of Tenant.

ARTICLE 13

Inspections; Self Help; Construction in the BLVD Retail

13.1 **Inspections.** Landlord shall have the right, upon reasonable prior notice of at least twenty-four (24) hours, except in the event of an emergency (in which case only such notice as is practicable shall be required), to enter upon the Premises during normal business hours to determine Tenant's compliance with this Lease or to maintain and repair any pipes, conduits or ducts, whether used in the supply of services to Tenant or to other occupants of the BLVD Retail. Landlord shall further have the right, on at least forty-eight (48) hours prior notice, to enter the Premises in connection with the following: **(A)** construction on the Premises; or **(B)** completing any work, repairs, alterations, or improvements in and about the Premises.

13.2 **Landlord's Right to Self Help.** If Tenant neglects or refuses to make repairs to or to maintain the Premises as required under this Lease, or to fulfill any other obligation (or any part thereof) as required under this Lease, then in addition to all other rights and remedies of Landlord

as a result of such failure, Landlord and/or its agents shall have the right, upon giving Tenant reasonable notice of its election to do so, except in the event of an emergency (in which case only such notice as is practical shall be required), to make the repairs or perform the maintenance or other obligations on behalf of and for the account of Tenant. The cost of the work so done or obligations performed by Landlord or its agents, together with an amount equal to 15% of such costs, shall be paid for by Tenant within ten days after Tenant's receipt of a bill therefor. Nothing herein shall imply any duty on the part of Landlord to do any work which Landlord is not specifically and expressly required to perform under this Lease or which, under any provisions of this Lease, Tenant is required to perform, and the performance of such work by Landlord shall not constitute a waiver of Tenant's default. Landlord shall have no liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs, replacements or action.

13.3 Construction in the BLVD Retail. In connection with any construction, excavation or other building operations related to changes to the BLVD Retail, Landlord, its agents, employees and contractors shall have the right of access to enter the Premises on reasonable prior notice of at least twenty-four (24) hours to Tenant and to strengthen, add to or shore the foundations, walls, columns or supporting members thereof, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Premises, in Landlord's sole discretion, and Landlord shall use reasonable efforts to complete all construction in the Premises as promptly as possible (considering the nature and extent of the construction and subject to prudent construction practices). Tenant's obligations under this Lease shall not be affected by any such changes, construction, excavation or other building operations, and so long as Landlord acts reasonably, Landlord shall not be liable for any inconvenience, disturbance, loss of business or any other annoyance arising therefrom, subject to Tenant's exclusivity right, right to Quiet Enjoyment and other rights hereunder.

ARTICLE 14

Utilities/Meters; Interruption of Service

14.1 Utilities/Meters. Tenant agrees to obtain directly from the provider thereof and pay all charges for electricity, air conditioning, heating, gas, water, sanitary sewer and other utility bills relating to the parcels constituting the Premises from and after the Delivery Date. If any utility services are not separately metered to the Premises, Landlord may require Tenant (as part of Tenant's Work or at any time during the Term of this Lease), at Tenant's sole cost and expense, to install check or sub-meters to measure Tenant's consumption of such utilities, and shall pay Landlord as Additional Rent, a share of the cost of such utilities (based on Tenant's consumption thereof as evidenced by such check or sub-meter and the rate for such utilities paid by Landlord). Additionally, if any utility service (whether separately or jointly metered to the Premises) is required to be maintained in Landlord's name, Tenant shall either pay all charges for such utility if separately metered to the Premises, or a proportionate share thereof (as set forth in this paragraph above) if jointly metered with other premises. Tenant shall pay any tap, connection and hook-up fees, and any security and other deposits, payable in connection with the utilities serving the Premises except for such development impact fees or hook-up fees charged by the City. All utilities (if separately metered) shall be transferred into Tenant's name on or before the Delivery Date (or such earlier date as Tenant may enter the Premises to perform Tenant's Work). If Tenant installs any electrical equipment that overloads the lines in the Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of codes and ordinances of the City or any governing body having jurisdiction.

14.2 **Interruption of Service.** No reasonable interruption in, or temporary stoppage of (not to exceed one business day), any of the services or utilities furnished to the Premises is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation under this Lease, render Landlord liable for damages or entitle Tenant to any Rent abatement. If Tenant is reasonably unable to operate its business for more than 5 business days, Tenant will be entitled to a rent abatement after such week until the Tenant is able to resume operations, unless the interruption is caused by Landlord, in which event Rent shall abate immediately and continue until such services are restored. If any interrupted services are not restored within ninety (90) days, Tenant may terminate this Lease by written notice to Landlord given during the continuance of the interruption.

ARTICLE 15

Tenant's Insurance; Landlord's Insurance; Mutual Release and Waiver of Subrogation

15.1 **Tenant's Insurance.** Tenant, at its sole cost and expense, shall obtain and keep in force commencing as of the Delivery Date, the following insurance with an insurance company authorized to do business in Arizona or alternatively through an actuarially sound self-insurance program:

A. **"Special Form Causes of Loss" Property Insurance.** Property insurance using ISO forms CP0010 and CP1030 (or their equivalent) and including equipment breakdown covering all of Tenant's Property, plate glass and all **"Leasehold Improvements"** (as defined in **Article 21**) in the Premises made and paid for by Tenant (including, without limitation, Leasehold Improvements paid for with the Tenant Allowance, if any), in an amount equal to the full replacement cost thereof.

B. **Business Interruption Insurance.** Business interruption insurance using ISO form CP0030 (or its equivalent) and including equipment breakdown, with a deductible or waiting period of no greater than 72 hours, in an amount that shall reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against in the previous Subsection or attributable to the prevention of access to the Premises by civil authority; and sufficient to reimburse Tenant for Rent in the event of a casualty to, or temporary taking of, The BLVD Retailor the Premises.

C. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, including Dram Shop or host liquor liability (if alcoholic beverages are sold or served in, from or about the Premises), written on an occurrence basis, with policy limits of not less than \$1,000,000.00 per occurrence, unless Landlord agrees to a lesser amount.

D. **Environmental Insurance.** Without limiting the provisions of **Article 32**, in the event Tenant's use of the Premises does or might result in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants (including, without limitation, any Hazardous Materials) into or upon land, the atmosphere or any watercourse or body of water, then Tenant shall obtain environmental insurance insuring against any loss for bodily injury, property damage, cleanup costs and defense expenses resulting from any of the above-described causes with limits of not less than \$2,000,000.00 inclusive per occurrence and \$2,000,000.00 annual aggregate, per location.

E. **Employer's Liability Insurance and Workers Compensation.** Employer's Liability insurance, with minimum limits of not less than \$500,000.00, bodily injury each accident, \$500,000.00 bodily injury by disease policy limit, and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation in form and amount as required by applicable law.

F. **Umbrella Liability Insurance.** Umbrella liability insurance over such primary general liability, employer's liability insurance policies and/or commercial automobile liability insurance (as applicable) in limits of not less than \$2,000,000.00, inclusive, per occurrence, and \$2,000,000.00 annual aggregate.

G. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident).

15.2 **Policies of Insurance.** Tenant shall have the right to satisfy the insurance required by this Article by means of blanket insurance policy(ies). All general liability policies of insurance or certificates thereof shall name Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear. Any and all deductibles or co-insurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance of the insurance policies as required by this Agreement, issued by Tenant's insurance 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. The Landlord 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. Tenant agrees to further provide Landlord evidence of renewals of policies upon request. The required coverage and/or limits referred to herein shall in no way affect or limit Tenant's liability with respect to its duties and obligations under this Lease.

15.3 **Uses Which Affect Insurance.** Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or the Subject Retail, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises or the Subject Retail, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. If any invalidation of coverage or increase in the rate of insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to the act of Tenant, and Tenant shall be liable for the increase and such amount shall be considered Additional Rent payable with the next monthly installment of Minimum Rent due under this Lease unless Tenant cures such act or omission after receiving written notice of same.

15.4 **Landlord's Insurance.** Landlord shall, at all times during the Term, carry a policy or policies of commercial general liability insurance covering the Common Areas in The BLVD Retail and special form causes of loss insurance covering Landlord's improvements in the BLVD Retail, all in such forms and amounts and with such deductibles and self-insured retentions as Landlord reasonably deems appropriate. Landlord shall not be required to carry insurance of any kind on Tenant's Property, and Tenant hereby acknowledges and agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If insurance coverages generally maintained by landlords of similar space in similar buildings in the area in

which The BLVD Retail is located increase or otherwise change, Landlord may similarly change the insurance coverages Landlord maintains under this Lease.

ARTICLE 16

Non-Liability of Landlord; Tenant Indemnification; Landlord Indemnification; Third Party Claims; Tenant's Risk

16.1 RESERVE

16.2 Tenant Indemnification. Tenant hereby agrees to indemnify, defend, and hold Landlord and its affiliates, owners, appointed and elected officers, agents and employees (collectively, the "**Landlord Indemnified Parties**") harmless for, from and against any and all "**Losses**" (as defined in this Section), to the extent arising from any or all of the following (collectively, "**Tenant's Indemnified Matters**"): **(A)** the conduct or management by Tenant or Tenant's officers, directors, members, partners, agents, employees, or representatives ("**Tenant Parties**") of the Premises or any business therein, or any work or Alterations done, or any condition created by Tenant or any Tenant Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; **(B)** the gross negligence, willful misconduct, or bad faith of any or all of Tenant and Tenant Parties occurring in the Premises; **(C)** any accident, injury or damage whatsoever occurring in, at or upon either or both of The BLVD Retail and the Premises and caused by Tenant and/or Tenant Parties; **(D)** any breach by Tenant of any of its warranties and representations under this Lease; **(E)** any violation by any or all of Tenant and/or any Tenant Parties of any law, code, ordinance or other governmental regulation in connection with this Lease or the Premises; **(F)** any breach or default on the part of Tenant in the performance of any covenant or obligation contained in this Lease; **(G)** claims for work or labor performed for or materials supplied or furnished to Tenant and/or any Tenant Parties. In case any action or proceeding is brought against any or all of Landlord and Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord, shall defend such action or proceeding by counsel reasonably satisfactory to Landlord. For purposes of this Article, the term "**Losses**" shall mean all third party claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, suits, administrative proceedings, costs and fees, including, attorneys' reasonable fees and expenses, that are reasonably related to any matter covered by the foregoing obligations. The provisions of this Section shall survive the expiration or termination of this Lease.

16.3 Landlord Indemnification. To the extent permitted by law, Landlord hereby agrees to indemnify, defend, and hold harmless Tenant, its affiliates, owners, appointed and elected officers, agents and employees (collectively, the "**Tenant Indemnified Parties**") for, from and against any and all claims, actions, suits, judgments, decrees, orders, liability and expense in connection with loss of life, bodily injury and/or damage to property (collectively, "**Landlord's Indemnified Matters**") using counsel reasonably acceptable to Tenant **(A)** arising from or out of any occurrence in or upon any of the Common Areas, except to the extent the same is caused by the willful misconduct or negligent act or omission of Tenant and/or Tenant Parties; and/or **(B)** occasioned wholly or in part by any omission, willful misconduct or negligent act of Landlord or Landlord's agents, employees, servants, or representatives or breach of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or earlier termination.

16.4 RESERVE

16.5 **Tenant's Risk.** All personal property in the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any damage done to, or loss of, such personal property, or for damage or loss suffered by the business income or occupation of Tenant arising from any act of neglect of third parties, or from bursting, overflowing, or leaking of water, sewer or steam pipes, rain, wind, tornadoes, floor or other surface or subsurface water, from overflow of drainage facilities or backup or stoppage of any drain, sewer or other water runoff facility or device or from the heating or plumbing fixtures, noise, dust, or from electric wires, or from gas, odors, natural disaster, riot or act of violence, leaking roofs or caused in any other manner. Tenant shall give Landlord prompt notice of any accident to, defect in or problem in the Premises or Building of which Tenant has knowledge or notice.

ARTICLE 17

Assignment and Subletting

17.1 **Consent of Landlord.** Tenant shall not assign this Lease or sublet the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease any operating department therein, whether by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law or otherwise, and whether voluntary or involuntary, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold, condition, or delay) which consent shall be evidenced by the signature of the City Manager thereon. Any attempt to do any of the foregoing, without the prior written consent of Landlord, shall be void and of no force or effect.

17.2 **Corporate, Partnership or Limited Liability Company Transfer.** Any transfer of Tenant's interest in this Lease by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the **Voting Stock** (as defined in this Section) or majority in interest in Tenant, if Tenant is a corporation or limited liability company, or any transfer of this Lease by transfer of any other ownership interest of Tenant, or any Guarantor, during the Term shall constitute an assignment for the purpose of this Lease, and shall be permitted with the prior written consent of Landlord which shall not be unreasonably withheld. For purposes of this Section, the term "**Voting Stock**" means shares of stock or interest of any kind, regularly entitled to vote for the election of directors, managing partners, or managers or their equivalent of the corporation, limited liability company, partnership or other entity involved.

17.3 **Assignment; Pledging.** If the Premises are occupied in whole or in part by anyone other than Tenant in violation of the terms of this Article, Landlord shall have the right to do the following: **(A)** collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the Rent payable hereunder without being deemed to have approved or consented to such action by Tenant; and/or **(B)** reenter the Premises, assume and take possession of the whole or any part thereof, and remove all persons or personal property therefrom, by direct or summary action, or in a different type of suit or proceeding, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for damages therefor or in connection therewith, and after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law.

17.4 **Event of Assignment or Subletting.** If Tenant wishes to assign this Lease or sublet all or any part of the Premises, it shall first give written notice of such intention to Landlord, furnishing Landlord with a copy of the final proposed assignment or sublease document and with reasonable information as to the identity and financial status of the proposed assignee or

subtenant. Any proposed assignment document shall provide, without limitation, the following: **(A)** that the assignee thereunder shall be liable for all of the obligations of Tenant under this Lease (including, without limitation, the payment of any and all amounts paid or to be paid by Tenant under this Lease on an estimated basis and reconciled on an annual basis, regardless of whether such reconciliation occurs subsequent to such assignment); and **(B)** that any security deposit paid to Landlord under this Lease is transferred to such assignee. Within sixty (60) days after receipt of such notice and documentation from Tenant, Landlord shall have the right, by notice to Tenant, to either: **(1)** permit Tenant to terminate this Lease upon notice of its election to do so to Landlord, in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; **(2)** approve or reject such assignment or subletting; or **(3)** convert the assignment or sublease into a direct lease between Landlord and such proposed assignee or sublessee and receive all of the rents. Notwithstanding the foregoing, Tenant may not attempt to assign or sublease this Lease until 12 months after the commencement of this Lease.

17.5 Permitted Transfer. Notwithstanding anything contained in this Lease to the contrary, Tenant may assign the Lease, upon Landlord's prior consent, which shall not be unreasonably withheld (a "**Permitted Transfer**") to a legal entity (a "**Permitted Transferee**") which is either: **(A)** the successor, by merger or otherwise, to all or substantially all of Tenant's assets and liabilities; or **(B)** controls or is controlled by or is under common control with Tenant. For purposes of this Section, the term "**control**" (including the terms "controls," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. However, any assignment, including a Permitted Transfer, shall not in any way relieve Tenant of liability as to any term or condition of this Lease without the express approval of Landlord.

17.6 Miscellaneous Provisions. Landlord agrees to give a reasonable estoppel letter to any assignee or sublessee to which Landlord consents or in the event of a Permitted Transfer, upon request from such assignee or sublessee. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article shall be void and of no further force or effect. All rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord and forwarded immediately to Landlord without offset or reduction, or, at Landlord's election, such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's Rent obligations). All consideration paid to Tenant for an assignment, sublease or other right to use the Premises which is in excess of the amount required to be paid over to Landlord for the use of the Premises (or pro rata portion of the amount required to be paid to Landlord in the case of a sublease of a portion of the Premises) shall be paid to Landlord by Tenant upon receipt. Tenant shall pay all costs incurred by Landlord in connection with any proposed assignment or sublease, including reasonable attorneys' fees, and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

17.7 No Release or Waiver. Notwithstanding anything contained in this Lease to the contrary, no consent or action by Landlord, and no assignment or subletting permitted by Landlord, shall be deemed a waiver or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder unless otherwise agreed to in writing. All obligations and duties shall continue notwithstanding any such consent, assignment or subletting.

ARTICLE 18

Landlord Transfer

18.1 **Landlord Transfer.** Landlord reserves the right to sell or otherwise assign its interest in this Lease or the Premises, subject to Tenant's Purchase Option. The acquisition of title or of Landlord's interest in this Lease by a subsequent owner shall not affect or impair this Lease. However, Landlord may not sell, assign, or otherwise transfer the Building or this Lease with Tenant without also selling, assigning, or otherwise transferring any and all of Landlord's liabilities and/or responsibilities under this Lease. If Landlord conveys or transfers its entire interest in the Premises, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer. Upon notice of such transfer, Tenant shall attorn to the new owner as landlord.

ARTICLE 19

Permitted Use; Prohibited Uses; Future Restriction; Rules and Regulations; Legal Requirements; Radius Restriction

19.1 **Permitted Use.** It is understood and agreed between the parties hereto that during the Term of this Lease, the Premises shall be used and occupied only for the Permitted Use as defined in **ITEM 3** of the Cover Sheet and for no other purpose or purposes without the prior written consent of Landlord (which may be withheld in Landlord's sole and absolute discretion). In the event Landlord elects (in the exercise of its sole and absolute discretion) to permit Tenant to use all or any portion of the Premises for a use other than the Permitted Use described in **ITEM 3** of the Cover Sheet, then such approved use shall constitute a "**Permitted Use**" for purposes of this Lease.

19.2 **Prohibited Uses; Future Restrictions.** Tenant shall promptly comply with all encumbrances of record affecting the Premises from time to time, all laws, ordinances and lawful orders, the rules adopted by the Declarant, or, if applicable, any rules and regulations of the BLVD Retail, as may be amended or promulgated in the future so long as there is not material adverse effect to Tenant, affecting the Premises and the cleanliness, safety, occupation and use of the same. In addition to other restrictions on the use of the Premises, Tenant shall not use or permit the Premises to be used for, and the Premises are subject to, and Tenant shall abide by, the "**BLVD Retail Rules and Regulations**" (as defined in this Article). In the event Tenant violates any of the provisions of this Section, Landlord shall have all rights and remedies provided in this Lease, in addition to all rights and remedies available to Landlord at law or in equity, including, but not limited to, injunctive relief.

19.3 **BLVD Retail Rules and Regulations.** In addition to the restrictions contained in this Lease, Landlord may from time to time promulgate reasonable and non-discriminatory rules and regulations which further govern the operation of Tenant's business in the Premises and in and about The BLVD Retail and which do not have a materially adverse effect on Tenant ("**BLVD Retail Rules and Regulations**"). Tenant agrees to abide by and comply with all such reasonable and non-discriminatory rules and regulations. A copy of The BLVD Retail Rules and Regulations currently in effect for The BLVD Retail is attached hereto as **Exhibit C** and incorporated herein by this reference.

19.4 **Legal Requirements.** Tenant shall be obligated (and shall be responsible) to comply with any Legal Requirements, which pertain to Tenant's use and occupancy of the

Premises, whether such Legal Requirements are structural or nonstructural in nature. The term “**Legal Requirements**” means all applicable current or future statutes, ordinances, orders, rules, regulations, judgments and requirements of public authorities with jurisdiction over The BLVD Retail and/or the Premises, and all other matters of record affecting the Premises from time to time. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which is not within the Permitted Use of the Premises which shall in any way increase the existing rate of or affect any fire or other insurance upon the Premises or The BLVD Retailor any of its contents, or cause a cancellation of any insurance policy covering said Premises or The BLVD Retailor any part thereof or any of its contents. Further, Tenant shall furnish and maintain an adequate number of fire extinguishers in good operating condition as may be reasonably required by Landlord or any governmental authority, and in any event, not less than one such extinguisher for each floor or level of the Premises or as may be required under the adopted fire code of the city.

ARTICLE 20

Bankruptcy and Other Actions

Any Event of Default of the type described in **Subsection 23(D)** (captioned “**Bankruptcy**”) under the Default provisions of this Lease (a “**Bankruptcy Event**”) shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

A. No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

B. It is understood and agreed that this is a lease of real property in a shopping center as such a lease is described in Section 365(b)(3) of the Bankruptcy Code, that Landlord is entitled to all rights and benefits of a landlord thereunder, and that nothing contained herein shall be deemed a waiver of any such right or benefit.

C. Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: **(1)** the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than thirty (30) days of assumption and/or assignment; **(2)** the deposit of an additional sum equal to three months of Minimum Rent and Additional Rent to be held as security; **(3)** the use of the Premises as set forth in this Lease with the quality and quantity of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; **(4)** the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has retailing experience in shopping centers of comparable size and financial ability to operate a retail establishment out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; **(5)** the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and **(6)** the Premises, at all times, remains a single store, salon, space and school and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE 21
Tenant's Property; Personal Property Taxes; Leasehold Improvements

21.1 **Tenant's Property.** Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's furniture, trade fixtures, signage (including both interior and exterior signage, but excluding signage required by law [e.g., "EXIT" signage]), merchandise, inventory, displays and other personal property paid for by Tenant (i.e., excluding any property or improvements paid for by Landlord either directly or with the Tenant Allowance) located in the Premises (collectively, "**Tenant's Property**"). Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Center resulting from such removal and shall repair any damage to the Premises or Center caused by the removal of Tenant's Property, and all utility lines shall be professionally capped or plugged and Tenant shall leave the Premises in broom clean condition. Tenant hereby agrees that, in addition to any other work required to comply with the provisions of this Section, the foregoing shall require Tenant to repair all damage to the exterior of the Premises resulting from the removal of Tenant's signage and other improvements therefrom. If Tenant shall fail to remove any of Tenant's Property, such property shall become the property of Landlord and Landlord shall have the right to dispose of such property as it deems appropriate, and Tenant shall reimburse Landlord for any reasonable costs thereby incurred on demand. This requirement shall survive the Term of this Lease to the extent necessary to give effect hereto. Notwithstanding anything contained in this Lease to the contrary, in addition to Tenant's obligation to pay its Proportionate Share of Special Assessments as set forth in **Article 7** above, during the Term of this Lease Tenant acknowledges and agrees that it shall pay all taxes, impositions, assessments and similar charges levied or imposed by any governmental or taxing authority against Tenant's Property or any other property or fixtures located in the Premises and used in connection with the operation of Tenant's business therein that are not taxed as real property, whether owned by Landlord or Tenant and to the extent such Taxes are applicable to Tenant (collectively, "**Personal Property Taxes**"). Tenant shall pay all Personal Property Taxes directly to the applicable governmental authority (or, if Landlord receives the bill with respect to any Personal Property Taxes, Tenant shall pay to Landlord within twenty (20) days after receipt of an invoice therefor from time to time, in which event Landlord shall remit such Personal Property Taxes to the applicable governmental authority).

21.2 **Leasehold Improvements Remain.** Notwithstanding anything to the contrary set forth in this Lease, all alterations, installations, additions or improvements upon or to the Premises attached or affixed to the real estate by either party, including, but not limited to, all paneling, millwork, decorations, partitions, air conditioning units, heating equipment, hot water heaters, light fixtures, railings, mezzanine floor, elevators, stairways, vault doors, and the like (collectively, the "**Leasehold Improvements**"), shall immediately become the property of Landlord upon installation and shall remain upon, and be surrendered with the Premises, as a part thereof, at the termination of this Lease. The value or cost of the Leasehold Improvements constructed by Tenant shall in no way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent.

ARTICLE 22
Eminent Domain

22.1 **Definition/General.** In the event of a taking of all or any part or of any interest in the Premises, the Building, the Subject Retail buildings, the Common Areas or any other part of the property by reason of any exercise of the power of eminent domain, or if there is a transfer thereof or of any interest therein, made in avoidance of an exercise of the power of eminent domain (all of the foregoing being hereinafter collectively referred to as a "**Taking**"), the following

provisions shall apply. Landlord shall notify Tenant of any pending or threatened Taking and of all related proceedings including the settling of any award.

A. **Total Taking.** In the event of a Taking of all of the Premises, the BLVD Retail, this Lease shall terminate as of the date of such Taking and all of Tenant's obligations hereunder, including its obligation to pay Rent accruing from and after the date of the Taking shall terminate as of the date of such Taking. To the extent that compensation for a complete taking of the premises includes the value of the Tenants Improvements, such compensation for value of the Tenant improvements shall be provided to Tenant

B. **Partial Taking.** In the event of a Taking of the following: **(1)** more than 20% of the Premises; **(2)** more than 40% of the Building or the Subject Retail buildings; **(3)** more than 35% of the Common Areas (including the parking areas); or **(4)** more than two of the accessways serving The BLVD Retail without replacement thereof, then Tenant or Landlord may terminate this Lease by notice to the other within sixty (60) days after possession is taken by the condemning authority; PROVIDED, HOWEVER, in the event Tenant elects to terminate this Lease pursuant to Clause (3) above, Landlord shall have the right to nullify such election by giving Tenant notice of its election to promptly restore the Common Areas so taken or furnish substitute facilities which are functionally equivalent to or better than the Common Areas so taken and within a reasonable distance from those portions taken.

22.2 **Restoration.** In the event this Lease is not canceled as herein provided, then Landlord shall: **(A)** restore, if the condemnation award proceeds are available and sufficient to do so, the affected portion and, if applicable, so much of the remainder of the Premises to a complete architectural unit to the extent that they existed on the date physical delivery thereof was initially delivered to Tenant prior to the Commencement Date (in any event subject to then existing code); and **(B)** turn over to Tenant (for restoration purposes by Tenant) that portion of Landlord's award applicable to Tenant's Work initially installed by Tenant and additional Tenant Improvements that was awarded to Landlord (rather than to Tenant) and not otherwise received by Tenant from the condemning authority or pursuant to **Section 22.3** (captioned "**Award**") for such element of damage; PROVIDED, HOWEVER, Landlord may terminate this Lease, if no condemnation award proceeds are available or the condemnation award proceeds are insufficient to restore such affected portion or remainder of the Premises as provided above, by written notice to Tenant within sixty (60) days after the date the condemning authority notifies Landlord of the amount of the condemnation award proceeds (if any). Following the physical delivery of the Premises to Tenant, Tenant shall commence and complete restoration of the Premises to at least the extent of Tenant's Work initially installed by Tenant and additional Tenant Improvements, subject to Tenant receiving enough award proceeds to pay for such Improvements (if there is not enough award, Tenant will have the option to terminate the Lease). During the period of restoration in the Premises only, the Rent shall be equitably abated in accordance with the nature and extent that Tenant's use and enjoyment of the Premises has been affected. Notwithstanding anything contained in this Lease to the contrary, in the event Landlord restores the Premises, Tenant shall agree to waive any existing Opening or On-Going Co-Tenancy Failure(s) and Tenant's Economic Termination Right.

22.3 **Award.** All damages awarded for any Taking shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; PROVIDED, HOWEVER, Tenant shall in no event have any right to receive any award for its interest in this Lease or for

loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord. Notwithstanding the foregoing provisions of this Article, Landlord may terminate this Lease with no further liability to Tenant in the event that following any Taking of any part of the BLVD Retail, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in The BLVD Retail elects to require the application of an award or payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

ARTICLE 23

Default

23.1 **Default Definition.** The occurrence of all or any of the following occurring on either or both parcels shall constitute an "**Event of Default**" by Tenant. It is not required that Tenant be in default on both parcels:

A. **Non-payment of Rent or other sums.** Any installment of Rent, Additional Rent or any other sum(s) required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid following the due date and after ten (10) days receipt of written notice thereof as herein provided.

B. **Vacation or Abandonment of Premises.** Tenant has "**vacated or abandoned**" (as defined in this Subsection) the Premises, and such conditions continues for a period of more than ten (10) days after Tenant's receipt of written notice thereof. For purposes of this subsection, the term "**vacated or abandoned**" shall mean that Tenant has: **(1)** ceased operating for business in the Premises or any part thereof, and **(2)** has either: **(a)** in writing expressed to Landlord or its agent its intention to cease performing all or any of its obligations under this Lease; or **(b)** removed such items of Tenant's Property from the Premises so as to render the Premises or any part thereof unsuitable for the operation of Tenant's business therein; or **(c)** tendered the keys to the Premises to Landlord or its agent; PROVIDED, HOWEVER, Tenant hereby agrees that no acceptance of notice or of the keys to the Premises by Landlord or any agent of Landlord shall constitute an acceptance of surrender of the Premises or terminate this Lease or Tenant's liability hereunder.

C. **Non-performance.** There is any default or breach on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default or breach shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (or, if such default cannot reasonably be cured within thirty (30) days, if Tenant shall fail to commence to cure the default within such thirty (30) day period or thereafter fails to diligently pursue such cure to completion, but in no event shall cure period exceed ninety (90) days).

D. **Bankruptcy.** If: **(1)** Tenant or any Guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; **(2)** Tenant or any Guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant or any Guarantor of Tenant's obligations under this Lease is granted in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease; or **(3)** a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

E. **Attachment.** This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within 15 days after its levy.

F. **Failure to Take Possession.** Tenant fails to take possession of the Premises on the Commencement Date as required hereunder.

23.2 **Remedies.** Upon an Event of Default of Tenant hereunder Landlord, at its option, may exercise any of the following remedies, which shall be in addition to the exercise of all rights and remedies of Landlord under this Lease, at law or in equity, with respect to such Event of Default:

A. **Terminate.** Cancel and terminate this Lease and all rights of Tenant hereunder and enter the Premises and take possession thereof.

B. **Take Possession.** Without terminating the Lease, re-enter and take possession of the Premises and remove all persons and property therefrom. Landlord shall also have all other rights and remedies upon default provided by law, including those set forth in the Uniform Commercial Code. The sale, lease, or other disposition of the property shall be either public or private after at least thirty (30) days' notice to Tenant at his last known address, and Landlord shall have the right and privilege to be a purchaser at any such sale. Landlord and Tenant agree that thirty (30) days' notice of such sale, lease, or other disposition of the property is reasonable under the circumstances. Landlord shall not be deemed guilty of trespass or liable for any loss or damage occasioned thereby. Should Landlord elect to re-enter, as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law or by this Lease, Landlord may either cancel this Lease pursuant to the rights reserved elsewhere in this Lease, or Landlord may, from time to time, without canceling this Lease, make such alterations and repairs as may be necessary in order to relet the Premises; and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorneys' fees, third, to the payment of costs of any alterations and repairs necessary to relet the Premises, fourth, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent or damage as such amounts may become due and payable hereunder during the entire term of the Lease. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to cancel this Lease unless a notice of such intention is given to Tenant or unless the cancellation thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to cancel this Lease for such previous Event of Default.

C. **Locks/Security Devices.** Alter locks and other security devices at the Premises in accordance with applicable law.

D. **Tenant Improvement Allowance.** Withhold payment of any unpaid portion of the Tenant Improvement Allowance pertaining to either or both parcels, if any, regardless of

whether Tenant has already paid for all or any portion of the cost of the work, materials or labor to be paid for with the Tenant Improvement Allowance.

E. **Injunctive Relief.** Without limitation, exercise any other right at law or in equity, including specifically, but not by way of limitation, the pursuit of temporary or permanent injunctive relief.

23.3 **Additional Provisions.** If Tenant shall after default voluntarily give up or tender possession of the Premises to Landlord, by delivering the keys to the Premises to Landlord or its agent or property manager, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord shall not be deemed to constitute a surrender of the Premises or otherwise affect Landlord's rights in connection with such default; it being understood and agreed that such surrender may be effected only by the written agreement of Landlord and Tenant. In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a Landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this Section are commercially reasonable.

ARTICLE 24

Tenant's Right to Terminate Lease

Notwithstanding any other provision of this Lease, the effectiveness of this Lease is expressly conditioned on the ability of the Tenant to maintain an accredited status as an educational institution as established by the United States Department of Education. Tenant agrees to provide Landlord with one hundred and twenty days (120) notice of any action by the United States Department of Education to revoke Tenant's status as an accredited institution. If the Tenant loses such accreditation for any reason, or if the Tenant fails to operate its business at the Premises due to a change in accreditation status, then Tenant shall have the right to terminate this Lease upon written notice to Landlord.

ARTICLE 25

Subordination; Estoppels

25.1 **Subordination.** Tenant covenants and agrees that **(A)** this Lease is and shall automatically and without further act or deed by Tenant be and remain subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of The BLVD Retail(each a "**Mortgage**") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and

extensions thereof or participation thereof, **(B)** any mortgagee, grantee, master lessor, beneficiary or trustee (each a "**Mortgagee**") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by Landlord or such Mortgagee to Tenant to that effect, this Lease shall without further act or deed by Tenant be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage, and **(C)** Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises (each a "**Foreclosure**") and if requested by Landlord's successor, Tenant shall attorn to such successor and shall recognize that successor as Landlord under this Lease. Tenant agrees that such successor shall not be **(1)** liable for any act or omission of Landlord under this Lease occurring prior to such Foreclosure, **(2)** subject to any offset accruing to Tenant against Landlord prior to such Foreclosure, or **(3)** bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with such successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

25.2 **Estoppel.** The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Lease shall be deemed unreasonable and shall not establish any rights or obligations on the part of either party. Within 20 days after the request of the other party at any time and from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other party a written instrument in form reasonably acceptable to Landlord and Tenant, duly executed, acknowledged: **(A)** certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified; **(B)** specifying the dates to which the Minimum Rent, Additional Rent and other charges hereunder have been paid; **(C)** stating whether or not, to the knowledge of the party executing such instrument, the other party is in default and, if so, stating the nature of such default; **(D)** stating the Commencement Date; **(E)** stating whether the option to extend the Term has been exercised; and **(F)** affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be required by the other party.

ARTICLE 26

Notices

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, or **(D)** if transmitted by electronic mail to the address for each party set forth below if no return error message or delivery failure message is received by the sender thereof :

If to Tenant:	West Valley Institute, LLC
	Dale LeMonds
	801 Kalamath St,
	Denver, CO 80204
	303-995-5958

dlemonds@avedadenver.com

With copy to:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Economic Development Director
kchapa@avondaleaz.gov

With copies to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Manager

City of Avondale City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

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 **(1)** when delivered to the party, **(2)** three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or **(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. 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.

ARTICLE 27

Surrender of Premises

Tenant shall surrender the Premises in broom clean condition and in good order, condition and repair, reasonable wear and tear and insured casualty damage excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 28

Holding Over

If Tenant remains in possession of the Premises after the expiration of the Term or earlier termination of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month holdover Tenant, subject to all the provisions of this Lease insofar as they are applicable to a month-to-month tenancy, but at

a daily rental of 125% per day Minimum Rent and Additional Rent provided under this Lease, computed on the basis of a thirty (30) day month.

ARTICLE 29

Casualty

29.1 **Removal of Debris.** In the event of a casualty, Tenant shall be responsible for the prompt removal of all debris resulting from Tenant Improvements installed in the Premises by Tenant, including Tenant's furniture and fixtures.

29.2 **Termination.** If at any time during the Term, the Premises or any material portion of The BLVD Retail should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion of the Premises and/or The BLVD Retail to substantially the condition which existed at the time of Landlord's tender of possession of the Premises to Tenant or alternatively, to terminate this Lease. Landlord shall notify Tenant of its election within twenty (20) days after receipt of notice from Tenant of such damage or destruction. In the event Landlord elects to terminate this Lease pursuant to this Section, Rent shall be apportioned on a per diem basis and be paid to the date of termination, such termination to be effective thirty (30) days following the date of Landlord's notice and upon expiration of such thirty (30) day period neither party shall have any further rights or obligations hereunder. Rent shall be abated for the period Tenant is unable to operate in the Premises.

29.3 **Repair.** If Landlord elects to repair and restore the Premises: **(A)** this Lease shall continue in full force and effect; **(B)** such repairs shall be made by Landlord within a reasonable period of time; and **(C)** Rent shall abate proportionately only during the period and to the extent that the Premises are unfit for use, and are not otherwise used, by Tenant to operate its business. Notwithstanding the foregoing, if the damage is due to the gross negligence of Tenant or its employees, there shall be no abatement of Rent. If Landlord elects to repair and restore the Premises, Tenant hereby covenants and agrees to restore the interior of the Premises, pursuant to Landlord's standard construction procedures, and reopen in the Premises promptly thereafter. Rent shall be abated for the period Tenant is unable to operate in the Premises.

29.4 **Notice.** Tenant shall give notice to Landlord within two (2) business days after Tenant learns of any material damage or destruction at the Premises.

ARTICLE 30

Waiver

One or more waivers of any covenant or condition of this Lease by Landlord shall not be construed as a waiver of a further breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar act by Tenant. No receipt of money by Landlord after a Tenant default has been declared shall, without the consent of Landlord, in any way reinstate, continue or extend the Term of this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance of surrender of the Premises without Landlord's acknowledgment thereof.

ARTICLE 31

Quiet Possession

Landlord agrees that, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall peaceably and quietly have, hold and enjoy the Premises free from molestation by Landlord or any party claiming by, through or under Landlord.

ARTICLE 32

Asbestos and Other Hazardous Materials

32.1 Definitions. For purposes of this Lease:

A. **"Environmental Laws"** means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

B. **"Hazardous Materials"** means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law excluding any products necessary in operating a salon, spa and professional school, or permitted use, as addressed under **Item 3**.

C. **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaking, dumping, discarding, burying, abandoning, using, generating, permitting, producing, introducing, maintaining, disposing or releasing into the Premises, The BLVD Retailor the environment.

D. **"Environmental Authorities"** means the United States, the State and any political subdivision thereof, the United States Environmental Protection Agency and any and all governmental authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction under any Environmental Law.

E. **"Notice"** means any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Material, and shall include the imposition of any liens on The BLVD Retailor revenues or assets of Landlord.

32.2 Tenant Requirements. Landlord is unaware of Hazardous Substances on the Premises. If this is a material concern to the Tenant, this shall be investigated by the Tenant prior to Lease Execution. Landlord will comply with all Environmental Laws as to the Premises and Common Areas. Neither Tenant, nor its agents, employees, contractors, servants, subtenants, concessionaires or invitees, shall Release any Hazardous Materials in or about any portion of the Premises or the BLVD Retail, or transport any Hazardous Materials to or from the Premises or the BLVD Retail, except construction materials (other than asbestos or polychlorinated biphenyls), office equipment, cleaning solutions, other maintenance materials and oil and other petroleum products that are or contain Hazardous Materials may be used, handled or stored on the Premises, provided such materials, equipment, solutions and products are used in de minimis amounts and are used only incidental to and as reasonably necessary for the operation and maintenance of the Premises for the Permitted Use hereunder and in compliance with all applicable Environmental Laws. In addition, neither Tenant, nor its agents, employees, contractors, servants or subtenants, shall install, use or permit the installation or use of storage tanks or other subterranean structures, on, under or adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws applicable to Tenant's operations in the Premises and the BLVD Retail, and make all submissions to, provide all information required by, and comply with all requirements of all Environmental Authorities. If there is any Release or transportation by Tenant of Hazardous Materials at or from the Premises or the BLVD Retail by Tenant or at Tenant's direction, or which arises at any time from Tenant's use or occupancy of the Premises or the BLVD Retail, and Landlord, any Environmental Authority or any third party demands that a remediation be undertaken, then Tenant, at Tenant's sole cost and expense, shall prepare and submit remediation plans for the demanding party's approval, and Tenant shall carry out all such remediation in accordance with such approved plans. In addition, Tenant shall promptly provide all information regarding the Release or transportation of Hazardous Materials that is requested by Landlord. If remediation is required by Tenant pursuant to the provisions of this Article, then Tenant shall continue to pay any and all Rent that comes due during such remediation and no abatement of Rent shall apply. If Tenant fails to fulfill or begin to fulfill any obligation imposed under this Section within 30 days after receipt of written notice from Landlord, Landlord may, in its sole discretion, undertake the remediation of such Hazardous Materials from the Premises and/or the BLVD Retail, in which event Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and the BLVD Retail, and Tenant's use thereof and for compliance therewith. In addition, Tenant shall execute all documents promptly upon Landlord's request, and reimburse Landlord for all reasonable expenses incurred by Landlord in fulfilling Tenant's obligations set forth in this Section, together with an additional amount equal to 25% of such expenses, within ten days after receipt of an invoice therefor. Notwithstanding the foregoing, Tenant shall have no obligation to undertake any remediation or incur any costs or expenses (as required in this Section) as a result of Hazardous Materials **(A)** existing in the Premises on or before the Delivery Date and not Released by Tenant, or its agents, employees, contractors, servants, subtenants, concessionaires or invitees; or **(B)** Released in the Premises or The BLVD Retail by Landlord, its agents, contractors or employees, or a third party unrelated to Tenant.

32.3 Tenant Indemnification. Tenant shall indemnify, protect and save Landlord, its officers, members, managers, agents and servants, and any Encumbrance Holder and management company (collectively, "**Landlord's Indemnitees**"), harmless for, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any of the Landlord Indemnitees, arising out of, or in any way connected with, any material breach of the requirements set forth in this Article by Tenant or any of its agents, employees, contractors, servants, subtenants, concessionaires or invitees. In connection with Tenant's indemnification hereunder: **(A)** upon receipt of written notice from Landlord, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord or the Landlord Indemnitees by counsel reasonably satisfactory to Landlord, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding; and **(B)** Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord, or any of the Landlord Indemnitees, arising out of any such claim, demand, action, petition or order.

Landlord will comply with all Environmental Laws as to the Building and the Common Areas.

32.4 Survival. The provisions of this Article shall extend to and be enforceable by Landlord's liability, health, disability and worker's compensation insurers, and shall survive the expiration or sooner termination of the Term.

ARTICLE 33

Security Deposit; Conflicts; Access; Relationship; Headings & Miscellaneous

33.1 Security Deposit. On or before the Effective Date, Tenant shall deposit a Security Deposit with Landlord equal to the first month's Rent. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any of the Rent or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit, or so much thereof as may be necessary to compensate Landlord for Minimum Rent, Additional Rent, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the rentals when due and all other sums payable by Tenant to Landlord, said Security Deposit shall be refunded in full to Tenant at the expiration or earlier termination of this Lease as mutually agreed to by both parties. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, as specified in **Article 20**, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due Landlord for the earliest periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Premises in the event that such interest is transferred and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section shall also apply to any subsequent transfer of Landlord's interest in the Premises.

33.2 **Governing Item.** Notwithstanding anything contained in the Lease to the contrary, in the event of a conflict between Tenant's approved Construction Documents, as set forth in **Exhibit B-2**, and the terms and conditions of this Lease, including, but not limited to, **Exhibit B-2**, Tenant's approved Construction Documents, as approved by Landlord in accordance with **Exhibit B-2**, shall govern.

33.3 **Landlord Access to Rent.** Landlord may, at any time during the last twelve (12) months of the Term, upon reasonable notice of at least twenty-four (24) hours to Tenant, enter the Premises at all reasonable hours for the purpose of offering them for rent; provided, however, that such actions must not disturb Tenant's use of the Premises for its operations.

33.4 **Relationship.** Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of landlord and tenant.

33.5 **Submission.** The submission of this Lease for examination does not constitute a reservation or any option for the Premises and this Lease becomes effective only upon its execution and delivery by both parties hereto.

33.6 **Headings.** The Article headings used throughout this Lease 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 Lease.

33.7 **Construction.** Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

33.8 **Independent Covenants.** The doctrine of independent covenants shall apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. All obligations of Tenant which by their nature involve performance after the end of the Term, or which cannot be ascertained to have been performed until after the end of the Term of this Lease, shall survive the expiration or earlier termination of this Lease.

33.9 **Holiday Lights.** Tenant agrees to allow Landlord's representative to install and maintain holiday lights on the Premises during the holiday season, if such lights shall not interfere with Tenant's signs or obstruct Tenant's entrance. During the holiday season, holiday lights may be placed upon the outline of the roofline of the buildings located at the BLVD Retail.

33.10 RESERVE

33.11 **Time of Essence & Binding Nature.** Time is of the essence of all of the terms and provisions of this Lease, and the terms and conditions hereof shall extend to and be binding upon the heirs, executors, successors and assigns of the parties hereto and mention of the singular shall include the plural and the plural shall include the singular.

33.12 **Memorandum of Lease.** In accordance with ARIZ. REV. STAT. § 42.6202(C), the City shall record a memorandum of this Lease in the Maricopa County Recorder's Office.

33.13 **Trial Waiver.**

THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

33.14 **Governing Law.** This Lease shall be subject to the laws of the State of Arizona.

33.15 **Attorneys' Fees.** In the event either party to this Lease brings any legal action to enforce the provisions hereof, the prevailing party in any such action shall be entitled to recover from the non-prevailing party all attorneys' fees and other fees and costs incurred by such prevailing party in connection with any such action.

33.16 **Force Majeure.** In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, governmental law or regulations that require closure of Tenant's Business for more than Sixty consecutive days, riots, insurrections, war, pandemics, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("**Force Majeure**"), then performance of such act shall be excused for the number of calendar days of such delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless Landlord or Tenant shall have notified the other of the delay within twenty (20) days after cessation of the event giving rise to such delay setting forth the nature of such Force Majeure and the duration of such delay. The provisions of this Section shall not: **(A)** operate to excuse Tenant from prompt payment of Minimum Rent, Additional Rent or any other payment required by the terms of this Lease; nor **(B)** be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds.

33.17 RESERVE

33.18 RESERVE

33.19 **Tenant Liability; Authority.** If this Lease is executed by more than one person or entity as "**Tenant**", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "**Tenant**" (herein individually referred to as "**Signatory**") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("**Future Instrument**") and bind each such Signatory who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity.

33.20 **Homeland Security.** Tenant represents, certifies and warrants to Landlord as follows: **(A)** Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially

Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; **(B)** Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and **(C)** none of the proceeds used to pay Minimum Rent and Additional Rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic Event of Default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

33.21 Limitation of Landlord's Liability. Notwithstanding any other provision of this Lease, Tenant agrees that neither Landlord nor any of Landlord's officers, directors, partners, shareholders, members or employees shall have any personal liability hereunder. Landlord is a governmental entity and can only be obligated to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease 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 Landlord shall be relieved of any subsequent obligation under this Lease. Landlord shall be the sole judge and authority in determining the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation of Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 31.21.

33.22 Legal Representation of the Parties. This Lease was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

33.23 Agreement; Amendment. This Lease (including all Riders, Exhibits, Addenda and Guaranty, if any) is the complete agreement between Landlord and Tenant concerning the Premises and the BLVD Retail. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings, if any, between the parties hereto with respect to the Premises and the BLVD Retail, shall be of no force or effect and shall not be used to interpret this Lease. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto.

This Lease shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Lease or a counterpart hereof shall be admissible into evidence in any proceeding as though it were an original.

33.24 Subsequent Commencement. This Lease shall be effective as of the day and year first above written notwithstanding that the Term shall commence at a date subsequent thereto and Landlord and Tenant intend that each shall have vested rights immediately upon the full execution signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by the last to sign of Landlord and Tenant.

33.25 Severability. If any provision of this Lease or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Lease shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Lease.

33.26 Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

33.27 Incorporation of Exhibits. All Exhibits identified in this Lease, including, but not limited to the following listed Exhibits, shall be and are hereby incorporated into this Lease by this reference:

EXHIBIT A-1 SITE PLAN
EXHIBIT A-2 SPACE PLAN
EXHIBIT A-3 LEGAL DESCRIPTION OF PROPERTY
EXHIBIT A-4 DEPICTION OF PROPERTY
EXHIBIT B-1 DELIVERY DATE CERTIFICATE
EXHIBIT B-2 CONSTRUCTION GUIDELINES
EXHIBIT C BLVD RETAIL RULES AND REGULATIONS
EXHIBIT D FORM OF COMMENCEMENT DATE MEMORANDUM

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Lease the day and year first above written.

LANDLORD:
CITY OF AVONDALE,
an Arizona municipal corporation

TENANT:
WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Executed: _____

Date Executed: _____

ATTEST:

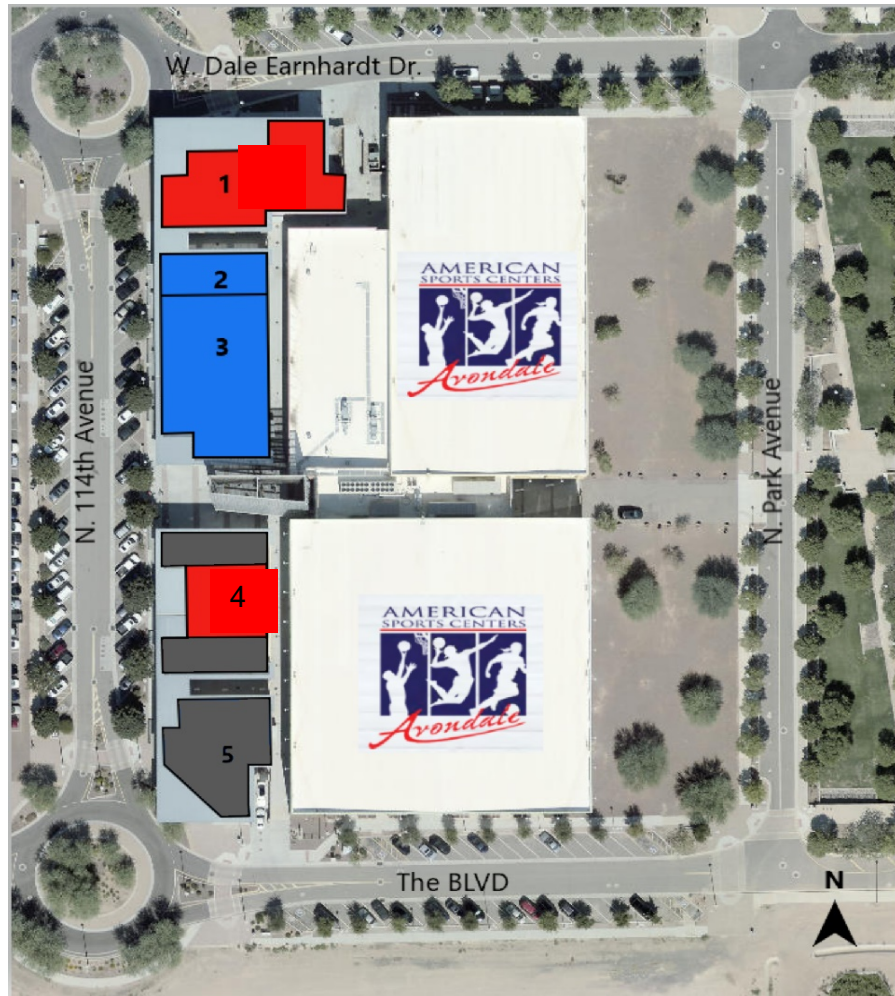
Marcella Carrillo, City Clerk

Date Executed: _____

EXHIBIT A-1

SITE PLAN

Tenant hereby acknowledges that the attached Site Plan is intended to show the approximate layout of The BLVD Retail and location of the Premises.



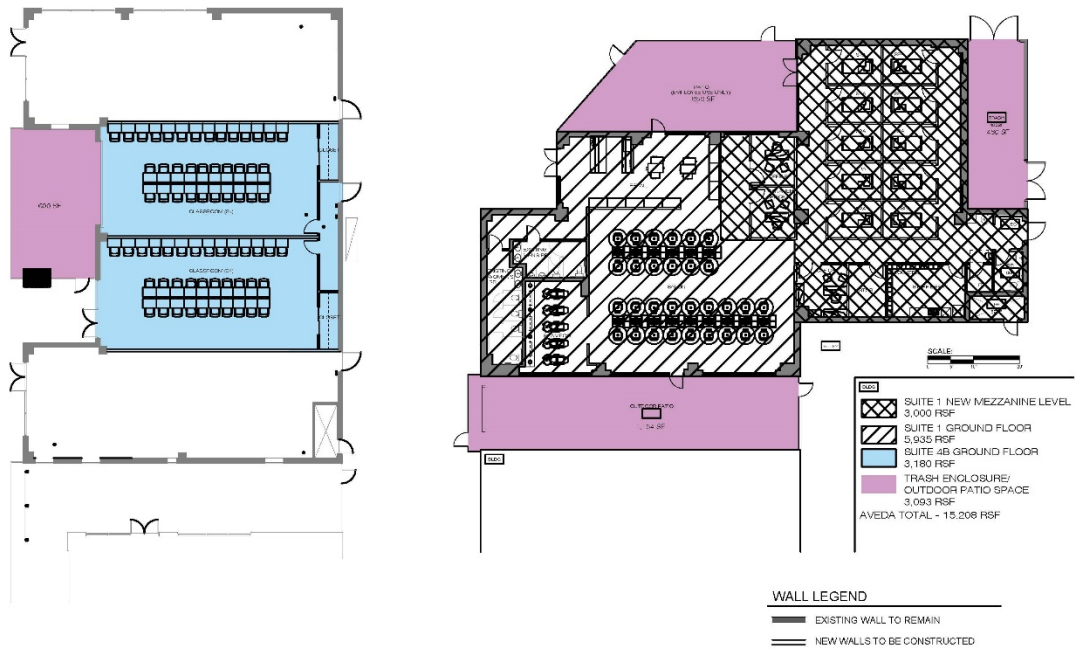
Spaces in RED Highlight only:

Space 1: 775 N. 114th Ave., Avondale, AZ 85323

Space 4: 745 N. 114th Ave., Suite 101, Avondale, AZ 85323

EXHIBIT A-2

SPACE PLAN



obbyhill
STIGNS
1 WEST COLORADO AVE.
SUITE 202
COLORADO SPRINGS, CO.
809-1000 719-834-2289

SPACE PLAN 2
7/15/21
BUILDING TOTAL - 26,294 RSF
BUILDING + MEZZ. TOTAL - 29,294 RSF
RENTABLE AREA - 52%

AVEDA
775 N. 114TH AVE.
AVONDALE, ARIZON

EXHIBIT A-3

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL: 102-57-247

LOT 4A OF THE REPLAT OF LOT 4 OF AVONDALE CITY CENTER PHASE 1 RECORDED IN MARICOPA COUNTY RECORDERS OFFICE BOOK 1077 OF MAPS, PAGE 32 A FEBRUARY 2011 PLAT.

EXHIBIT A-4

DEPICTION OF THE PROPERTY

In the event of any conflict between the depiction of the Property and the legal description of the Property, the legal description of the Property shall control.



EXHIBIT B-1

DELIVERY DATE CERTIFICATION

[DATE]

VIA FEDERAL EXPRESS

Tenant: West Valley Institute, LLC
Dale LeMonds
801 Kalamath Street
Denver, CO 80204

Copy To:

Re: Lease Agreement, dated _____ (the "**Lease**"), between THE CITY OF AVONDALE, an Arizona municipal corporation ("**Landlord**"), and WEST VALLEY INSTITUTE, LLC ("**Tenant**"), with respect to those certain premises contemplated to contain approximately 3,180 rentable square feet, as more particularly depicted and described in **Exhibit A** to the Lease (the "**Premises**") and located at 745 N. 114th Avenue, Suite102, Avondale, Arizona 85323

Dear Tenant:

In accordance with the provisions of the Lease, Landlord and Tenant acknowledge that the Delivery Date (as such term is defined in the Lease) will be deemed to be _____. This notice shall constitute the Delivery Date Certificate from Landlord to Tenant.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carrillo, City Clerk

TENANT:

WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

DELIVERY DATE CERTIFICATION

[DATE]

VIA FEDERAL EXPRESS

Tenant: West Valley Institute, LLC
Dale LeMonds
801 Kalamath Street
Denver, CO 80204

Copy To:

Re: Lease Agreement, dated _____ (the "**Lease**"), between THE CITY OF AVONDALE, an Arizona municipal corporation ("**Landlord**"), and WEST VALLEY INSTITUTE, LLC ("**Tenant**"), with respect to those certain premises contemplated to contain approximately 5,935 rentable square feet, as more particularly depicted and described in **Exhibit A** to the Lease (the "**Premises**") and located at 775 N. 114th Avenue, Avondale, Arizona 85323

Dear Tenant:

In accordance with the provisions of the Lease, Landlord and Tenant acknowledge that the Delivery Date (as such term is defined in the Lease) will be deemed to be _____. This notice shall constitute the Delivery Date Certificate from Landlord to Tenant.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carrillo, City Clerk

TENANT:

WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the “**Construction Guidelines**”) supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as “**Landlord's Work**” in **ITEM 9** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the BLVD Retail, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall, at its own cost and expense, perform all work described as “**Tenant's Work**” in **ITEM 9** of the Lease (the “**Tenant's Work**”). The parties acknowledge that Tenant will not be required to comply with the public procurement laws with respect to Tenant's Work or other alterations hereunder. Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which unreasonably interferes in any way with, or results in a work stoppage in connection with, construction of any part of The BLVD Retail or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of finish drawings (“**Tenant's Drawings**”) by the end of the project.

3.2 **Approval of Tenant's Drawings.** Landlord shall have fifteen (15) days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within fifteen (15) days. Landlord shall have five (5) days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications at 100% design development (“**Construction Documents**”) by _____ 2021. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents.** Landlord shall have fifteen (15) days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within fifteen (15) days. Landlord shall have five (5) days after receipt of the resubmitted Construction Documents to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction

Documents. Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than \$1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs and, in its reasonable discretion, the City may approve or disapprove Tenant's Contractor, specifying in detail any reasons for disapproval. If the Tenant's Contractor is not approved, the City has authority to request that Tenant solicit a different contractor to perform any and all work according to the specifications of this lease.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than \$2,000,000.00 inclusive, per occurrence, and \$2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than \$1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. Employer's Liability Insurance and Workers Compensation.

Employer's Liability insurance, with minimum limits of not less than \$500,000 bodily injury each accident, \$500,000.00 bodily injury by disease policy limit and \$500,000.00 bodily injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. Umbrella Liability Insurance.

Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than \$2,000,000.00 inclusive per occurrence, and \$2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. Builder's Risk Insurance.

Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in The BLVD Retail and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. Insurance Changes.

Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 Policies of Insurance.

Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the BLVD Retail. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance 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. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies 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. Tenant agrees to further provide Landlord evidence of renewals of

policies not later than 30 days prior to the end of the expiring term. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 Conditions to Commencement of Tenant's Work. On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including “**technical data**”; **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 Construction of Tenant's Work. Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punch list items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site cleanup is required.

4.5 Contractor Deposit. Prior to commencement of construction, Tenant or Tenant's contractor shall deposit with Landlord the amount of \$5,000.00 for the Premises as a damage/repair/clean-up deposit (the “**Contractor Deposit**”). Landlord may utilize the Contractor Deposit if Tenant's contractor does not repair damage to the property, damages the property, does not complete punch list items or does not clean-up their construction site as required or otherwise fulfill the obligations of this Section. Should Landlord be required to complete any work to be completed by Tenant's contractor, including, but not limited to, cleanup, painting, punch list items, etc., Tenant shall pay Landlord the cost of such work within twenty (20) days after receipt of an invoice therefor. Any items borrowed from Landlord shall be documented.

4.6 Violations by Tenant's Contractors. In addition to application of the Contractor Deposit, and any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days' notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the BLVD Retail.

5. Allowance. In consideration of the performance by Tenant of Tenant's Work in the Premises and the timely fulfillment of all of the terms of this Lease, Landlord agrees to pay to Tenant the Tenant Allowance, as described in the Lease, applicable to those costs as defined in Item 10 (E) for Tenant's permanent leasehold improvements for the Premises. The Tenant Allowance shall be applicable only to Tenant's Work actually performed and completed to the Premises and shall be paid according to the provisions of **ITEM 9 (E)** of the Cover Sheet of this lease. Landlord further agrees to pay Tenant any and all remaining retainage within twenty-one (21) days of the Certificate of Occupancy, provided **all** of the following have occurred:

5.1 **Opened.** Tenant has opened for business in the Premises as required by this Lease and has paid to Landlord the first and any subsequently owed Rent payment(s) or other amounts due under this Lease.

5.2 **Commencement Date Memorandum.** Tenant has executed and delivered to Landlord a Commencement Date Memorandum in the form attached to the Lease as **Exhibit D**;

5.3 **No Default.** Tenant is not in default after notice and the lapse of any applicable cure period.

5.4 **Work Completed.** Tenant's Work is completed in accordance with approved Construction Documents.

5.5 **Debris.** The Premises and the Common Areas surrounding the Premises are free of Tenant's debris, all contractor equipment and materials have been removed from the Premises, and any damage to The BLVD Retailor the Common Areas caused by Tenant, its agents or contractors, has been repaired.

5.6 **Liens, Judgments, Levies, or Tax Liens.** The Premises, including all installations therein, are free and clear of all liens and there are no judgments, levies, attachments, liens or tax liens pending or in effect with respect to Tenant's Work in the Premises.

5.7 **Required Documentation.** Tenant has submitted the following completed documentation to Landlord:

A. **Lien Waivers.** Full, final and unconditional lien waivers and releases in favor of Landlord, Landlord's lender, any proposed purchaser, or any other person/entity reasonably requested by Landlord, from Tenant's general contractor and from all Tenant's subcontractors having contracts in excess of \$5,000.00.

B. **Certificates.** A copy of the permanent Certificate of Occupancy and any temporary Certificates of Occupancy.

C. **Contractor's Final Billing.** A copy of the final billing from Tenant's general contractor (broken down in reasonable detail and showing the cost of work performed at the Premises adequate to componentized for tax purposes under either generally accepted accounting principles or Internal Revenue guidelines).

D. **Architect Certificate.** Tenant's architect's certificate certifying that Tenant's Work is completed in accordance with the approved Construction Documents, including all items on Landlord's representative's punch list.

[Balance of this page intentionally left blank.]

EXHIBIT C

THE BLVD RETAIL DEVELOPMENT RULES AND REGULATIONS

Landlord agrees to use its reasonable efforts to cause compliance by tenants of The BLVD Retail with these Rules and Regulations, as they may be revised or amended by Landlord from time to time in its commercially reasonable discretion so long as there is no material adverse effect on Tenant (as amended, the "**Rules and Regulations**"), Landlord will assist with reasonable enforcement of these Rules and Regulations on all property in the BLVD Retail Development. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Lease. To the extent that the provisions of these Rules and Regulations are inconsistent with the provisions of this Lease, the provisions of the Lease shall control. In the event Tenant violates any of the Rules and Regulations and such violation continues for more than 24 hours after Tenant's receipt of notice thereof from Landlord, then Tenant shall pay Landlord, as liquidated damages, an amount equal to \$50.00 per day so long as such violation continues. Tenant recognizes that its violation of the Rules and Regulations will result in damages to Landlord and that the nature and amount of such damages is difficult or impossible to quantify, and that the foregoing amount represents a reasonable approximation of the actual damages Landlord would suffer in the event Tenant violates the Rules and Regulations.

1. Business Hours. Unless otherwise specified in this Lease, Tenant agrees to remain open during standard business hours. Standard business hours generally commence at 8:00 a.m. through 10:00 p.m. Retail establishments are expected to be open for not less than seventy-five (75) percent of standard business hours.

2. Common Areas. Tenant shall not use the Common Areas, including areas adjacent to the Premises (except any outdoor seating area approved by Landlord pursuant to Section 8 below), for any purpose other than ingress and egress, and in accordance with all other applicable provisions of this Lease, including these Rules and Regulations. Without limiting the generality of the foregoing, Tenant shall not use the Common Areas to canvass, solicit business or information from, or distribute any article or material to, other tenants, occupants or invitees of the BLVD Retail, without the express written consent of Landlord. Tenant shall not allow anything to remain in or to obstruct any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping area, or other area outside the Premises (except as set forth in Section 8 below). Janitorial closets, utility closets, telephone closets, broom closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.

3. Deliveries. Deliveries of furniture, inventory and all other items shall be brought into The BLVD Retail in compliance with all Legal Requirements and at Tenant's sole risk. All such deliveries shall be made prior to 10:00 am and only through the service entrances of Tenant's Premises and service entrances of the BLVD Retail, when available. Landlord may inspect items brought into The BLVD Retail Premises with respect to weight or dangerous nature or compliance with this Lease or applicable laws. Tenant shall move all inventories, supplies, furniture, equipment and other items directly into the Premises immediately upon receipt.

4. Trash; Recycling Program. All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in the areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to the Section in the Lease concerning Hazardous Substances. Tenant shall not burn any trash or garbage of any kind in or about the Premises or

BLVD Retail. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord. If Tenant is permitted under this Lease to handle foodstuffs, garbage and refuse shall be stored and daily removed from the Premises in leak proof, airtight containers. If any leakage occurs, Tenant shall promptly clean and remove any evidence of such leakage at its expense. Tenant shall immediately clean up and remove spills and debris in connection with its disposal of waste at or from the Premises.

5. **Pest Control.** Tenant shall, at its sole cost, arrange for pest control at such intervals as may reasonably be required by Landlord. Tenant shall provide Landlord with evidence of Tenant's compliance with this provision within five days after Landlord's written request. If, however, Landlord shall provide or arrange for such pest control, Tenant shall pay to Landlord Tenant's Proportionate Share of the cost thereof (or such other share as Landlord may fairly and reasonably determine) on or before the first day of each calendar month in advance, or Landlord may include such charges in Operating Costs.

6. **Sign and Display Windows.** Tenant will be permitted to install a sign(s) on its suite, window line and will be properly identified on the Building monument, directory and will have the right to lighted exterior building signage as approved by the City of Avondale. Tenant will obtain all required permitting and approvals from the City of Avondale prior to installing any signage and will pay for all costs associated with sign installation. All Tenant's signs shall be professionally designed, prepared and installed and in good taste so as not to detract from the general appearance of the Premises or The BLVD Retail and shall comply with the sign criteria developed by Landlord as set forth in the Lease. The term "**sign**" for purposes of this Section shall mean any sign, placard, picture, name, direction, lettering, insignia, trademark, advertising material, advertising display, awning or other similar item, including Tenant's storefront sign. Blinds, shades, drapes and other such items shall not be placed in or about the windows in the Premises except to the extent, if any, that the character, shape, designs, color, material and make thereof is first approved by Landlord in writing. During such periods as Tenant is required to operate its store hereunder, Tenant shall keep the display window(s) and signs, if any, in the Premises well lit during business hours and daily until at least 11:00 p.m., at Landlord's discretion.

7. **Display of Merchandise.** Tenant shall not place or maintain any permanent or temporary fixture or other item or display any merchandise: **(A)** outside of the Premises; or **(B)** anywhere inside the Premises within six feet of any entrance to the Premises (except that, with respect to any recessed entry of the Premises, Tenant shall not place or maintain any such fixtures or other item within three feet of any entrance). All displays of merchandise shall be tasteful and professional.

8. **Outdoor Seating.** Any outdoor seating area (the "**Outdoor Seating Area**"), including the placement and quantity of furniture, fixtures and equipment in, and the design and materials of, the Outdoor Seating Area, must be approved by Landlord. The Outdoor Seating Area shall be installed and maintained at Tenant's sole cost and expense, in accordance with all applicable laws and at all times clean and free of debris. When not in use, Tenant shall store the Outdoor Seating Area furniture, fixtures and equipment in an appropriate location, which, if on the Premises, shall be approved by Landlord in the exercise of its sole and absolute discretion.

9. **Plumbing Equipment.** The toilet rooms, urinals, wash bowls, drains and sewers and other plumbing fixtures, equipment and lines shall not be misused or used for any purpose other than that for which they were constructed, and no foreign substance of any kind shall be deposited therein. The expense incurred due to any breakage, stoppage or damage resulting from a violation

of this provision shall be borne by Tenant, who shall, or whose employees, invitees or agents shall, have caused such breakage, stoppage or damage.

10. **Exhaust System; Grease Traps; Odor Control.** If Tenant operates a business on the Premises in which smoke and/or odor cannot be avoided by an exhaust termination location design, Tenant shall, at Tenant's sole cost and expense, provide an exhaust air pollution control system approved by Landlord.

11. **Roof; Awnings and Projections.** Tenant shall not install any aerial, antennae, satellite dish or any other device on the roof, exterior walls or Common Areas of The BLVD Retail without obtaining Landlord's prior written consent, provided that Tenant shall be permitted to install, at Tenant's sole cost and expense, cable television service to the Premises. Tenant may install as applicable and have access to the HVAC System only to the extent approved in writing or required by Landlord from time to time in connection with Tenant's obligations under this Lease. No awning or other projection shall be attached by or for Tenant to the exterior walls of the Premises or the Building. Any item set forth in this Section installed without the prior written consent of Landlord shall be subject to removal by Landlord without notice to Tenant all at Tenant's sole cost and expense.

12. **Overloading Floors.** Tenant shall not overload any floor or part thereof in the Premises, Building or BLVD Retail, including any public corridors or elevators therein, and Landlord may designate the location of safes, vaults and all other heavy articles and require supplementary supports of such material and dimensions as Landlord may deem necessary to properly distribute the weight at Tenant's expense (including expenses for structural review and engineering).

13. **Locks and Keys.** Upon termination of this Lease or Tenant's right to possession, Tenant shall: **(A)** return to Landlord all keys, parking stickers or key cards, and in the event of loss of any such items, shall pay Landlord therefor; and **(B)** advise Landlord as to the combination of any vaults or locks that Landlord permits to remain in the Premises.

14. **Unattended Premises.** Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights (except signs required to be illuminated hereunder), water faucets and other utilities in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes). This provision shall not imply that Tenant may leave the Premises unattended in violation of the operating requirements set forth elsewhere in this Lease.

15. **Heating Facilities.** If the Premises are equipped with heating facilities separate from those in the remainder of the BLVD Retail, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

16. **Food and Beverages; Game and Vending Machines.** Except to the extent expressly permitted under this Lease, Tenant shall not: install, operate or use any video, electronic or pinball game or machine, or any coin or token operated vending machine or device to provide products, merchandise, food, beverages, candy, cigarettes or other commodities or services, including, but not limited to, pay lockers, pay toilets, scales and amusement devices; PROVIDED, HOWEVER, that Tenant may install vending machines for the sale of non-alcoholic beverages, food and candy in an area not visible from the sale area or exterior of the Premises for the exclusive use of Tenant's employees.

17. **Landlord's Trade Name and Trademarks.** No symbol, design, name (other than the name of The BLVD Retail in Tenant's advertising as permitted or required by this Lease), mark or insignia adopted by Landlord for The BLVD Retail or picture or likeness of The BLVD Retail shall be used by Tenant without the prior written consent of Landlord.

18. **Prohibited Activities.** Tenant shall not: **(A)** use strobe, flashing lights or rotating spotlights in or on the Premises (or other areas of the BLVD Retail) or in any signs for the Premises; **(B)** use, sell or distribute leaflets, handbills, bumper stickers, other stickers or decals, balloons or other such articles in the Premises (or other areas of the BLVD Retail); **(C)** operate any loudspeaker, telephone set, phonograph, radio, CD player or other musical or sound producing instrument or device that can be heard outside the Premises; **(D)** operate any electrical or other device which interferes with or impairs radio, television, microwave, or other broadcasting or reception from or in The BLVD Retail elsewhere; **(E)** make or permit objectionable noise, vibration, smoke, fumes, vapors or odors to emanate from the Premises unless, in the case of smoke, fumes, vapors, or odors, Tenant installs and maintains a grease containment system or, if applicable, skin and hair salon odor control system, approved by Landlord in writing; **(F)** do or permit anything in or about the Premises or any other areas of The BLVD Retail that is unlawful, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the BLVD Retail; **(G)** use or permit upon the Premises or other areas of The BLVD Retail anything that violates the certificates of occupancy issued for the Premises or the BLVD Retail, or causes a cancellation of Landlord's insurance policies or increases Landlord's insurance premiums (and Tenant shall comply with all requirements of Landlord's insurance carriers, the American Insurance Association, and any board of fire underwriters); **(H)** use the Premises for any purpose, or permit upon the Premises or any areas of The BLVD Retail anything that may be dangerous to parties or property (including, but not limited to, flammable oils, fluids, paints, chemicals, firearms or any explosive articles or material(s); **(I)** cause, conduct, permit or advertise any auction or closing-out or wholesale business in the Premises; or any distress sale, fire sale, bankruptcy sale, liquidation, relocation sale, closing sale, going-out-of-business sale, sheriff's sale, receiver's sale, or any other sale that, in Landlord's opinion, adversely affects the reputation of The BLVD Retail or suggests that the business operations are to be discontinued in the Premises; nor **(J)** do or permit anything to be done upon the Premises or any other areas of The BLVD Retail in any way tending to disturb, bother or annoy any other tenant at The BLVD Retail or the occupants of neighboring property.

19. **Responsibility for Compliance.** Tenant shall be responsible for requiring compliance with these Rules and Regulations, as they may be amended from time to time, by Tenant's employees and, as applicable, by Tenant's agents, invitees, contractors, subcontractors and suppliers.

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EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

THIS COMMENCEMENT DATE MEMORANDUM ("**Memorandum**") dated as of _____, 202__, by and between, **CITY OF AVONDALE, an Arizona municipal corporation ("Landlord")**, and, **WEST VALLEY INSTITUTE, LLC, an Arizona limited liability company ("Tenant")**.

RECITALS:

A. By that certain Center Lease dated as of _____ between Landlord and Tenant (the "**Lease**"), Landlord leased to Tenant and Tenant leased from Landlord the Premises, subject to the conditions and limitations therein contained.

B. **ITEM 6** of the Cover Sheet of the Lease provides that, upon determination of the Commencement Date, Landlord and Tenant shall execute a memorandum which shall set forth, among other things, the Commencement Date, the exact Floor Area of the Premises, the date when Tenant may exercise its Option Term pursuant to **ITEM 7** of the Cover Sheet of the Lease, and the date on which the initial term of the Lease shall expire (subject to Tenant's right, if any, to extend the Term of the Lease as provided therein), and shall evidence Tenant's acceptance of the Premises and agreement that Landlord has fully complied with Landlord's covenants and obligations.

C. The Commencement Date and such other dates have been determined and, accordingly, the parties desire to enter into this Memorandum.

D. Unless otherwise provided herein, all capitalized words and terms in this Memorandum shall have the same meanings ascribed to such words and terms in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Delivery Date was _____.
2. The Commencement Date is _____. Tenant's obligation to pay Minimum Rent and other charges payable by Tenant under the Lease shall commence as of the Commencement Date set forth above.
3. The Floor Area of the Premises are 5,935 and 3,180 rentable square feet.
4. Tenant shall exercise its right to the Option Term to extend this lease, if at all, six (6) months prior to the lease termination date, set forth in the Lease.
5. The date on which the initial Term of the Lease shall expire, unless such Term is extended by Tenant as provided in the Lease, is _____.
6. Tenant hereby acknowledges Tenant's acceptance of possession of the Premises and agrees that Landlord has fully complied with Landlord's covenants and obligations under the Lease.

7. Tenant acknowledges that all Rent is payable to Landlord at the following address, unless further notified:

City of Avondale
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323
Attn: Accounts Receivable

8. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

CITY OF AVONDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

Marcella Carrillo, City Clerk

TENANT:

WEST VALLEY INSTITUTE, LLC
an Arizona limited liability company

By: _____

Name: _____

Title: _____

Date Executed: _____

Date Executed: _____

CITY COUNCIL REPORT

SUBJECT: Ordinance 2035-0821 - City Code Amendment - Chapter 20 and Chapter 23
Relating to the Police Department and Traffic

MEETING DATE: 8/23/2021

TO: Mayor and Council

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

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
-

PURPOSE:

City Council will consider a request to adopt Ordinance 2035-0821, amending Avondale City Code Chapter 20, Police Department, Article 1, Section 20-7 and deleting Chapter 23, Traffic, Article II, Administration and Enforcement Section 23-29, authority to direct traffic relating to traffic direction and enforcement and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Enacted in 1971, Avondale City Code, Section 23-29 of Chapter 23 gives authority only to the police chief and all police officers to direct traffic by voice, hand, or signal. Other than the fire department officers at the scene of a fire, no other employee is given the authority to direct traffic within the City. As the City continues to grow, giving unarmed police assistants the authority to direct traffic and investigate traffic collisions is needed for the future.

DISCUSSION:

Section 23-29 of Chapter 23 of the Avondale City Code does not allow non-sworn, unarmed police department staff to direct vehicle traffic. Over the years, the police department has added park rangers, security officers, and community service officers who can relieve sworn police officers from traffic control assignments. The amended ordinance would move from Chapter 23 (Administration and Enforcement) to Chapter 20 (Police Department) section 20-7 of the Avondale City Code.

Unarmed police assistants are vital in providing resources to the City and the Department at traffic collisions or

special events. Police assistants have the training and can relieve sworn officers from specific duties to make the Department more efficient and effective. Sworn police officers will be freed from routine duties and will allow the officers to be re-assigned to handle calls for service that are more serious in nature.

The change to the ordinance also allows for the possibility of future civilian positions of unsworn, unarmed traffic investigators to have the authority to investigate traffic collisions and issue citations for violations of both Arizona state statutes or City ordinances.

BUDGET IMPACT:

This action has no budgetary impact.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance, amending Avondale City Code Chapter 20, Police Department, Article 1, Section 20-7 and deleting Chapter 23, Traffic, Article II, Administration and Enforcement Section 23-29, authority to direct traffic relating to traffic direction and enforcement and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

ORDINANCE NO. 2035-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 20 POLICE DEPARTMENT, ARTICLE I, IN GENERAL, SECTION 20-7, RESERVED; AND DELETING CHAPTER 23 TRAFFIC, ARTICLE II, ADMINISTRATION AND ENFORCEMENT, SECTION 23-29, AUTHORITY TO DIRECT TRAFFIC RELATING TO TRAFFIC DIRECTION AND ENFORCEMENT.

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

SECTION 1. The Avondale City Code, Chapter 20 (Police Department), Article I (In General), Section 20-7 (Reserved) is hereby deleted in its entirety and replaced with the following:

20-7 Traffic; Authority to direct; unarmed police assistants; traffic investigators.

- (a) The police chief, police officers, and to the extent authorized by the police chief, unarmed police assistants, and traffic investigators are authorized to direct all traffic as determined to be necessary and appropriate by the police chief or their designee.
- (b) Officers of the fire department, when at the scene of a fire, under the direction of the police chief or their designee may direct or assist the police in directing traffic thereat or in the immediate vicinity.
- (c) The city may designate or employ individuals as unarmed police assistants. A police assistant appointed pursuant to this section shall:
 - 1. Be unarmed at all times during the course of their duties.
 - 2. Be empowered to commence an action or proceeding before a court or judge for any violation of city ordinances regulating the standing or parking of vehicles.
 - 3. Police assistants appointed pursuant to this section shall not be granted any other powers or benefits to which police officers are entitled.
- (d) The city may designate or employ individuals as traffic investigators. A duly employed police assistant may also be assigned the duties of a traffic investigator. Traffic investigators appointed pursuant to this section shall:

1. Be unarmed at all times during the course of their duties.
2. Be empowered to commence an action or proceeding before a court or judge for any violation of a state statute or city ordinance relating to traffic laws within the jurisdiction of the city.
3. File written reports as required by Ariz. Rev. Stat. § 28-667.
4. Traffic investigators appointed pursuant to this section shall not be granted any other powers or benefits to which police officers are entitled.

SECTION 2. The Avondale City Code, Chapter 23 (Traffic), Article II (Administration and Enforcement), Section 23-29 (Authority to direct traffic) is hereby deleted in its entirety and reserved for future use.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. 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 Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

CITY COUNCIL REPORT

SUBJECT: Ordinance 2036-0821 - Accepting Donation of Real Property for Public Use for The BLVD Water Features

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director 623-333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, 623-333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local businesses unified by pride and common values.

Accepting the donation of water feature parcel will allow permanent ownership by the City of an integral entry feature for The BLVD creating an arrival point for a new and exciting destination for Avondale.

PURPOSE:

City Council will consider a request to adopt Ordinance 2036-0821, authorizing the acceptance of real property located at the southeast corner of Avondale Boulevard and The BLVD for public use and authorize the Mayor or City Manager, City Attorney and City Clerk to take all steps to execute the necessary documents to carry out this purpose. The Council will take appropriate action.

BACKGROUND:

The City of Avondale has recently rebranded The BLVD area as an economic engine in the City. In an effort to bring quality development to this area, the acquisition of this property would provide land necessary for the south water fountain for The BLVD Water Features project. This property is approximately 0.09 acres and is bordered by City Right of Way on the north and west sides of property and MGN1's Final Plat on south and east sides of the property.

DISCUSSION:

Under the terms of the donation agreement, the City of Avondale will accept the donation +/- 0.09 acres of real property located at the southeast corner of Avondale Boulevard and The BLVD for public use from MGN1, LLC.

BUDGET IMPACT:

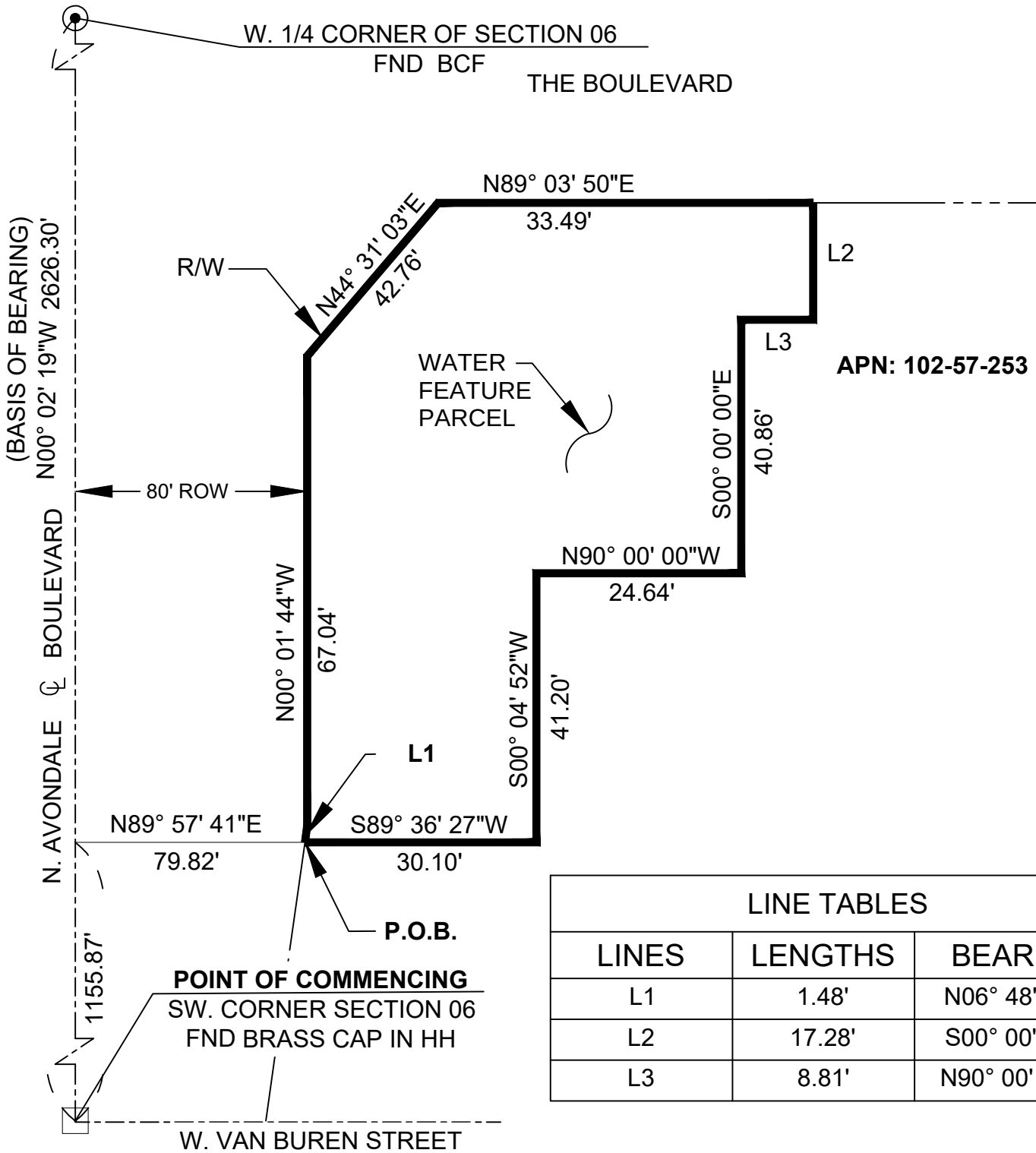
Accepting a donation of real property from MGN1, LLC for public use will have no budgetary impact on the

city.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance accepting the donation +/- 0.09 acres of real property located at the southeast corner of Avondale Boulevard and The BLVD for public use from MGN1, LLC .

EXHIBIT "A"

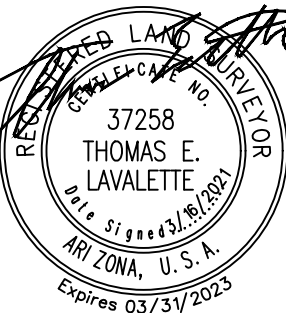


LINE TABLES

LINES	LENGTHS	BEARING
L1	1.48'	N06° 48' 01"E
L2	17.28'	S00° 00' 00"E
L3	8.81'	N90° 00' 00"W



SCALE:
NTS
T1N R1E



PROJECT: 2021-M-14

DATE: 03-16-2021

CHKD BY: TL

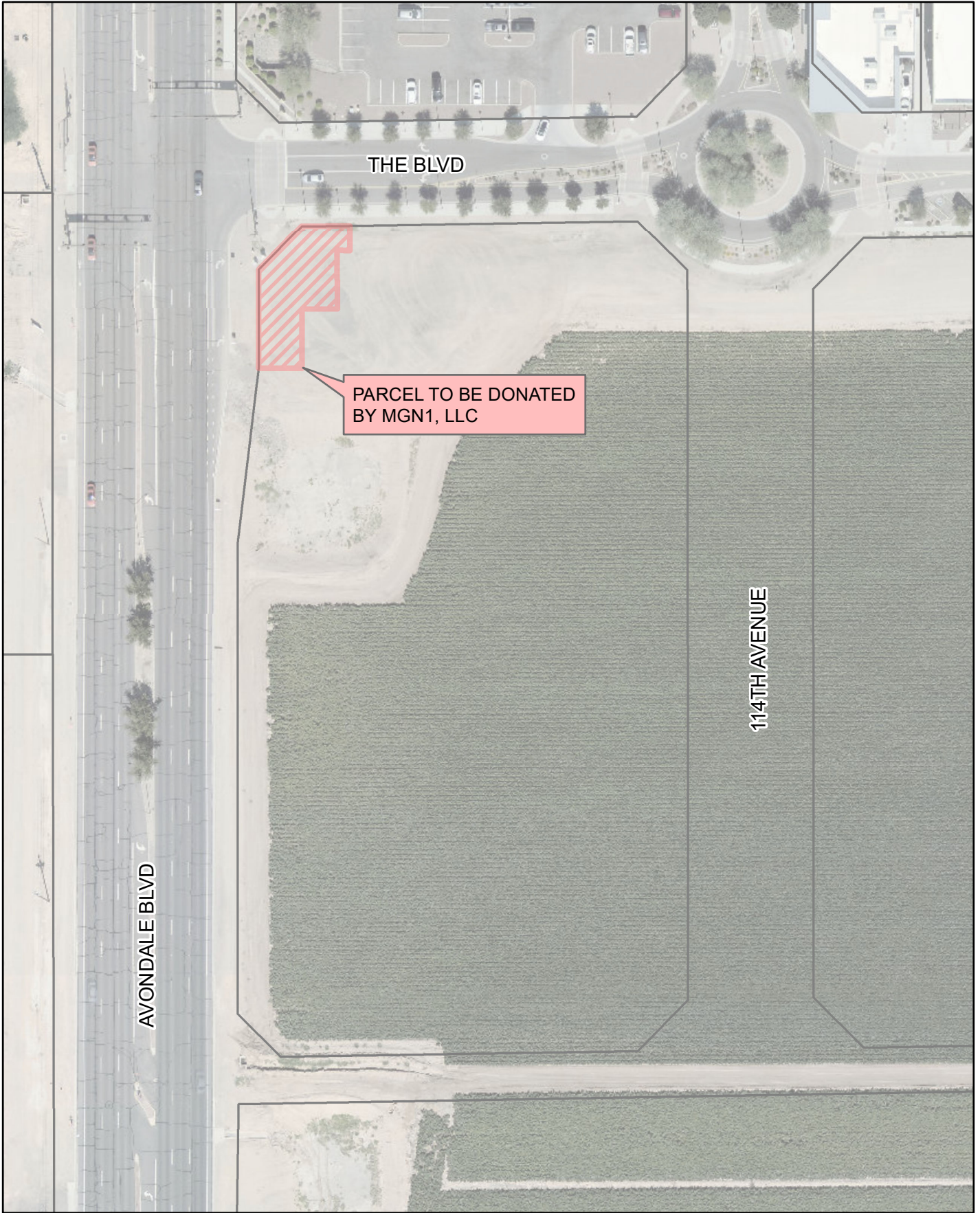
DRN BY: BL

SCALE: N.T.S.

TITLE:

WATER FEATURE PARCEL
THE BOULEVARD

SHEET NO: 1 OF 1



Water Feature Parcel Aerial

ORDINANCE NO. 2036-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ACCEPTING THE DONATION FOR PUBLIC USE OF APPROXIMATELY .09 ACRES OF REAL PROPERTY LOCATED APPROXIMATELY 1155 FEET NORTH OF VAN BUREN STREET AND APPROXIMATELY 80 FEET EAST OF AVONDALE BOULEVARD

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

SECTION 1. A $\pm$ 0.09 acre parcel of real property, located $\pm$ 80 feet east of Avondale Boulevard, and $\pm$ 1155 feet north of Van Buren Street, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby accepted for public use by the City of Avondale from MGN1, LLC, a Louisiana limited liability company.

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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2036-0821

[Legal Description]

See following pages.



DATE: March 16, 2021
LOCATION: 801 N. Avondale
Blvd. Avondale AZ
85323
OWNER: MGN1, LLC.

DESCRIPTION Water Feature
OF LEGAL: Parcel

PAGE NO. 1 OF 1

LEGAL DESCRIPTION
OF A
PARCEL OF LAND

That portion of the Southwest Quarter of Section 06, Township 1 North, Range 1 East of the Gila & Salt River Base & Meridian, Maricopa County, Arizona. being more particularly described as follows:

COMMENCING at the Southwest Corner of Section 06, Township 1 North, Range 1 East of the Gila & Salt River Base & Meridian, Maricopa County, Arizona, being a found Brass Cap in Hand Hole at the intersection of Van Buren Street and Avondale Boulevard. from which the West Section Line to the West Quarter Corner of Section 06, bears North 00 degrees 02 minutes 19 seconds West, a distance of 2,626.30 feet to a Found Brass Cap Flush and the intersection of Avondale Boulevard and Roosevelt Street;

THENCE along said West Section line North 00 degrees 02 minutes 19 seconds West a distance of 1,155.87 feet to a point along the Centerline of Avondale Boulevard;

THENCE North 89 degrees 57 minutes 41 seconds East, a distance of 79.82 feet to a point on the East Right of Way line of Avondale Boulevard and the True Point of Beginning;

THENCE along said Line North 06 degrees 48 minutes 01 seconds East, a distance of 1.48 feet;

THENCE continuing along said line North 00 degrees 01 minutes 44 seconds West, a distance of 67.04 feet to an Angle point;

THENCE North 44 degrees 31 minutes 03 seconds East a Distance of 42.76 feet to a point on the South Right of Way Line of The Boulevard;

THENCE Along Said Line North 89 degrees 03 minutes 50 seconds East, a distance of 33.49 feet;

THENCE Departing Said Line South 00 degrees 00 minutes 00 seconds East, a distance of 17.28 feet

THENCE North 90 degrees 00 minutes 00 seconds West, a distance of 8.81 feet;

THENCE South 00 degrees 00 minutes 00 seconds East, a distance of 40.86 feet

THENCE North 90 degrees 00 minutes 00 seconds West, a distance of 24.64 feet;

THENCE South 00 degrees 04 minutes 52 seconds West, a distance of 41.20 feet

THENCE South 89 degrees 36 minutes 27 seconds West, a distance of 30.10 feet back to the True Point of Beginning;

Parcel containing 4,084 sqft or 0.09 acres more or less

CITY COUNCIL REPORT

SUBJECT: Ordinance 2037-0821 - Granting an Electrical Easement to Salt River Project (SRP) for the new Fire Station No. 175

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Creative and Sustainable Community Development - Avondale is committed to creating a sense of place, a community of residents and local businesses unified by pride and common values.

Granting of SRP Easement will allow electrical service to be provided to the new Fire Station No. 175 which will provide public safety to the Avondale community and service to future development in Avondale.

PURPOSE:

City Council will consider a request to adopt Ordinance 2037-0821, granting an Electrical Easement to Salt River Project for the new Fire Station No. 175 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale is constructing the new Fire Station No.175 to to provide public safety for the city.

DISCUSSION:

Salt River Project is the only power company that can provide power to the new Fire Station No.175 . In order to provide power, SRP will require an electrical easement for the new connection.

BUDGET IMPACT:

The granting of the proposed electrical easement to SRP will have no budgetary impact to the city.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance granting an Electrical Easement to SRP for the new Fire Station No.175 and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

ORDINANCE NO. 2037-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, GRANTING AN EASEMENT TO SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

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

SECTION 1. An easement is hereby granted to Salt River Project Agricultural Improvement and Power District, in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference, through, over, under and across certain real property generally located along the south side of Van Buren Street, west of Fairway Drive, as depicted and described in the easement form attached hereto as part of Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2037-0821

[SRP Power Distribution Easement]

See following pages.

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT
Land Department/PAB10W
P. O. Box 52025
Phoenix, Arizona 85072-2025

**EXEMPT PURSUANT TO
A.R.S. §§ 11-1134(A)(2) and (A)(3)**

POWER DISTRIBUTION EASEMENT

Maricopa County
Parcel # 500-27-013
NE ¼, SEC. 11, T01N, R01W

Agt. CLB
Job # LJ84660 / T3304736
W **CLB** C pb
R/W #

**CITY OF AVONDALE,
a municipal corporation,**

hereinafter called Grantor, for and in consideration of the sum of Ten Dollars, and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, and its successors and assigns, hereinafter called Grantee, for use by Grantee and Grantee's employees, contractors, licensees, and invitees, a non-exclusive easement to construct, install, reconstruct, replace, remove, repair, operate and maintain underground electrical conduits and conductors, pipes, cables, switching equipment, transformers, pad-mounted equipment, enclosures, manholes, vaults, and all other appliances, appurtenances and fixtures (collectively, "Facilities") for the transmission and distribution of electricity, communication signals and data, and for all other purposes connected therewith at such locations and elevations, in, upon, over, under, across, through and along the Easement Parcel (defined below), as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of access to and from the Easement Parcel, over, across, through and along Grantor's Property (defined below) (collectively, the "Easement"). Grantee is hereby authorized to permit others to use the Easement for additional Facilities jointly with or separately from the Grantee for their purposes.

The lands in, upon, over, under, across, through and along which the Easement is granted are situated in the County of Maricopa, State of Arizona, and are more particularly described as:

Grantor's Property:

A portion of the Northeast quarter of Section 11, Township 01 North, Range 01 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described in WARRANTY DEED Instrument 1997-0462036 records of Maricopa County, Arizona.

Easement Parcel:

Said easement being a strip of land delineated on Exhibit “A” (CITY OF AVONDALE FIRE STATION NO. 175, SRP Job No. T3304736), prepared by Salt River Project A.I. & Power District, dated 07/28/2021, said Exhibit “A” attached hereto and made a part hereof.

CAUTION: Facilities placed within the Easement Parcel may contain high voltage electrical equipment. Notice is hereby given that the location of underground electrical conductors or facilities must be verified as required by Arizona Revised Statutes, Section 40-360.21, et seq., Arizona Blue Stake Law, prior to any excavation.

The Easement is governed by the following terms and conditions:

1. Modification of Easement Parcel. Grantor acknowledges that field conditions may result in the Facilities being installed within Grantor’s Property in a location that is not within the Easement Parcel. After the completion of any construction or installation outside of the Easement Parcel, Grantee shall obtain Grantor’s agreement with and execution of an amendment to this Easement modifying the legal description of the Easement Parcel to reflect the actual location of the Facilities (the “Amendment”). Upon the recordation of the Amendment, such revised legal description shall have the same force and effect, and create the same priority of interest, as if recorded concurrently with this instrument. Grantor may consent to the execution and recordation of the Amendment through the exercise of its sole discretion.
2. Prohibited Activities. Grantor shall not, whether directly or indirectly by granting permission, construct, install, or place any building or other structure, plant any trees, drill any wells, store materials of any kind, or alter the ground level, within the Easement Parcel. This paragraph 2 does not prohibit the use of the Easement Parcel for such purposes as landscaping (except trees), paved parking, sidewalks and/or driveways, provided that such use is otherwise in accordance with the terms of this Easement, and does not interfere with the efficient operation and maintenance of the Facilities, including access thereto. To obtain clarification as to whether or not a particular construction activity is prohibited by the first sentence of this paragraph 2, Grantor may request Grantee’s prior written approval to grade or install improvements (“Work”) within the Easement Parcel by submitting all construction, grading, or other development plans, as applicable, describing the proposed Work. Grantee may grant or deny such approval through the exercise of Grantee’s sole discretion, provided that Grantee’s review and right to approve shall be limited to whether the proposed Work conflicts with the existing Facilities, including access thereto. Any such approval is hereby subject to Grantor complying with all other provisions of this Easement.
3. Clear Areas. Grantor shall maintain a clear area that extends 3.00 feet from and around all edges of all transformer pads and other equipment pads, and a clear area that extends 12.00 feet immediately in front of all transformer and other equipment openings (“Clear Areas”). No improvements, fixtures, trees, shrubs, or other obstructions shall be placed within the Clear Areas. Grantee shall have the right (but not the obligation) to remove any obstructions within the Clear Areas.

4. Additional Grantee Rights. Grantee shall have the right (but not the obligation) to trim, cut and clear away trees, brush or other vegetation on, or which encroaches into, the Easement Parcel or the Clear Areas, whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted. Grantor agrees that any fences or walls which now cross or hereafter cross Grantor's Property will not prevent Grantee's access to the Easement Parcel or the Facilities. Grantor further agrees that Grantee can use gates on all such fences or walls for such access.
5. Perpetual Nature of Easement. The Easement, and Grantee's rights hereunder, shall be perpetual, and shall not terminate until, and unless abandoned through the recordation of a document formally abandoning the Easement, which references this instrument and is executed and acknowledged by Grantee. Upon such recordation, all Grantee's rights hereunder shall cease, except the right to remove any and all property placed upon the Easement Parcel within a reasonable time subsequent to such abandonment.
6. Successors and Assigns. The benefits and burdens, and the covenants and agreements herein set forth shall run with and burden the land and shall extend and inure in favor and to the benefit of, and shall be binding on Grantor and Grantee and their successors and assigns.
7. Rights and Remedies Cumulative. The rights and remedies hereunder are cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other right or remedy available.
8. Private Use. The provisions of this Easement Agreement are not intended to and do not constitute a public utility easement, or any other grant, dedication, or conveyance for public use of the Easement Parcel.
9. Warranty of Title. Grantor represents and warrants that: (i) fee simple title to the Grantor's Property and Easement Parcel is vested in Grantor, and (ii) Grantor has full power and authority to grant the Easement and to perform its obligations under this document.
10. Authority to Bind Grantor. The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor, and (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity).

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, **CITY OF AVONDALE, a municipal corporation**, has caused its name to be executed by its duly authorized representative(s), this _____ day of _____, _____.

**CITY OF AVONDALE,
a municipal corporation**

By _____

Its _____

By _____

Its _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____ by _____ and _____,
as _____ and _____, respectively, of
CITY OF AVONDALE, a municipal corporation, on behalf of such corporation.

Notary Public

My Commission Expires:

Notary Stamp/Seal

EXHIBIT "A"

SRP JOB NUMBER: T3304736

SRP JOB NAME: CITY OF AVONDALE FIRE STATION NO. 175

TTRSS: T-1-N, R-1-W, SEC 11

DATE: 07-29-2021

PAGE: 1 OF 3

AN EASEMENT WITHIN A PARCEL OF LAND AS DESCRIBED IN DOCUMENT 1997-0462036 MARICOPA COUNTY RECORDER (MCR) LOCATED IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11, BEING A BRASS CAP IN HAND HOLE, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 11, BEING A BRASS CAP FLUSH, BEARS NORTH 88 DEGREES 33 MINUTES 17 SECONDS WEST, A DISTANCE OF 2638.76 FEET (**BASIS OF BEARINGS**);

THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, NORTH 88 DEGREES 33 MINUTES 17 SECONDS WEST, A DISTANCE OF 1109.38 FEET;

THENCE SOUTH 01 DEGREES 26 MINUTES 43 SECONDS WEST, A DISTANCE OF 73.00 FEET TO THE SOUTH LINE OF A PUBLIC UTILITY EASEMENT (PUE) BEING 8.00 FEET IN WIDTH PER BOOK 1003 PAGE 27 MCR THE THE **POINT OF BEGINNING**;

THENCE SOUTH 01 DEGREES 22 MINUTES 33 SECONDS WEST, A DISTANCE OF 217.28 FEET;

THENCE NORTH 88 DEGREES 37 MINUTES 27 SECONDS WEST, A DISTANCE OF 28.40 FEET;

THENCE NORTH 01 DEGREES 22 MINUTES 33 SECONDS EAST, A DISTANCE OF 9.00 FEET;

THENCE SOUTH 88 DEGREES 37 MINUTES 27 SECONDS EAST, A DISTANCE OF 20.40 FEET;

THENCE NORTH 01 DEGREES 22 MINUTES 33 SECONDS WEST, A DISTANCE OF 208.29 FEET TO THE SOUTH LINE OF SAID PUE;

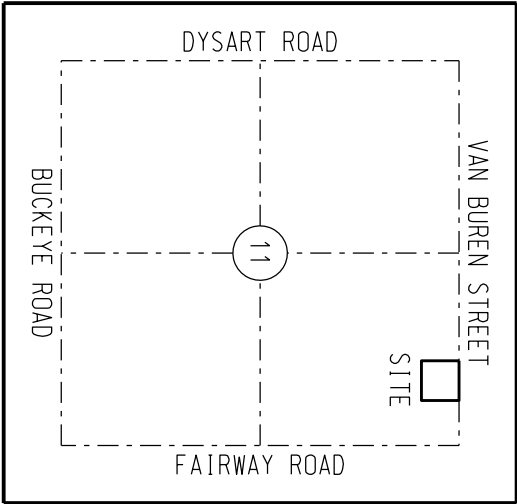
THENCE ALONG THE SOUTH LINE OF SAID PUE SOUTH 88 DEGREES 33 MINUTES 17 SECONDS EAST, A DISTANCE OF 8.00 FEET TO THE **POINT OF BEGINNING**.

SAID EASEMENT CONTAINS AN AREA OF 1922 SQUARE FEET OR 0.044 ACRES, MORE OR LESS.

END OF DESCRIPTION



EXHIBIT "A"



VICINITY MAP (NTS)
T1N, R1W
G&SRM

CAUTION

THE EASEMENT LOCATION AS HEREON
DELINEATED MAY CONTAIN HIGH
VOLTAGE ELECTRICAL EQUIPMENT,
NOTICE IS HEREBY GIVEN THAT THE
LOCATION OF UNDERGROUND
ELECTRICAL CONDUCTORS OR
FACILITIES MUST BE VERIFIED AS
REQUIRED BY ARIZONA REVISED
STATUTES, SECTION 40-380.21, ET.
SEQ., ARIZONA BLUE STAKE
LAW, PRIOR TO ANY EXCAVATION.

NOTES

THIS EXHIBIT IS INTENDED TO
ACCOMPANY AN EASEMENT. ALL
PARCELS SHOWN WERE PLOTTED
FROM RECORD INFORMATION, AND
NO ATTEMPT HAS BEEN MADE TO
VERIFY THE LOCATION OF ANY
BOUNDARIES SHOWN. THIS IS NOT
AN ARIZONA BOUNDARY SURVEY.

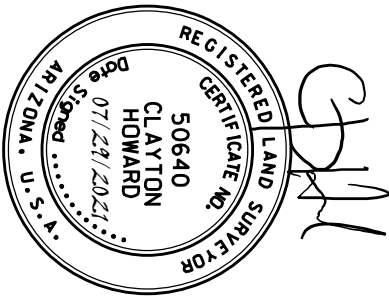
ABBREVIATION TABLE

APN	ASSESSOR'S PARCEL NUMBER
BCFL	BRASS CAP FLUSH
BCHH	BRASS CAP IN HAND HOLE
LVI	LAST VISUAL INSPECTION
(M)	MEASURED
MCR	MARICOPA COUNTY RECORDER
NTS	NOT TO SCALE
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
PUE	PUBLIC UTILITY EASEMENT

ALL ELECTRIC LINES SHOWN ARE MEASURED
TO THE WINDOW OF THE EQUIPMENT PAD
UNLESS OTHERWISE NOTED.

LEGEND

- SECTION AND CENTERLINE
- PROPERTY LINE
- EASEMENT AREA
- EXISTING EASEMENT AS NOTED
- TIE LINE
- SECTION CORNER AS NOTED



BASIS OF BEARINGS:
BASED ON THE MARICOPA COUNTY
LOW DISTORTION PROJECTION
COORDINATE SYSTEM.



SURVEY DIVISION
LAND DEPARTMENT

CITY OF AVONDALE FIRE STATION NO. 175

NE 1/4, SECTION 11
T.1 N., R.1 W.
5.0 NORTH - 1.3 WEST

EXHIBIT "A"

VAN BUREN STREET

(BASIS OF BEARING)

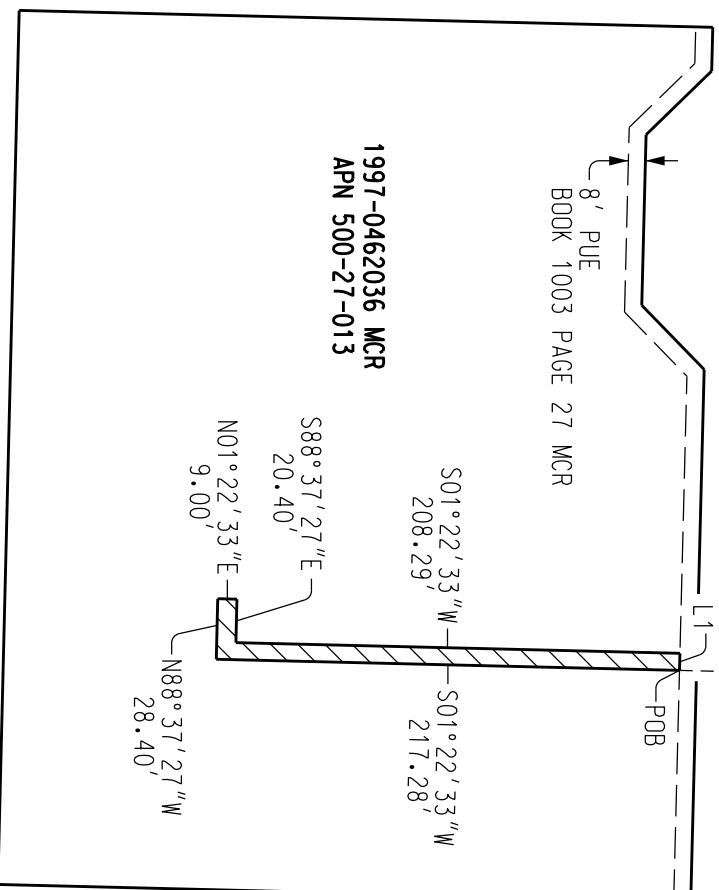
N88°33'17"W 2638.76' (M)

1529.38'

1109.38'

NORTH 1/4 CORNER
SECTION 11
FOUND BCFL
LVI: 02-27-2018

NORTHEAST CORNER
SECTION 11
FOUND BCHH
LVI: 08-02-2012
POC



8' PUE
BOOK 1003 PAGE 27 MCR

1997-0462036 MCR
APN 500-27-013

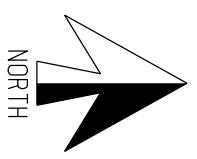
LINE TABLE		
LINE	BEARING	DISTANCE
L1	S88°33'17"E	8.00'

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT & POWER DISTRICT

 SURVEY DIVISION
LAND DEPARTMENT

SRP LDWR NUMBER: NA	SCALE: NTS
I.O. NUMBER: T3304736	SHEET: 3 OF 3
AGENT: BAL TRUS	SHEET SIZE: 8.5"x11"
DRAWN: RAUSER	REVISION: 0
CHECKED BY: HOWARD	CREW CHIEF: LACEY
DATE: 07-28-2021	FIELD DATE: 07-26-2021

CITY OF AVONDALE FIRE STATION NO. 175
NE 1/4, SECTION 11
T.1 N., R.1 W.
5.0 NORTH - 1.3 WEST



CITY COUNCIL REPORT

SUBJECT: Ordinance 2038-0821 - SRP Blanket Easement for SRP for The BLVD Water Features

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.

Approval of the SRP Blanket Easement will allow The BLVD Water Features project to be completed and provide a destination amenity in the Park Avenue District of the BLVD for recreation and encourage development as approved by the Council in The BLVD Specific Plan.

PURPOSE:

City Council will consider a request to adopt Ordinance 2038-0821, granting a Blanket Easement to the Salt River Project for the new BLVD Water Features and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale is constructing the new BLVD Water Features to provide a new destination amenity in the Park Avenue District of the BLVD for the city.

DISCUSSION:

Salt River Project is the only power company that can provide power for the new BLVD Water Features. In order to provide power, SRP will require a blanket easement for the new electrical connection.

In order to maintain the project schedule, a blanket easement for SRP on the parcel adjacent to the American Sports Complex on the east side (APN 102-57-249) where electrical service for the lake will be located at the southwest corner of the parcel is needed for construction to progress as scheduled. A specific easement for the specific location of SRP's electrical service on the parcel will be provided in the near future for Council

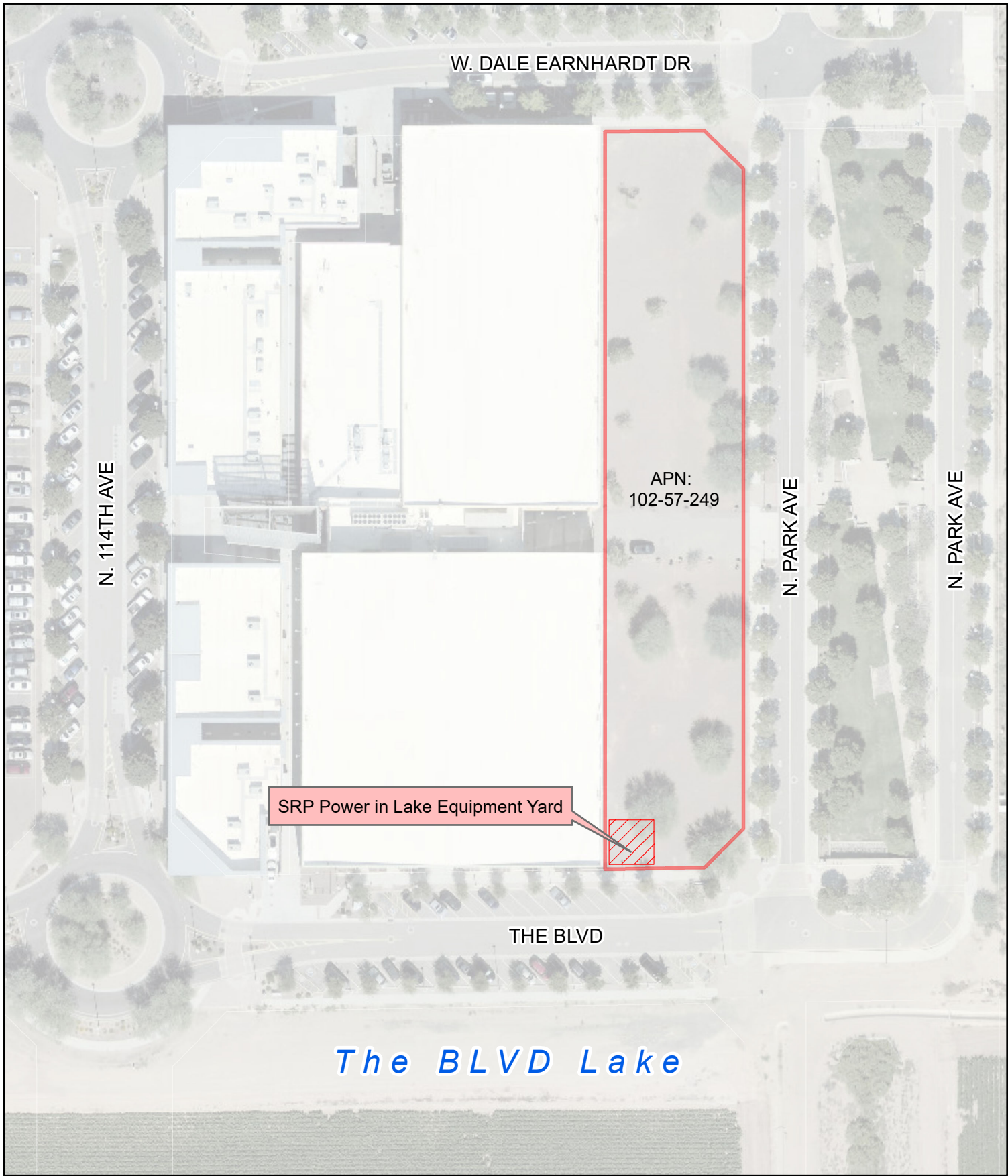
Approval and will replace this blanket easement.

BUDGET IMPACT:

The granting of the proposed blanket easement to SRP will have no budgetary impact to the city.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance granting a Blanket Easement to SRP for the new BLVD Water Features and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.



SRP BLANKET EASEMENT FOR THE BLVD WATER FEATURES



ORDINANCE NO. 2038-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, GRANTING AN EASEMENT TO SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

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

SECTION 1. An easement is hereby granted to Salt River Project Agricultural Improvement and Power District, in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference, through, over, under and across certain real property generally located along the east side of Avondale Boulevard, north of Van Buren Street, as depicted and described in the easement form attached hereto as part of Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2038-0821

[SRP Easement]

See following pages.

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT

Land Department/PAB350

P. O. Box 52025

Phoenix, Arizona 85072-2025

**EXEMPT PURSUANT TO
A.R.S. §§ 11-1134(A)(2) and (A)(3)**

**POWER DISTRIBUTION EASEMENT
(BLANKET)**

Maricopa County
Parcel # 102-57-249
SW ¼, SEC. 06, T01N, R01E

Agt. CLB
Job # LJ84153 / T3296026
W **CLB** C JEP
R/W#:

**City of Avondale,
an Arizona municipal corporation,**

hereinafter called Grantor, for and in consideration of the sum of Ten Dollars, and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, and its successors and assigns, hereinafter called Grantee, for use by Grantee and Grantee's employees, contractors, licensees, and invitees, a non-exclusive easement to construct, install, reconstruct, replace, remove, repair, operate and maintain underground electrical conduits and conductors, pipes, cables, switching equipment, transformers, pad-mounted equipment, enclosures, manholes, vaults, and all other appliances, appurtenances and fixtures (collectively, "Facilities") for the transmission and distribution of electricity, communication signals and data, and for all other purposes connected therewith at such locations and elevations, in, upon, over, under, across, through and along the Easement Parcel (defined below), as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of access to and from the Easement Parcel, over, across, through and along Grantor's Property (defined below) (collectively, the "Easement"). Grantee is hereby authorized to permit others to use the Easement for additional Facilities jointly with or separately from the Grantee for their purposes.

The lands in, upon, over, under, across, through and along which the Easement is granted are situated in the County of Maricopa, State of Arizona, and are more particularly described as:

Grantor's Property:

A portion of the Southwest quarter of Section 06, Township 01 North, Range 01 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as Lot 4C in FINAL PLAT FOR REPLAT OF LOT 4 OF AVONDALE CITY CENTER PHASE 1 Instrument 2011-0153641 records of Maricopa County, Arizona.

Easement Parcel:

Said easement being the same as the above described Grantor's Property.

CAUTION: Facilities placed within the Easement Parcel may contain high voltage electrical equipment. Notice is hereby given that the location of underground electrical conductors or facilities must be verified as required by Arizona Revised Statutes, Section 40-360.21, et seq., Arizona Blue Stake Law, prior to any excavation.

The Easement is governed by the following terms and conditions:

1. Blanket Easement. Grantor acknowledges this instrument grants a blanket easement in, upon, over, under, across, through and along the Grantor's Property. Within one hundred twenty (120) days after completion of construction of all initial Facilities, Grantee shall file a notice fixing the location of the Easement Parcel ("Notice of Location") which shall contain a legal description for the Easement Parcel corresponding to the location of the Facilities within Grantor's Property. Upon and after recordation of the Notice of Location, all references in this instrument to "Easement Parcel" shall mean and refer to the real property legally described in such Notice of Location. Notwithstanding the foregoing, until and unless a Notice of Location is recorded fixing the location of the Easement Parcel, the Easement Parcel shall consist of the real property legally described and defined as the "Easement Parcel" above.
2. Prohibited Activities. Grantor shall not, whether directly or indirectly by granting permission, construct, install, or place any building or other structure, plant any trees, drill any wells, store materials of any kind, or alter the ground level, within the Easement Parcel. This paragraph 2 does not prohibit the use of the Easement Parcel for such purposes as landscaping (except trees), paved parking, sidewalks and/or driveways, provided that such use is otherwise in accordance with the terms of this Easement, and does not interfere with the efficient operation and maintenance of the Facilities, including access thereto. To obtain clarification as to whether or not a particular construction activity is prohibited by the first sentence of this paragraph 2, Grantor may request Grantee's prior written approval to grade or install improvements ("Work") within the Easement Parcel by submitting all construction, grading, or other development plans, as applicable, describing the proposed Work. Grantee may grant or deny such approval through the exercise of Grantee's sole discretion, provided that Grantee's review and right to approve shall be limited to whether the proposed Work conflicts with the existing Facilities, including access thereto. Any such approval is hereby subject to Grantor complying with all other provisions of this Easement.
3. Clear Areas. Grantor shall maintain a clear area that extends 3.00 feet from and around all edges of all transformer pads and other equipment pads, and a clear area that extends 12.00 feet immediately in front of all transformer and other equipment openings ("Clear Areas"). No improvements, fixtures, trees, shrubs, or other obstructions shall be placed within the Clear Areas. Grantee shall have the right (but not the obligation) to remove any obstructions within the Clear Areas.

4. Additional Grantee Rights. Grantee shall have the right (but not the obligation) to trim, cut and clear away trees, brush or other vegetation on, or which encroaches into, the Easement Parcel or the Clear Areas, whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted. Grantor agrees that any fences or walls which now cross or hereafter cross Grantor's Property will not prevent Grantee's access to the Easement Parcel or the Facilities. Grantor further agrees that Grantee can use gates on all such fences or walls for such access.
5. Perpetual Nature of Easement. The Easement, and Grantee's rights hereunder, shall be perpetual, and shall not terminate until, and unless abandoned through the recordation of a document formally abandoning the Easement, which references this instrument and is executed and acknowledged by Grantee. Upon such recordation, all Grantee's rights hereunder shall cease, except the right to remove any and all property placed upon the Easement Parcel within a reasonable time subsequent to such abandonment.
6. Successors and Assigns. The benefits and burdens, and the covenants and agreements herein set forth shall run with and burden the land and shall extend and inure in favor and to the benefit of, and shall be binding on Grantor and Grantee and their successors and assigns.
7. Rights and Remedies Cumulative. The rights and remedies hereunder are cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other right or remedy available.
8. Private Use. The provisions of this Easement Agreement are not intended to and do not constitute a public utility easement or any other grant, dedication, or conveyance for public use of the Easement Parcel.
9. Warranty of Title. Grantor represents and warrants that: (i) fee simple title to the Grantor's Property and Easement Parcel is vested in Grantor, and (ii) Grantor has full power and authority to grant the Easement and to perform its obligations under this document.
10. Authority to Bind Grantor. The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor, and (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity).

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, **City of Avondale, an Arizona municipal corporation**, has caused its name to be executed by its duly authorized representative(s), this _____ day of _____, _____.

**City of Avondale,
an Arizona municipal corporation**

By _____

Its _____

By _____

Its _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____ by _____ and _____,
as _____ and _____, respectively, of
City of Avondale, an Arizona municipal corporation, on behalf of such corporation.

Notary Public

My Commission Expires:

Notary Stamp/Seal

CITY COUNCIL REPORT

SUBJECT: Authorization to Proceed with Annexation – ClearSky Rehabilitation Hospital of Avondale – Application PL-21-0124

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME: Creative and Sustainable Community Development

- STRATEGY: Maintain and expand quality infrastructure and improve connectivity to City amenities.
-

PURPOSE:

City Council will consider a request by Mr. Danny Banks, ClearSky Health, to authorize the annexation process of approximately 7.11 acres located at the southwest corner of McDowell Road and 109th Avenue. The Council will take appropriate action.

BACKGROUND:

The proposed annexation request includes 7.11 acres of land located at the southwest corner of McDowell Road and 109th Avenue (Exhibit A). Currently in the jurisdiction of Maricopa County, the 7.11-acre property is comprised of a 6.12-acre parcel owned by ClearSky Health of West Valley Property Company LLC and an approximately 0.99-acre strip of adjoining McDowell Road right-of-way; the request does not include an 18.37-acre parcel immediately west of the subject property, owned by Stead Family PVHCMF Charitable Remainder Unitrust, which will remain in the jurisdiction of Maricopa County.

The impetus for the proposed annexation and rezoning is to accommodate development of the 6.12-acre parcel with an approximately 40,000 square foot single-story ClearSky Rehabilitation Hospital. The planned facility will provide inpatient care for patients recovering from stroke, heart attack, brain injury, spinal cord injury, orthopedic conditions, cancer, and pulmonary conditions. Annexation into the City of Avondale is required in order for the City to provide water and sewer service to the planned facility.

The property subject to the annexation request, currently in active agricultural/farming use, is relatively flat and features an irrigation canal running along the property's McDowell Road frontage. The I-10 Freeway, which abuts the property's southern boundary, is slightly elevated relative to the grade of the property; a double-sided static (non-electronic) billboard sign is located at the far southeast corner of the site adjacent to I-10.

The property is presently zoned C-2 (Intermediate Commercial) in Maricopa County, which accommodates retail, service, office, and similar commercial uses that serve a community-wide trade area (Exhibit B). As required by Arizona statute, upon annexation, the property will be assigned City zoning equivalent to the existing Maricopa County Zoning. The City equivalent zoning to Maricopa County's C-2 district is Avondale's C-2 (Community Commercial) district, which allows for retail, service, and office uses similar to what is presently permitted in the County.

The subject property is designated by the General Plan 2030 Land Use Map as Freeway Commercial. The Freeway Commercial designation provides for regional retail, medical, office, higher educational complexes, hospitality, sports and family entertainment, commercial complexes, and service destinations serving a larger, more regional trade area. The City's Freeway Commercial (C-3) zoning district most directly conforms to the property's Freeway Commercial General Plan designation. Though upon annexation the property will be initially assigned C-2 zoning as discussed above, a concurrent application to rezone the site to C-3 to achieve conformance with the General Plan has been submitted and is in review. The rezoning will be scheduled to be acted upon by City Council on the same agenda as approval of the annexation request.

The existing uses and zoning of adjacent properties include:

NORTH OF MCDOWELL ROAD: Crystal Gardens, a fully developed 904-lot single-family residential subdivision constructed between 1996 and 2002. Crystal Gardens is located within the City of Avondale's jurisdiction and is zoned Crystal Gardens Planned Area Development (PAD).

EAST: Akos Medical Campus, a partially constructed 9.2-acre development consisting of a four-story, 68,000 square foot medical office building on the eastern portion of the site with the western half reserved for future development of an additional medical office building. The Akos Medical Campus property is zoned Avondale Integrated Medical Services (AIMS) PAD.

SOUTH: I-10 Freeway. Adjacent to the subject property, I-10 is a 12-lane highway situated within an approximately 530-foot-wide corridor. A wide, concrete lined drainage channel parallels the freeway on the north side, directly adjacent to the subject site's southern property line.

WEST: An undeveloped, 18.37-acre property located within the jurisdiction of Maricopa County, currently in farming production. Like the subject site, the property to the west is zoned Maricopa County C-2 (Intermediate Commercial) which accommodates a range of retail, office, and service uses. Future annexation of this property will be required before it can be developed with access to City services.

SUMMARY OF REQUEST:

The project applicant, Mr. Danny Banks, ClearSky Health, is requesting (Exhibit E) that the City Council provide City Staff with "authorization to proceed" with the proposed annexation of 7.11 acres as described in the legal description and map exhibit attached to this report as Exhibit F. As noted above, the proposed annexation will facilitate development of the property with an approximately 40,000 square foot Clear Sky Rehabilitation Hospital providing inpatient therapeutic care for persons recovering from a variety of conditions.

Receiving "authorization to proceed" from City Council is the first step in the annexation of properties. Once authorized, Staff will begin completing all statutorily mandated steps towards annexation of property, including obtaining property owner and valuation information from the Maricopa County Assessor and State of Arizona Department of Revenue, scheduling the annexation for a required public hearing before City Council and a separate City Council meeting for adoption, recording a blank petition, completing all required notifications, obtaining property owner signatures, and preparing an Ordinance for the proposed Annexation.

Providing authorization to proceed does not obligate the City Council to approve the proposed annexation if and when the item does come back to a future Council meeting for adoption.

DISCUSSION:

At this time, Staff expects that the required public hearing will be held during the October 18, 2021 City Council meeting, with adoption of the annexation Ordinance tentatively identified for the November 15, 2021

City Council meeting. The rezoning of the property to C-3 (Freeway Commercial) is also tentatively scheduled for the November 15, 2021 meeting.

BUDGET IMPACT:

The annexation application included the required \$6,000.00 fee that will be used towards costs related to the processing of the annexation. As noted previously, providing authorization to proceed does not obligate the City Council to approve the proposed annexation at a future meeting.

If the proposed annexation is approved at a future meeting and the property is developed within the City, revenue from construction sales tax, property tax, water and sewer fees, and development impact fees can be expected. Conversely, the City will incur costs of serving the property with Avondale services, including, but not limited to, water, sewer, sanitation, police, fire, and street services.

RECOMMENDATION:

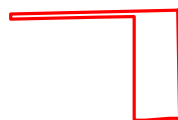
City Council will **AUTHORIZE** City Staff to proceed with the process of annexing approximately 7.11 acres located at the southwest corner of McDowell Road and 109th Avenue.

PROPOSED MOTION:

I move that City Council **AUTHORIZE** City Staff to proceed with the process of annexing approximately 7.11 acres located at the southwest corner of McDowell Road and 109th Avenue.

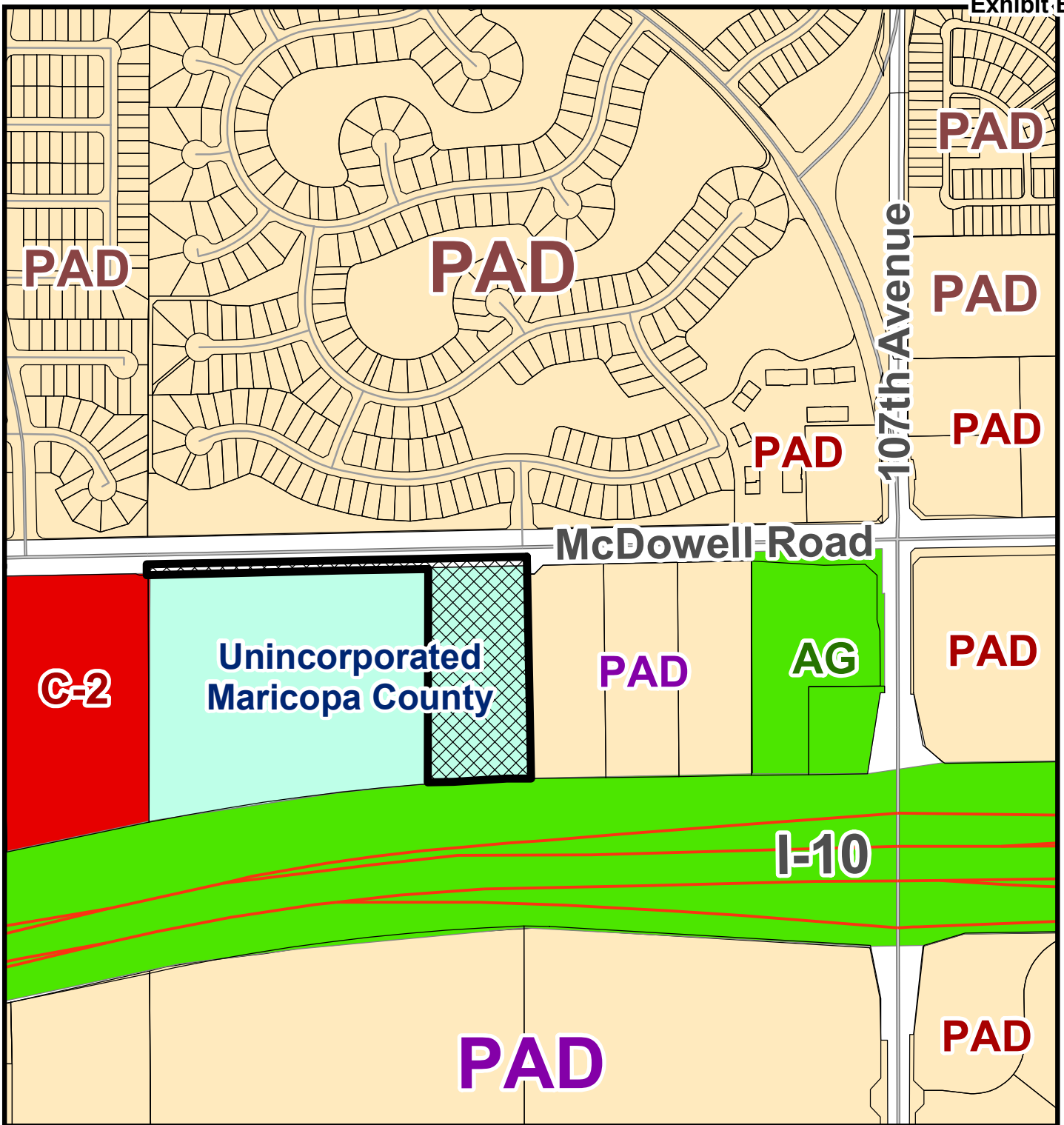


Aerial Photograph

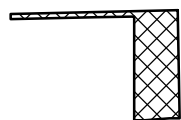


Annexation Area



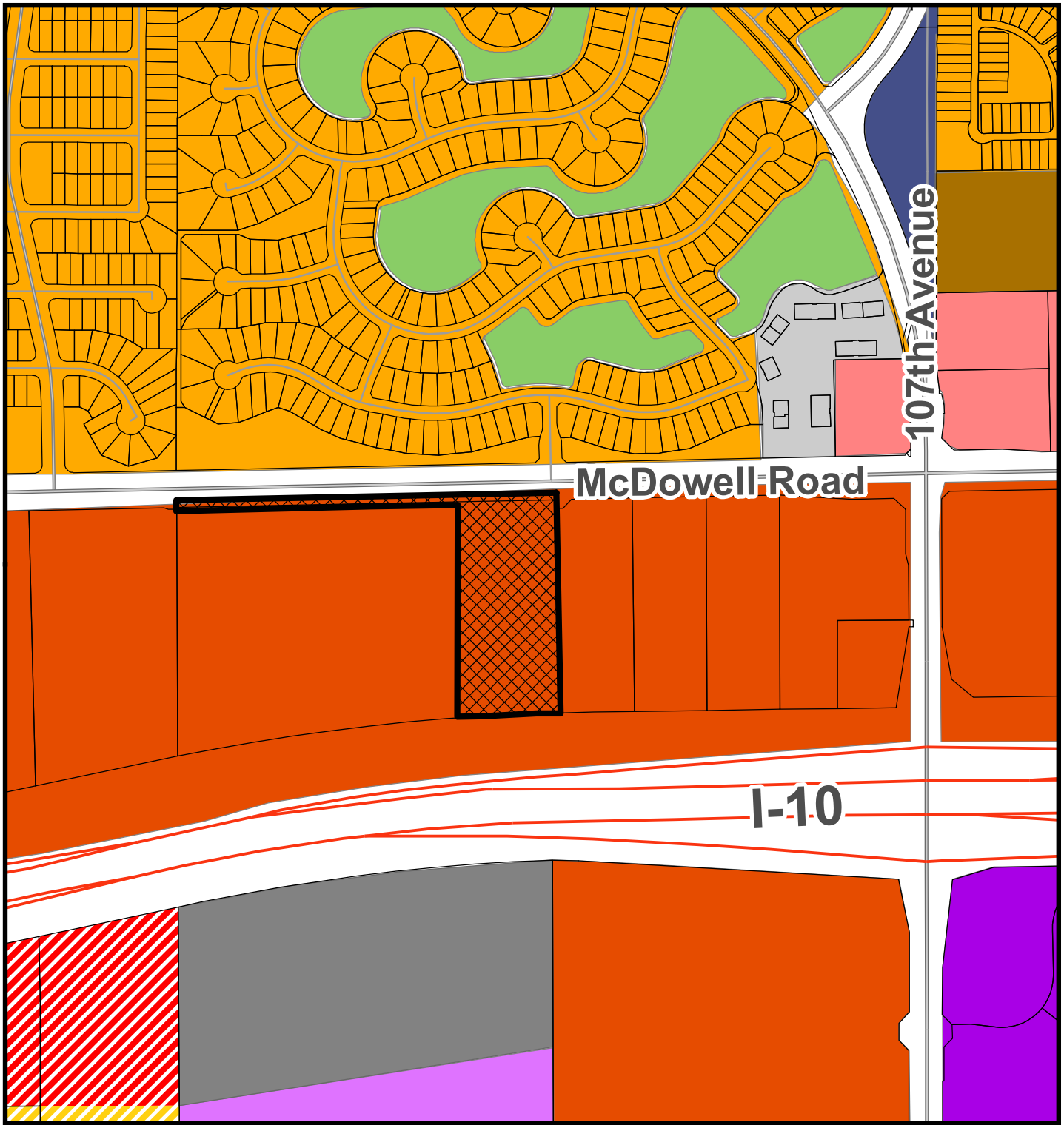


Zoning Vicinity map



Annexation Area



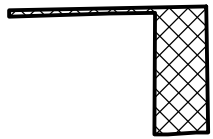


General Plan Land Use Map

- | | |
|-----------------------|-------------------------------|
| Freeway Commercial | Local Commercial |
| Office/Professional | Medium Density Residential |
| High Intensity Office | High Density Residential |
| Mixed Use | The BLVD Gateway District |
| Business Park | The BLVD Residential District |
| Open Space and Parks | Public/Civic |



Annexation Area



*SUMMARY OF RELATED FACTS
APPLICATION PL-21-0124*

<i>THE PROPERTY</i>	
PARCEL SIZE	Approximately 7.11 acres
LOCATION	Southwest Corner of McDowell Road and 109 th Avenue
JURISDICTION	Maricopa County
PHYSICAL CHARACTERISTICS	Relatively flat with an irrigation canal running along the property's McDowell Road frontage. The I-10 Freeway is elevated relative to the grade of the subject property adjacent to the site. A double-sided static billboard sign is located at the far southeast corner of the site adjacent to I-10.
EXISTING ZONING	The property is zoned Maricopa County C-2 (Intermediate Commercial) which provides for retail, service, office, and similar uses to a community-wide trade area.
EXISTING LAND USE	The subject property, along with additional land to the west that is not included in this annexation request, is in active farming use.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF MCDOWELL ROAD	Crystal Gardens, a fully developed 904-lot single-family residential subdivision constructed between 1996 and 2002. Crystal Gardens is located within the City of Avondale's jurisdiction and is zoned Crystal Gardens Planned Area Development (PAD).
EAST	Akos Medical Campus, a partially constructed 9.2-acre development consisting of a four-story, 68,000 square foot medical office building on the eastern portion of the site with the western half reserved for future development of an additional medical office building. The Akos Medical Campus property is zoned Avondale Integrated Medical Services (AIMS) PAD.
SOUTH	I-10 Freeway. Adjacent to the subject property, I-10 is a 12-lane highway situated within an approximately 530-foot-wide corridor. A wide, concrete lined drainage channel parallels the freeway on the north side, directly adjacent to the subject site's southern property line.
WEST	An undeveloped, 18.37-acre property located within the jurisdiction of Maricopa County, currently in farming production. Like the subject site, the property to the west is zoned Maricopa County C-2 (Intermediate Commercial) which accommodates a range of retail, office, and service uses.

<i>GENERAL PLAN</i>
The subject property is designated by the General Plan 2030 Land Use Map as Freeway Commercial. The Freeway Commercial designation provides for regional retail, medical, office, higher educational complexes, hospitality, sports and family entertainment, commercial complexes, and service destinations serving a larger, more regional trade area.

<i>PUBLIC SCHOOLS</i>

SCHOOL DISTRICT(S)	Littleton Elementary School District; Tolleson Union High School District
ELEMENTARY SCHOOL	Student's choice (No defined school). The closest district school is Collier Elementary School, located at the southwest corner of Coldwater Springs Boulevard and 118 th Avenue in the Coldwater Springs master planned community.
HIGH SCHOOL	Tolleson Union High School, located at the southwest corner of Van Buren Street and 94 th Avenue in the City of Tolleson.

<i>STREETS</i>	
McDowell Road	
Classification	Major Arterial
Existing half-street right-of-way	65 feet
Standard half-street right-of-way	65 feet
Existing half-street improvements	Two (2) travel lanes, half center turn lane
Standard half-street improvements	Three (3) travel lanes, half center turn lane (or median), bike lane, curb, gutter, detached sidewalk, streetlights, and landscaping.

<i>UTILITIES</i>
Future development on the annexation parcel will have access to City water via an existing 12-inch water line in McDowell Road and a planned 16-inch water line to be installed in McDowell Road by the City's upcoming McDowell Road and 107th Avenue Capital Improvement Program (CIP) project. City sewer service to the parcel will be accommodated by an existing 15-inch line that runs north of McDowell Road parallel to the street. Salt River Project (SRP) provides electricity to this area of Avondale.

Exhibit E

Annexation Project Narrative

ClearSky Rehabilitation Hospital of Avondale

July 01, 2021



City of Avondale Arizona
Development & Engineering Service Department
11465 W. Civic Center Drive, #110
Avondale, AZ 85323

Re: Project narrative for the proposed ClearSky Rehabilitation Hospital of Avondale

- Letter with explanation of annexation request:
This annexation request is being made following pre-application review comments with the city of Avondale staff. The site is currently located in unincorporated Maricopa County. Annexation of the property into the City of Avondale is required to receive development approvals, permits, and services from the City. Only the 7.1111-acre portion to be developed by ClearSky Health (as shown in the legal description map) is being annexed at this time and a lot split is currently in process with Maricopa County. Adjacent portions of McDowell Road right-of-way currently in Maricopa County jurisdiction are also included within the legal description submitted as part of the application request.
- Explain how request conforms with Arizona state law requirements:
This annexation request conforms to A.R.S Title 9, Chapter 4, Article 7 in that the property is currently bounded by City of Avondale property and the adjacent property is also planned on being annexed into the City of Avondale. Annexation area is part of an existing Maricopa County island and no new County islands would be created as part of the proposed annexation. No part of the property is State land and does not need approval by the State of Arizona Land Commissioner. The property has not been part of a failed annexation and the property meet the requirements outlined in the referenced statute. The property will be annexed into the City with the zoning that most closely matches the current County zoning. The process of requesting the annexation through the City of Avondale requires the notification and posting standards listed in the referenced statute. If City Council determines the annexation would be in the best interest of the City, City staff will be will begin the formal annexation process in accordance with the referenced statute.
- Description of expected future use/development of the proposed annexation area:
The ClearSky Rehabilitation Hospital of Avondale is a facility that will provide care for patients recovering from stroke, heart attack, brain injury, spinal cord injury, orthopedic conditions, cancer, and pulmonary conditions. The facility will offer physical therapy, speech therapy, and occupational therapy services that bridge an important gap in transitioning patients from acute care facilities back to home living. With a 12-day average stay, the hospital strives to maintain a friendly environment that promotes healing of the body, mind and spirit. The facility is intended to be licensed as a specialty rehabilitation hospital. The facility is a single-story building that is approximately 40,000 gross square feet.
- Disclose any easements, utilities, irrigations, canals, state land property, and the like:

There are three easements/agreements related to the property as identified in the title report and ALTA survey provided by Wood Patel for the whole property:

4. The right of the State of Arizona to prohibit, limit and control access to the limited access highway as set forth in instrument recorded in Docket 13207, Page 1405 and recorded as Docket 15507, Page 683.
5. The terms and provisions contained in the document entitled "Water Service Agreement" recorded as 87-493367 of Official Records and recorded as 2007-0462424 of Official Records.
6. An easement for underground electrical conduits and incidental purposes in the document recorded as 2017-0351085 of Official Records.

1. There is an Arizona Department of Transportation access control agreement which affects the south property boundary of our site per Docket 13207, Page 1405 and Docket 15507, Page 683, Maricopa County Records (MCR). There is a chain link fence along the property boundary to prevent access to the ADOT I-10 drainage channel.
2. There is a Water Services Agreement, related to water provided by FER to the Stead Property (parent property from which our site is split) for irrigation as per document 2007-0462424, MCR. The agreement becomes non-applicable when the property is developed.
3. There is an 8 ft wide easement for electric power distribution which runs along and inside the east property line and south property line of the site per document recorded as 2017-0351085, MCR. The power feed a billboard in the southeast corner of the site and will remain.

Note that the site is north of Interstate 10, which is a state owned freeway right of way.

- Description of existing infrastructure: water, sewer, electricity, natural gas, phone, cable, irrigation, wells, curb, gutter, sidewalks, street lights, pavement, and the like:

The site has the following existing utilities:

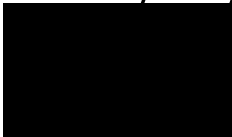
1. Water – existing 12" water main in the north side of McDowell Road right of way
2. Sewer – existing 15" sewer main located within the HOA area of the residential development on the north side of McDowell Road.
3. Electricity – provided by SRP. There are existing underground electrical lines along the south side of McDowell Road. They stop at the northeast corner of the site where they feed several pieces of electrical equipment. There is an underground electric line along and inside the east and south sides of our property feeding the billboard.
4. Natural Gas – provided by Southwest Gas. There is an existing 4" polyethylene gas main on the north side of McDowell Rd.
5. Phone/Cable – Century Link is the provider and they have underground facilities on the north side of McDowell Rd. There are also facilities on the south side of McDowell Rd, but they are east of the site approximately 300 feet or more.
6. Irrigation - We have an SRP irrigation pipe along our frontage and inside the City of Avondale right of way for McDowell Rd. This line will remain in place and in service. We have a private irrigation ditch along the north side of our property within our property boundary. This ditch will be replaced with a pipe or removed depending on negotiations with the neighboring property regarding continued farming.
7. Wells – no wells on the site.
8. Curb, gutter, sidewalks, pavement – McDowell Road is paved. There are no curbs, gutter, or sidewalks on the south side of the road. These will be constructed with this project (half street improvements).

9. Street lights – There are no streetlights along the McDowell Rd frontage. These will be added with the half street improvements.
- Identify all existing residential and non-residential structures within the proposed annexation area:
No existing residential or non-residential structures within the proposed annexation area. Land is currently utilized for agricultural use
 - Description of existing conditions: number of people residing in the proposed annexation area, construction date of existing subdivisions, number of existing dwelling units, number of vacant lots, identify commercial businesses:
1 vacant lot. No people reside in the proposed annexation area, no existing dwelling units or commercial businesses. Land is currently utilized for agricultural use
 - Information related to any Maricopa County zoning violations and legal nonconforming buildings and/or uses:
Lot is vacant and utilized for agriculture. No known zoning violations or nonconforming buildings
 - Explanation of desired City services:
The project will require water and sewer service to be provided by the City of Avondale. This includes water for fire flow. The project includes adding a 16 inch waterline in the south side of McDowell Rd across the frontage of the project. The project anticipates connecting to both the existing 12" water and the new 16" water with two 8" connections that will serve an onsite fire loop system. Two 3" domestic water service connections are proposed (one is a redundant line).
 - Identify which school districts will be affected by the development:
The project is in the Littleton Elementary School & the Tolleson Union High School district but will not be affected by the development due to the nature of this project. Given that the project does not feature a residential component, no additional analysis pertaining to schools is necessary
 - Proximity to Police and Fire stations:
The closest police station is to proposed development the Main Station located on 11485 W Civic Center Dr, Avondale, AZ 85323, approximately 2.3 miles away.

The closest fire station is the Avondale Fire-Rescue Station 172 located on 1825 N 107th Ave, Avondale, AZ 85392, less than 0.5 mile away.

Very truly yours,

Dekker/Perich/Sabatini Ltd.



Robert C. George, AIA, LEED AP
Principal

Exhibit F

Proposed Annexation Legal Description & Map

ClearSky Rehabilitation Hospital of Avondale



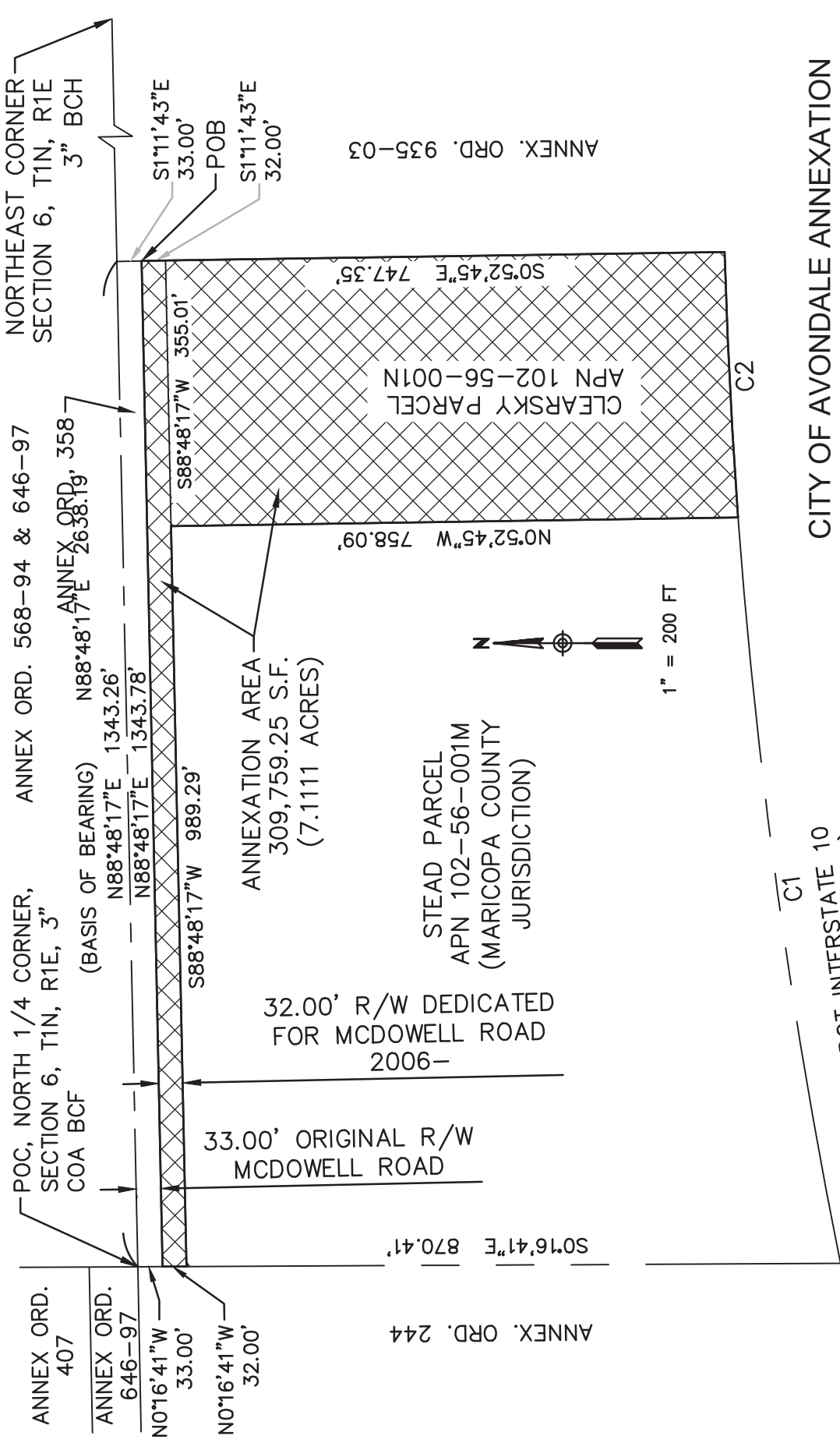
CITY OF AVONDALE ANNEXATION
LEGAL DESCRIPTION AND MAP
CLEARSKY HEALTH
109TH AVE AND MCDOWELL ROAD
PAGE 1 OF 2, 7/2/21

A parcel of land lying within the northeast 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:

COMMENCING at the north quarter corner of said Section 6, a 3-inch City of Avondale brass cap flush, from which the northeast corner of said section, a 3-inch brass cap in handhole, bears North 88°48'17" East (basis of bearing), a distance of 2638.19 feet;
THENCE along the north line of said northeast quarter, North 88°48'17" East, a distance of 1343.26 feet;
THENCE leaving said north line, South 01°11'43" East, a distance of 33.00 feet, to the POINT OF BEGINNING;
THENCE continuing South 01°11'43" East, a distance of 32.00 feet, to the south line of that certain right of way parcel of land described in Document 2006-0003279, Maricopa County Records (MCR);
THENCE leaving said south line South 00°52'45" East, a distance of 747.35 feet, to the northerly right-of-way line of Interstate 10 and the beginning of a non-tangent curve to the left from which point the radius point bears South 1°39'00" East;
THENCE 355.26 feet along said northerly right-of-way line the arc of said curve to the left, having a radius of 7959.44 feet, through a central angle of 2°33'26" and a chord bearing of South 87°04'17" West;
THENCE leaving said northerly right-of-way line, North 00°52'45" West, a distance of 758.09 feet to a point on said south line of the right of way parcel;
THENCE South 88°48'17" West, along said south line, a distance of 989.29 feet to a point on the west line of said northeast quarter;
THENCE departing said south line North 00°16'41" West, a distance of 32.00 feet;
THENCE North 88°48'17" East, along a line 33.00 feet south of and parallel to said north line of the northeast quarter, a distance of 1343.78 feet returning to the POINT OF BEGINNING;

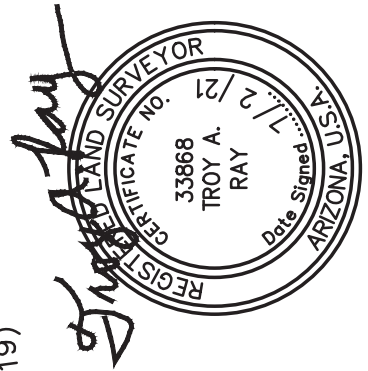
The above described parcel contains 309,759.25 square feet or 7.1111 acres, more or less.





CITY OF AVONDALE ANNEXATION
LEGAL DESCRIPTION AND MAP

CLEARSKY HEALTH
109TH AVE AND MCDOWELL ROAD
PAGE 2 OF 2, 7/2/21



CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	
C1	7°14'43"	7959.44'	1006.51'	
C2	2°33'26"	7959.44'	355.26'	

ADOT INTERSTATE 10
(ANNEX. ORD. 319)

ANNEX. ORD. 244

STEAD PARCEL
APN 102-56-001M
(MARICOPA COUNTY
JURISDICTION)

CLEARSKY PARCEL
APN 102-56-001N

ANNEXATION AREA
309,759.25 S.F.
(7.1111 ACRES)

33.00' ORIGINAL R/W
MCDOWELL ROAD

32.00' R/W DEDICATED
FOR MCDOWELL ROAD
2006-

RITOCH-POWELL
& Associates
[RPA]
602-263-1177
WWW.RPAENG.COM

CLOSURE CALCULATIONS — ANNEXATION

North: 896655.9509' East: 584885.5765'

Segment #1 : Line

Course: S01° 11' 43"E Length: 32.00'
North: 896623.9578' East: 584886.2440'

Segment #2 : Line

Course: S00° 52' 45"E Length: 747.35'
North: 895876.6958' East: 584897.7112'

Segment #3 : Curve

Length: 355.26' Radius: 7959.44'
Delta: 002°33'26" Tangent: 177.66'
Chord: 355.23' Course: S87° 04' 17"W
Course In: S01° 39' 00"E Course Out: N04° 12' 26"W
RP North: 887920.5560' East: 585126.8949'
End North: 895858.5465' East: 584542.9451'

Segment #4 : Line

Course: N00° 52' 45"W Length: 758.09'
North: 896616.5473' East: 584531.3132'

Segment #5 : Line

Course: S88° 48' 17"W Length: 989.29'
North: 896595.9107' East: 583542.2384'

Segment #6 : Line

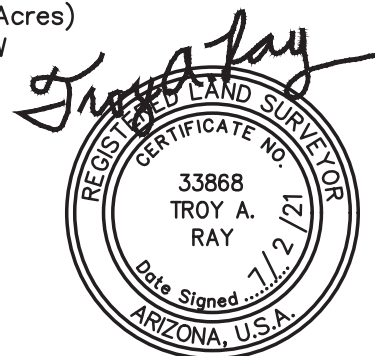
Course: N00° 16' 41"W Length: 32.00'
North: 896627.9103' East: 583542.0831'

Segment #7 : Line

Course: N88° 48' 17"E Length: 1343.78'
North: 896655.9416' East: 584885.5707'

Perimeter: 4257.78' Area: 309759.25 Sq. Ft. (7.1111 Acres)
Error Closure: 0.0109 Course: S31° 46' 37"W
Error North: -0.00930 East: -0.00576

Precision 1: 390,618.35



CITY COUNCIL REPORT

SUBJECT: Final Plat for Avondale Commerce Park Ph II - Application PL-21-0036

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction
-

PURPOSE:

City Council will consider a request by Mr. James A. Brucci, Hunter Engineering, for approval of Application PL-21-0036 Avondale Commerce Park Phase II Final Plat on 40.03 gross acres of property located at the northwest corner of 101st Avenue and Van Buren Street. The proposed Final Plat will dedicate public utility easements, sidewalk easement, and right-of-way. The Council will take appropriate action.

BACKGROUND:

The 40-gross acre site subject property (Exhibits A, B, and C) is located at the northwest corner of 101st Avenue and Van Buren Street. The site, which was annexed in April 1986, is relatively flat and features no unusual characteristics.

The site is located within the Freeway Corridor Specific Plan (FCSP), rezoned Agricultural (AG) to Avondale Commerce Park Planned Area Development in March 2009. The land use designation is Business Park. The Business Park designation accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers and limited warehouse and support services that support these primary employment uses. In conformance, with the Business Park designation, the approved Avondale Commerce Park PAD allows for development of the property with a commerce park featuring two (2) light industrial buildings.

The Avondale Commerce Park development has received Site Plan and Design Review approval. The project, which is currently used for agricultural productions, includes two, single-story buildings totaling approximately 633,321 square feet which will accommodate industrial warehouse type uses.

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

NORTH OF PIERCE STREET: Phase I of the Avondale Commerce Center Park PAD is developed with two industrial buildings, totaling 652,146 square feet.

SOUTH OF VAN BUREN STREET: Properties located within the City of Tolleson, including an enclosed industrial development west of 101st Avenue.

EAST: Currently a vacant parcel zoned Interstate Commerce Center PAD with a proposal to construct a 95,580 square foot building for industrial uses.

WEST OF 103rd AVENUE: The parcel is zoned Agriculture (AG). The westerly portion of the lot is developed with the Maricopa County Justice Courts while the easterly portion of the parcel is utilized for agricultural purposes.

SUMMARY OF REQUEST:

The proposed Final Plat dedicates public easements, sidewalk easements and rights of way, in conformance with the approved Avondale Commerce Park Site Plan as follows:

- 101st Avenue Right-of-Way: The Final Plat dedicates 40 feet of half-street right-of-way for 101st Avenue, an Industrial Collector, from Pierce Street to Van Buren Street.
- Van Buren Street Right-of-Way: The Final Plat dedicates 70 feet of half-street right-of-way for Van Buren Street, a Minor Arterial, from 101st Avenue to 103rd Avenue.
- 103rd Avenue Right-of-Way: The Final Plat dedicates 40 feet of half-street right-of-way for 103rd Avenue, an Industrial Collector, from Pierce Street to Van Buren Street.
- Sidewalk Easements: The Final Plat dedicates an eight (8) sidewalk easements. Two sidewalks easements will be located on each of the following streets: 101st Avenue, 103rd Avenue, Pierce Street and Van Buren Street for a total of eight (8) sidewalk easements.
- Pierce Street Right-of-Way: The Final Plat dedicates 40 feet of half-street right-of-way for Pierce Street, an Industrial Collector, from 101st Avenue to 103rd Avenue.
- Public Utility Easements: Per City standards, the proposed Final Plat dedicates eight (8) foot public utility easements (PUEs) adjacent to future 103rd Avenue, 101st Avenue, Van Buren Street and Pierce Street, to accommodate future utility service enhancements in the area.

ANALYSIS:

- The proposed Final Plat 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 Final Plat conforms to the boundaries of the Final Plat received on May 18, 2021.
- The Final Plat conforms to the boundaries of the site plan approved with the Site Plan and Design review application on February 11, 2021.

DISCUSSION:

- The proposed Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
- The proposed Final Plat is in conformance with the Avondale Commerce Park PAD and approved

Avondale Commerce Park Phase II Site Plan, including conditions of approval.

- 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 impacts.

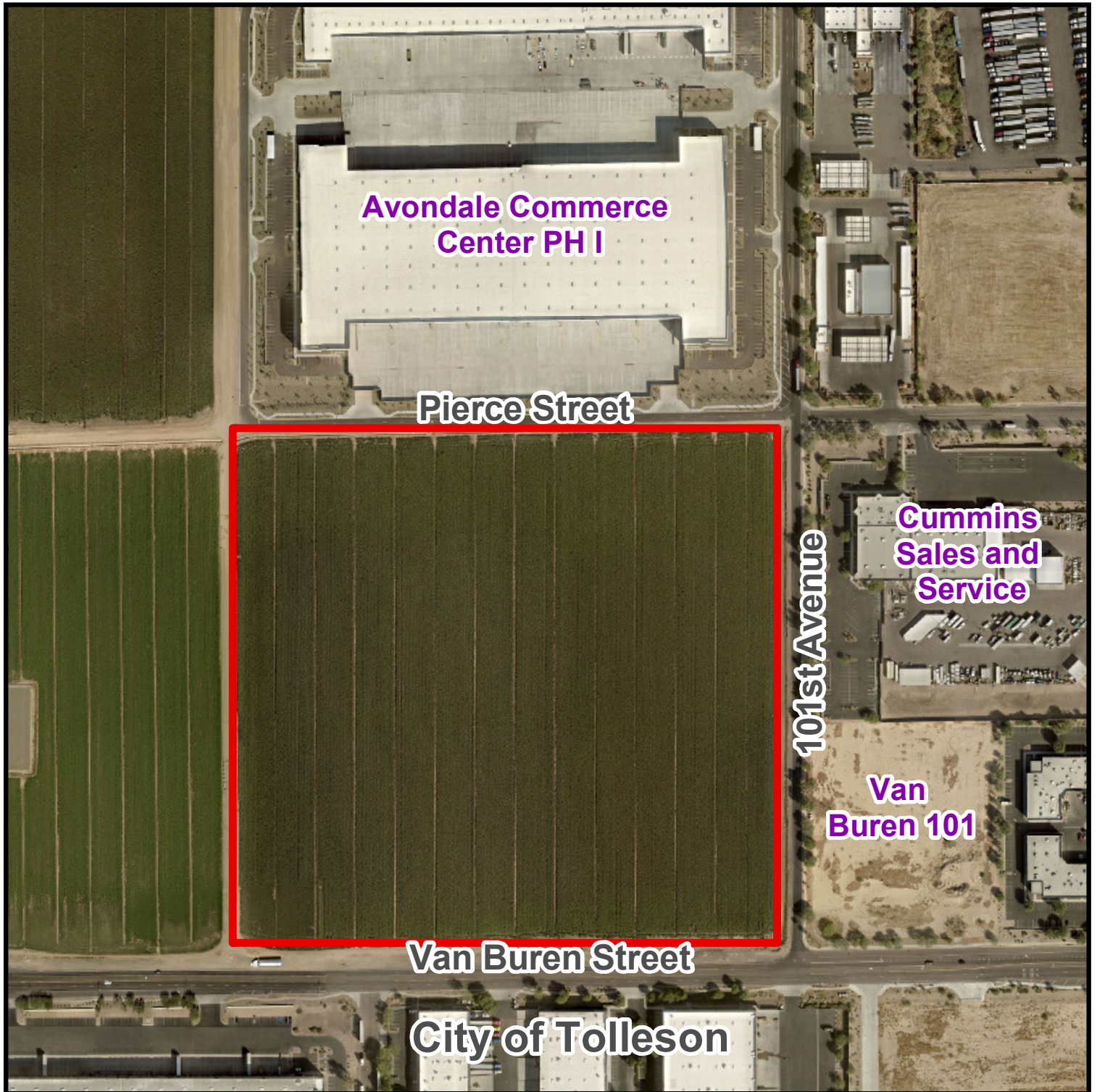
RECOMMENDATION:

City Council will **APPROVE** Application PL-21-0036 Final Plat for Avondale Commerce Park Phase II, subject to the following one (1) condition of approval:

1. The recorded plat shall be in conformance with the Avondale Commerce Park Phase II Final Plat submitted on May 18, 2021.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-21-0036, a Final Plat for Avondale Commerce Park Phase II, subject to one (1) recommended condition of approval as listed in the staff report.

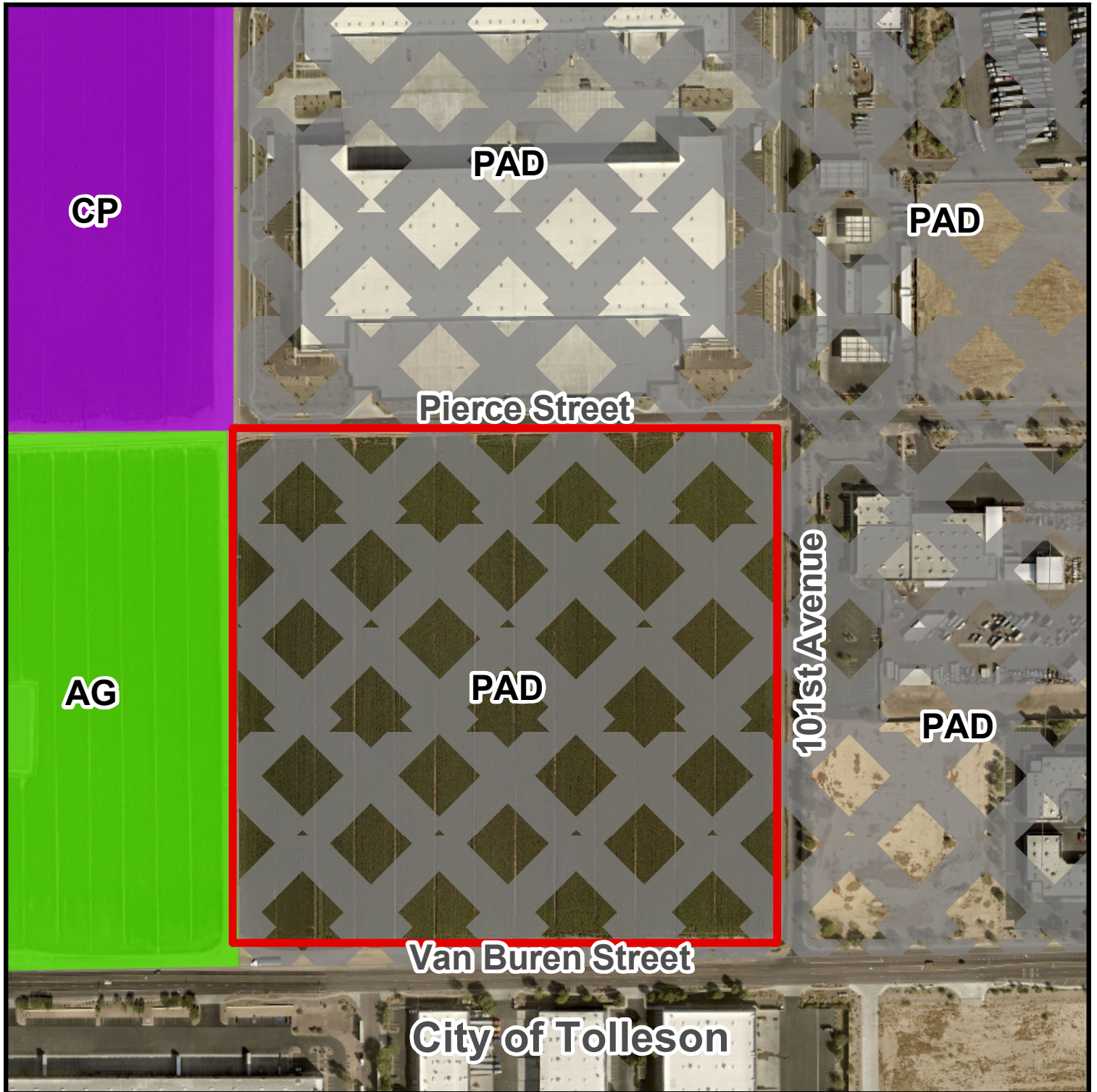


Aerial Photograph



 Project Location



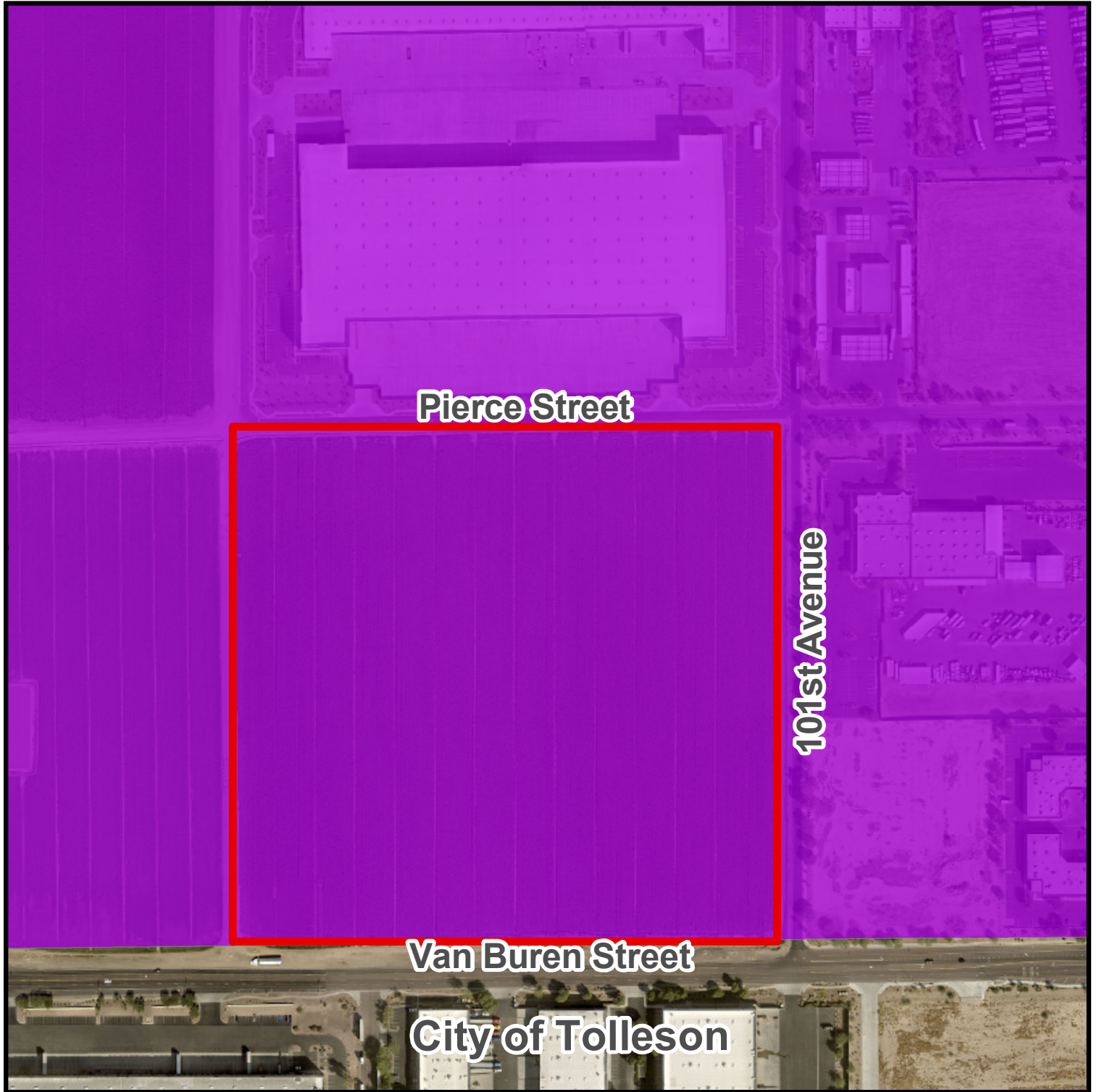


Zoning Vicinity Map



 Project Location





General Plan Land Use Map



Project Location



Business Park



Exhibit D

Summary of Related Facts

SUMMARY OF RELATED FACTS

APPLICATION PL-21-0036

<i>THE PROPERTY</i>	
SIZE	40.03 gross acres
LOCATION	Northwest corner of 101 st Avenue and Van Buren Street.
PHYSICAL CHARACTERISTICS	The site is rectangular-shaped, relatively flat, and features no unusual physical characteristics.
EXISTING LAND USE	The parcel is currently vacant with no use.
EXISTING ZONING	The parcel is zoned Avondale Commerce Park Planned Area Development (PAD). The approved PAD allows for light industrial uses.
ZONING HISTORY	The site was annexed April 4, 1986.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF PIERCE STREET	Phase I of the Avondale Commerce Center Park PAD is developed with two industrial buildings, totaling 652,146 square feet.
EAST OF 101 ST AVENUE	Currently a vacant parcel zoned Interstate Commerce Center PAD with a proposal to construct a 95,580 square foot building for industrial uses.
SOUTH OF VAN BUREN STREET	Properties located within the City of Tolleson, including an enclosed industrial development west of 101 st Avenue.
WEST:	The parcel is zoned Agriculture (AG). The westerly portion of the lot is developed with the Maricopa County Justice Courts while the easterly portion of the parcel is utilized for agricultural purposes.

<i>GENERAL PLAN</i>
The property is presently designated by the General Plan 2030 Land Use Map as Business Park. The Business Park designation accommodates development of large-scale employment campuses consisting of enclosed light manufacturing, corporate commerce, office and limited warehouse and support services designated with attractive streetscapes, appropriate screening, and pedestrian considerations. The Avondale Commerce Park Phase II, which allows for commerce park and light industrial uses on the site, conforms to the Business Park designation.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Tolleson Union High School District, Tolleson Elementary School District
ELEMENTARY SCHOOL	Porfirio H. Gonzales Elementary School, located east of the northeast corner of 95 th Avenue and Garfield Street in the City of Tolleson
HIGH SCHOOL	Tolleson Union High School, located at the southwest corner of Van Buren Street and 94 th Avenue in the City of Tolleson

<i>ADJACENT STREETS</i>	
101st Avenue	
Classification	Industrial Collector
Existing half-street ROW	40 feet
Standard half-street ROW	40 feet
Existing half-street improvements	One (1) through lane, detached sidewalk, curb, gutter, landscaping, and streetlights
Standard half-street improvements	One (1) through lane, detached sidewalk, curb, gutter, landscaping, and streetlights
Van Buren Street	
Classification	Minor Arterial
Existing half-street ROW	70 feet
Standard half-street ROW	70 feet
Existing half-street improvements	One (1) through lane, half center turn lane, temporary left-turn lane (will convert to an additional westbound lane when property is developed), bike lane, detached sidewalk, curb, gutter, landscaping, and streetlights
Standard half-street improvements	Two (2) through lanes, half center turn lane, bike lane, detached sidewalk, curb, gutter, landscaping, and streetlights
Pierce Street	
Classification	Industrial Collector
Existing half-street ROW	40 feet
Standard half-street ROW	40 feet
Existing half-street improvements	One through lane, half center turn lane, detached sidewalk, curb, gutter, landscaping, streetlights
Standard half-street improvements	One through lane, half center turn lane, detached sidewalk, curb, gutter, landscaping, streetlights
103rd Avenue	
Classification	Industrial Collector
Existing half-street ROW	40 feet
Standard half-street ROW	40 feet
Existing half-street improvements	One (1) through lane, detached sidewalk, curb, gutter, landscaping, and streetlights
Standard half-street improvements	One (1) through lane, detached sidewalk, curb, gutter, landscaping, and streetlights
<i>UTILITIES</i>	
The site has access to an existing 12-inch water lines in Van Buren Street. Sewer service to the site will be accommodated by an existing 12-inch main line in Van Buren Street. Salt River Project (SRP) provides electrical service in this portion of the City.	

Exhibit E

Proposed Avondale Commerce Park Phase II
Final Plat

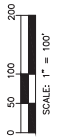
PHASE II

11

2

____ PROPERTY LINE
____ EASEMENT LINE
____ RIGHT-OF-WAY LINE
C.O.A. CITY OF AVONDALE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S8902°08'W	80.14'
L2	S861°10'22"E	80.21'
L3	N45541°15'W	20.19'
L4	N4334°40'40"E	20.18'
L5	N46701°42'W	20.31'
L6	S4338°13'37"W	20.28'
L7	S4508°03'2"E	20.24'
L8	S4445°41'8"W	20.26'
L9	N4508°03'2"E	20.13'
L10	N4525°16'17"W	20.14'
L11	N4557°52'W	14.11'
L12	S4348°51'W	14.09'
L13	S4507°52'E	14.14'
L14	N4337°00'4"E	14.12'
L15	N4517°00'4"E	24.52'
L16	S4508°34'W	24.75'
L17	N4454°40'7"E	24.75'
L18	N4505°33'W	24.75'



CITY COUNCIL REPORT

SUBJECT: Final Plat for MGN1, being a Replat of Avondale City Center Phase 2 Lot 8, for The BLVD water feature - Application PL-21-0091

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Diverse Recreation and Entertainment Opportunities

- Increase visitor traffic to Avondale's entertainment, recreation, conference, and hospitality venues.
-

PURPOSE:

City Council will consider a request to approve a Final Plat for MGN1 being a Replat of Avondale City Center Phase 2 Lot 8, approximately 4.099 acres of private property located at the southeast corner of Avondale Boulevard and The BLVD. The Council will take appropriate action.

BACKGROUND:

The subject property is located at the southeast corner of Avondale Boulevard and The BLVD (Exhibit A). The property was annexed in April 2009 and zoned Agricultural (AG) until being rezoned to City Center District (CCD) in February 2010. Following adoption of The BLVD Specific Plan in September 2019, the entirety of the subject property was rezoned from CCD to The BLVD District (BLVDD) in March 2020 (Exhibit B). The property is located within The BLVD's Park Avenue District, the core area for The BLVD, which is also the General Plan Land Use Designation for the site (Exhibit C). The Park Avenue District of The BLVD is expected to develop with a mix of hotel, retail, restaurant, sports, entertainment, theater, cultural, multi-family residential, studios, office, and education uses all designed to interface with adjacent streets in an urban manner and featuring modern, contemporary design.

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

NORTH OF THE BLVD: Property that had been used until Fall 2020 as the temporary parking lot for the American Sports Center (ASC) and adjacent inline businesses. Though the temporary pavement remains in place, access to the lot was closed in Fall 2020 in preparation for sale and development of the site. A Development Plan for a Dutch Bros. drive-through coffee shop was approved in July 2021 on the northern end of the site. The property is zoned BLVDD, part of the Park Avenue District.

EAST OF 114TH AVENUE: City-owned property zoned BLVDD, part of the Park Avenue District, that is currently being developed with a lake feature and being marketed for future retail and entertainment development.

SOUTH: An 8.9-acre City-owned parcel zoned BLVDD, part of the Park Avenue District currently being marketed for future commercial, entertainment, retail, and residential.

WEST OF AVONDALE BOULEVARD: A 19.09-acre vacant parcel zoned BLVDD, part of the Village District intended for conventional retail, restaurant, office, employment, and urban-form multi-family uses (minimum 18 dwelling units per acre) with a strong emphasis on pedestrian-orientation and contemporary urban design.

SUMMARY OF REQUEST:

The Development & Engineering Services Department is requesting approval of a Final Plat for MGN1, being a Replat of Lot 8 consisting of 4.099 acres of privately-owned property located at the southeast corner Avondale Boulevard and The BLVD. The proposed Final Plat (Exhibit E) contains a total of two (2) lots, splitting existing Lot 8 into two (2) lots. The City intends to purchase the smaller lot at the hard corner for the purpose of constructing The BLVD Water Feature, which is currently under construction.

PUBLIC PARTICIPATION:

Public notification is not required for Final Plat applications.

PLANNING COMMISSION ACTION:

The Planning Commission does not review Final Plat applications.

ANALYSIS:

- The proposed Final Plat has been prepared by a 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 Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.

DISCUSSION:

1. The proposed Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
2. The proposed Final Plat is in conformance with The BLVD Specific Plan.
3. The condition of approval is 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 impacts.

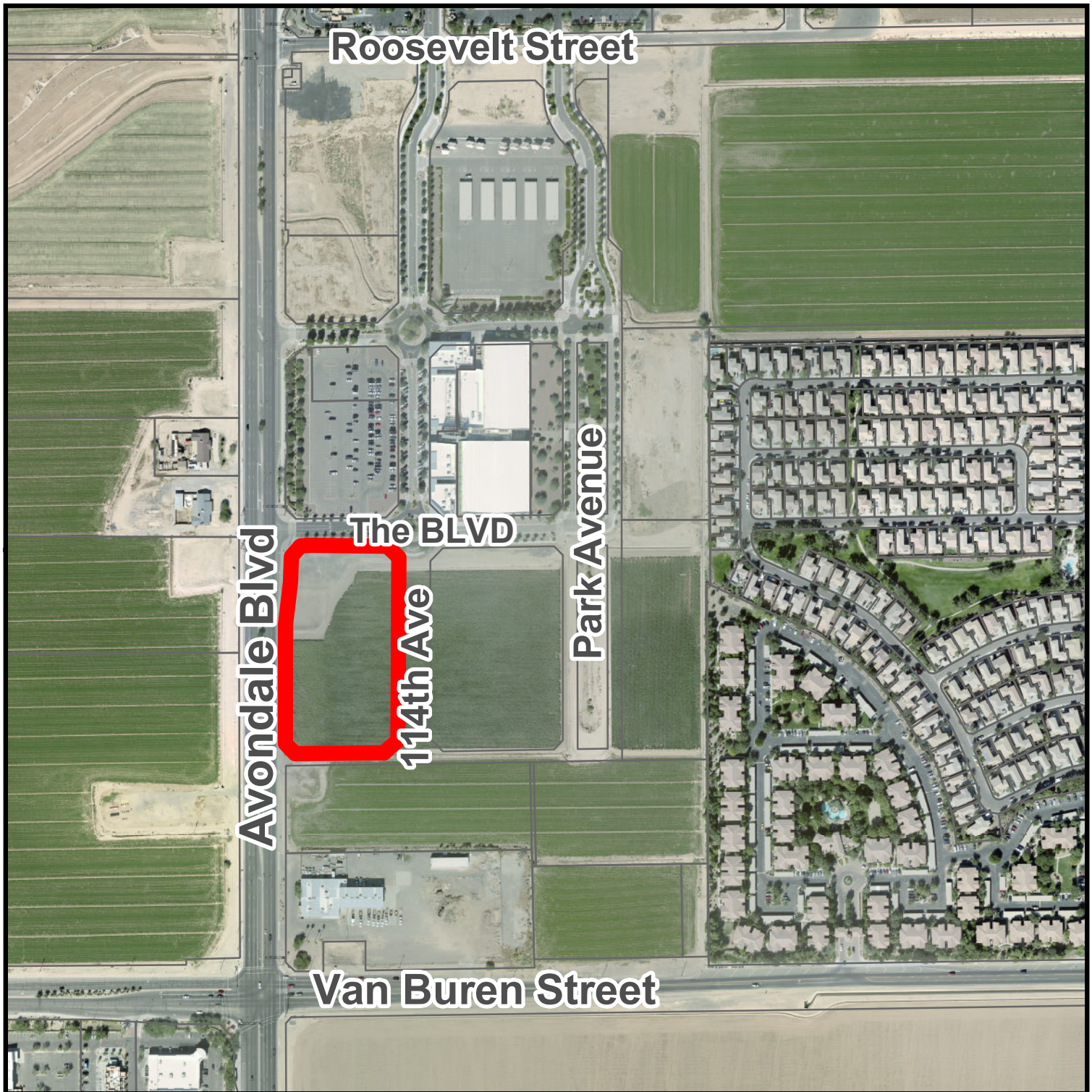
RECOMMENDATION:

No public hearing is required. The City Council will **APPROVE** Application PL-21-0091, a request for approval of a Final Plat for MGN1, being a Replat of Avondale City Center Phase 2 Lot 8, consisting of two (2) parcels totaling 4.099 acres, subject to one (1) condition of approval as listed in the staff report.

1. The recorded plat shall be in conformance with the Final Plat for MGN1 dated July 7, 2021.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-21-0091, a request for approval of a Final Plat for MGN1, being a Replat of Avondale City Center Phase 2 Lot 8, consisting of two (2) parcels totaling 4.099 acres, subject to one (1) condition of approval as listed in the staff report.

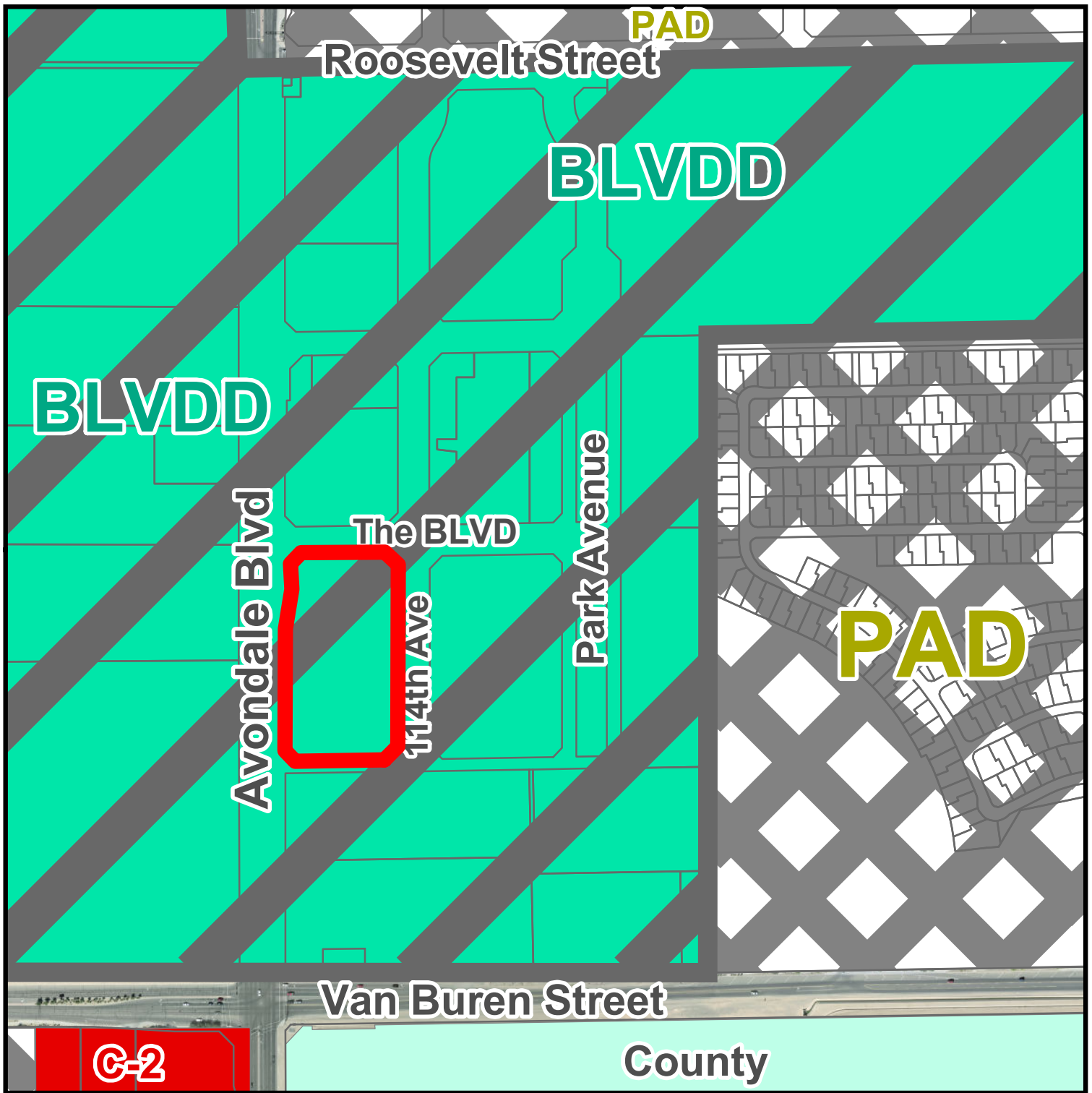


Aerial Photograph



Project Location



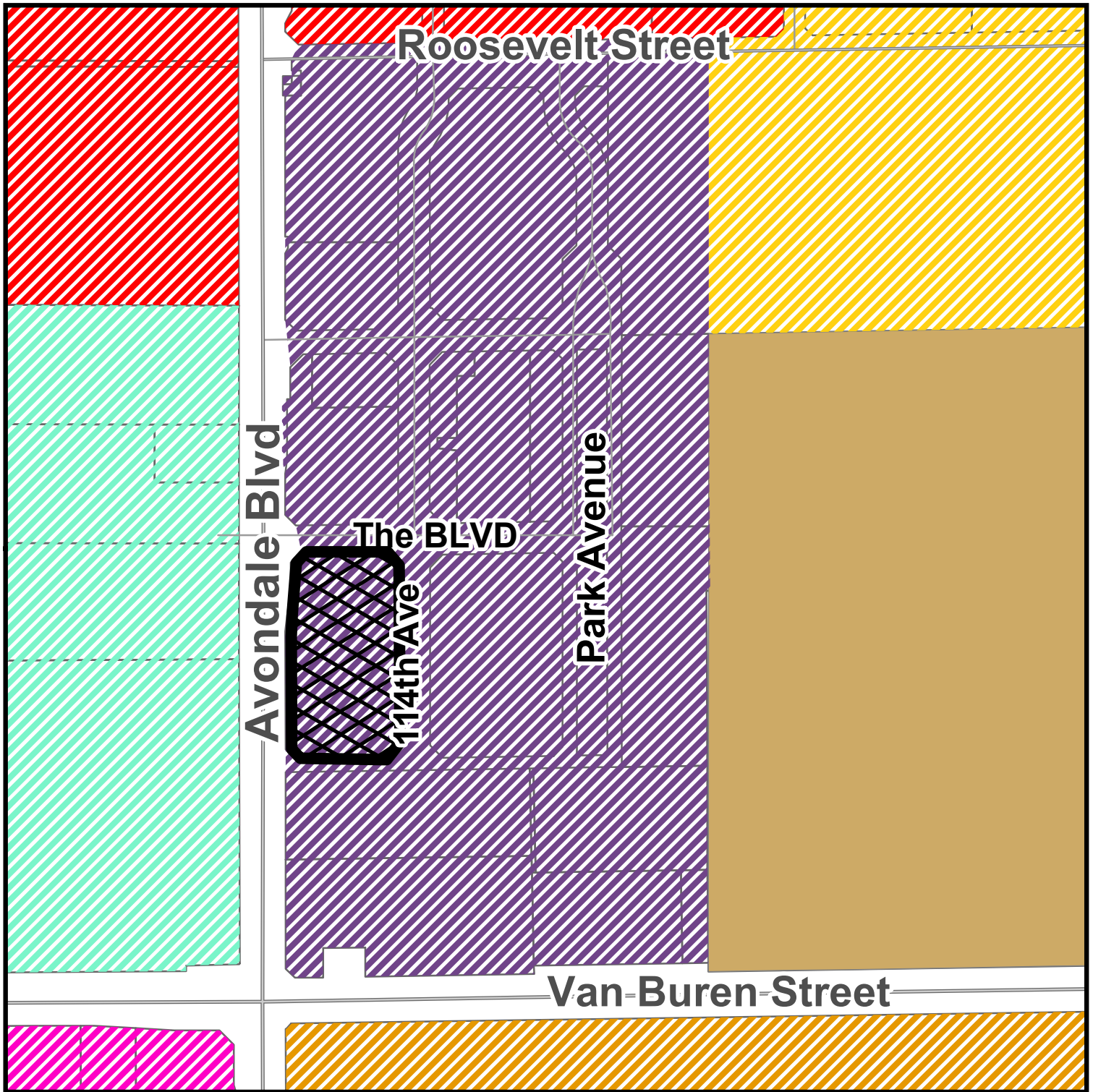


Zoning Vicinity Map



Project Location





General Plan Land Use Map



Neighborhood District



Gateway District



Village District



Park Avenue District



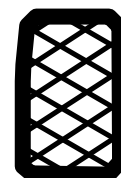
Promenade District



Residential District



Medium/High Density Residential



Subject Property

*SUMMARY OF RELATED FACTS
APPLICATION PL-21-0091*

<i>THE PROPERTY</i>	
PROPERTY SIZE	Approximately 4.099 acres
LOCATION	Southeast corner Avondale Blvd and The BLVD
PHYSICAL CHARACTERISTICS	The subject property is undeveloped and mostly in agricultural production.
GENERAL PLAN LAND USE DESIGNATION	The BLVD – Park Avenue District
EXISTING ZONING	The BLVD District (BLVDD)
ZONING HISTORY	The subject property was annexed in April 2009 and zoned AG until also being rezoned to City Center District (CCD) in February 2010. Following adoption of The BLVD Specific Plan in September 2019, the entirety of the subject property was rezoned from CCD to The BLVD District (BLVDD) in March 2020. The property is located within The BLVD's Park Avenue District, the core area for The BLVD, which is expected to develop with a mix of hotel, retail, restaurant, sports, entertainment, theater, cultural, multi-family residential, studios, office, and education uses all designed to interface with adjacent streets in an urban manner and featuring modern, contemporary design.

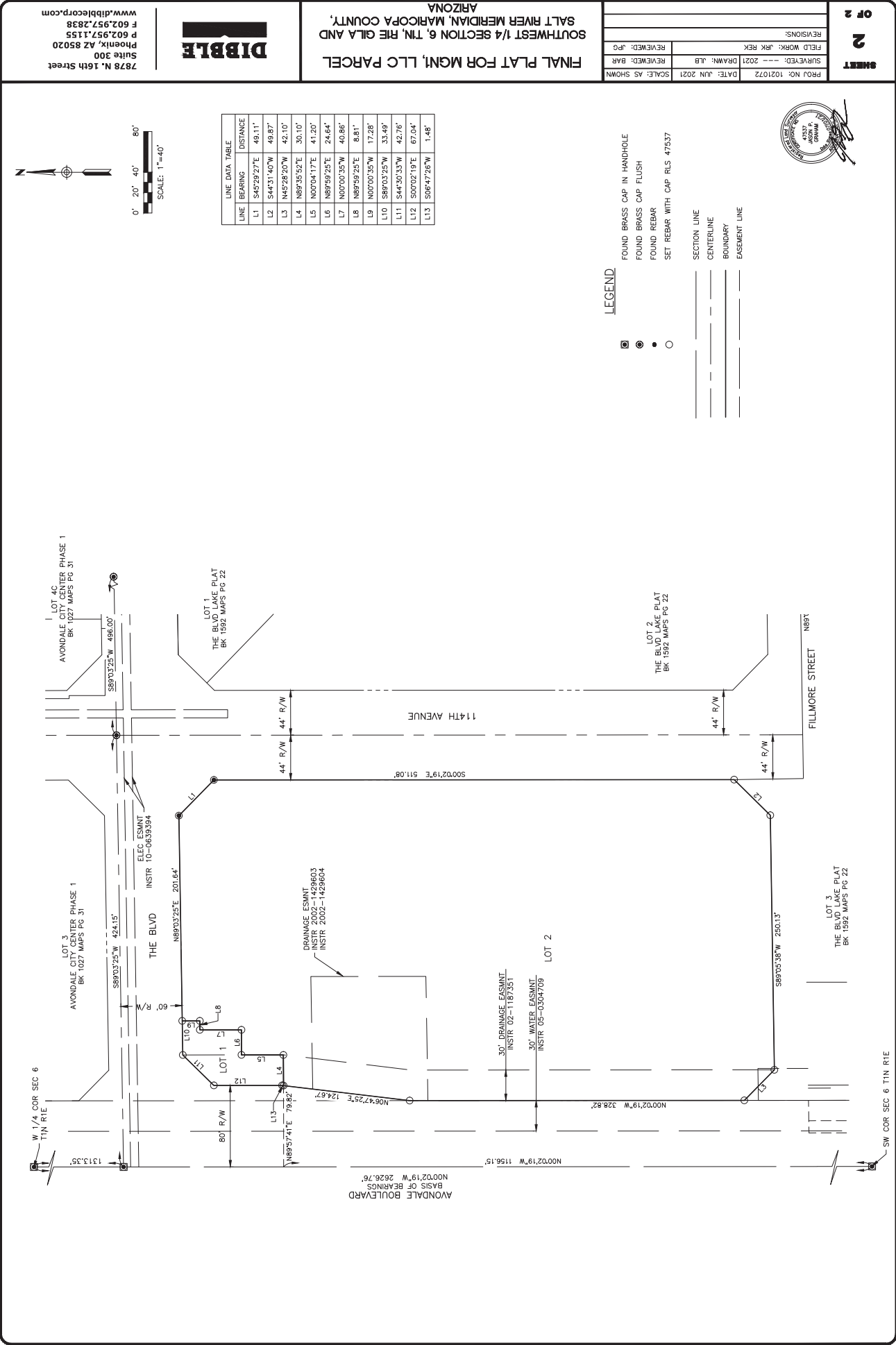
<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF THE BLVD	Property that had been used until Fall 2020 as the temporary parking lot for the American Sports Center (ASC) and adjacent inline businesses. Though the temporary pavement remains in place, access to the lot was closed in Fall 2020 in preparation for sale and development of the site and the lot is no longer used. A Development Plan for a Dutch Bros. drive-through coffee shop was approved in July 2021 on the northern end of the site. The property is zoned BLVDD, part of the Park Avenue District.
EAST OF 114 TH AVE.	City-owned property zoned BLVDD, part of the Park Avenue District, that is currently being developed with a lake feature and being marketed for future retail and entertainment development.
SOUTH	An 8.9-acre City-owned parcel zoned BLVDD, part of the Park Avenue District currently being marketed for future commercial, entertainment, retail, and residential.
WEST OF AVONDALE BLVD.	A 19.09-acre vacant parcel zoned BLVDD, part of the Village District intended for conventional retail, restaurant, office, employment, and urban-form multi-family uses (minimum 18 dwelling units per acre) with a strong emphasis on pedestrian-orientation and contemporary urban design.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOL	Student's choice (No defined school). The closest district school is Collier Elementary School located at the southwest corner of Coldwater Springs Boulevard and 114 th Avenue within the Coldwater Springs community.
HIGH SCHOOL	La Joya Community High School, located at the southwest corner of Avondale Boulevard and Durango Street.

<i>STREETS</i>	
Avondale Boulevard	
Classification	Major Arterial
Existing half-street right-of-way	65 feet
Standard half-street right-of-way	65 feet
Existing half-street improvements	Three (3) travel lanes, landscaped median, bike lane, curb, gutter, and street lights.
Standard half-street improvements	Three (3) travel lanes, landscaped median, bike lane, curb, gutter, detached sidewalk, street lights, and landscaping.
The BLVD	
Classification	The BLVD Custom Local
Existing half-street right-of-way	31 feet
Standard half-street right-of-way	31 feet
Existing half-street improvements	Varies by location
Standard half-street improvements	One (1) travel lane, angled parking, curb and gutter, detached sidewalk, street lights and landscaping.
114th Avenue	
Classification	The BLVD Custom Local
Existing half-street right-of-way	44 feet
Standard half-street right-of-way	44 feet
Existing half-street improvements	None
Standard half-street improvements	One (1) travel lane, angled on-street parking, curb, gutter, detached sidewalk, street lights and landscaping.
<i>UTILITIES</i>	
The site has access to an existing 8-inch water line in The BLVD and an existing 16-inch water main in Avondale Boulevard. Additionally, the site has access to an existing 8-inch sewer line in The BLVD. SRP provides electrical service to this area.	

Exhibit E

Proposed Final Plat



LEGEND

- FOUND BRASS CAP IN HANDHOLE
- FOUND BRASS CAP FLUSH
- FOUND REBAR
- SET REBAR WITH CAP R/L 47537

SECTION LINE
CENTERLINE
BOUNDARY
EASEMENT LINE

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	S45°29'27"E	49.11'
L2	S44°31'40"W	49.87'
L3	N45°28'20"W	42.10'
L4	N89°35'52"E	30.10'
L5	N00°04'17"E	41.20'
L6	N89°59'25"E	24.64'
L7	N00°00'35"W	40.86'
L8	N89°59'25"E	8.81'
L9	N00°00'35"W	17.28'
L10	S89°03'25"W	33.49'
L11	S44°30'33"W	42.76'
L12	S00°02'19"E	67.04'
L13	S06°47'26"W	1.48'

AVONDALE BOULEVARD
BASIS OF BEARINGS
N00°02'19"W 2626.76'
N00°02'19"W 1156.15'
N00°02'19"W 326.82'
N00°02'19"E 511.08'

W 1/4 COR SEC 6
T1N R1E

LOT 3
AVONDALE CITY CENTER PHASE 1
BK 1027 MAPS PG 31

LOT 4C
AVONDALE CITY CENTER PHASE 1
BK 1027 MAPS PG 31

THE BLVD
INSTR 10-0635394
ELEC EASMT

LOT 1
THE BLVD LAKE PLAT
BK 1592 MAPS PG 22

LOT 2

LOT 3
THE BLVD LAKE PLAT
BK 1592 MAPS PG 22

LOT 4
THE BLVD LAKE PLAT
BK 1592 MAPS PG 22

114TH AVENUE

FILLMORE STREET

SW COR SEC 6 T1N R1E

CITY COUNCIL REPORT

SUBJECT: Final Plat for River Run - Application PL-20-0134

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Develop diverse housing options, to include housing that is affordable to workers and close to their jobs.
-

PURPOSE:

City Council will consider a request by Mr. Jeff Giles, Clouse Engineering, Inc., for approval of a Final Plat for River Run, approximately 14.52 gross acres located west of the southwest corner of Thomas Road and 119th Avenue. Consistent with the Preliminary Plat approved by City Council in November 2019, the proposed Final Plat will create 103 single-family residential lots. The Council will take appropriate action.

BACKGROUND:

The 14.52 gross acre subject property (Exhibits A, B and C) is located west of the southwest corner of Thomas Road and 119th Avenue.

In June 2018, City Council approved Ordinance No. 1654-618 annexing the 14.52-acre site into the City of Avondale's municipal boundary. At the same meeting, City Council approved Resolution No. 3457-618 for a Minor General Plan Land Use Map Amendment and Ordinance No. 1653-618 rezoning the subject site to River Run Planned Area Development (PAD). The Minor General Plan Land Use Map Amendment changed the land use designation from Medium Density Residential to Medium/High Density Residential and the rezoned to PAD provided for 103 alley-loaded single-family residential homes in a private gated community.

A Preliminary Plat for River Run was approved by City Council in November 2019. The approved Preliminary Plat (Exhibit E) divides the property into 103 single-family residential lots in conformance with the approved PAD.

The existing uses and zoning of surrounding properties include:

NORTH: The Stewart Company Rock and Quarry Mine, zoned Industrial (A-1) and Agriculture (AG).

EAST: Garden Park Subdivision, zoned PAD, a fully developed 146-lot single-family residential subdivision.

SOUTH: Donatela II, a fully developed 236-lot, single-family residential subdivision, zoned R1-6.

WEST: The Agua Fria River under the jurisdiction of Maricopa County, zoned RU-43.

SUMMARY OF REQUEST:

The applicant is requesting approval of a Final Plat for River Run (Exhibit F) for the River Run residential subdivision. In conformance with the approved River Run Preliminary Plat, the proposed Final Plat subdivides the 14.52 gross acre property into a total of 103 single-family residential lots that is alley loaded and a gated community. Additionally, there are four (4) separate tracts for private streets and open space amenities. The lots created are a minimum lot size from 30-foot x 80-foot (2,400 square feet) to a maximum 50-foot x 81-foot (4,050 square feet).

The useable open space with the development within the development totals 5.33 acres (37.5%) which exceeds the City's minimum requirement of fifteen (15) percent. The proposed open space takes on a variety of forms, including but not limited to:

- Tract C – one (1) acre open space tract that features a community pool, covered tot-lot, ramada with picnic seating, and a half basketball court.
- 119th Avenue Trail – A 12-foot multi-use trail adjacent to the proposed development's 119th Avenue frontage.
- River Run/Donatella II Pedestrian Connection – A 12-foot pedestrian connection between River Run and Donatela II that connects the 119th Avenue multi-use trail and the future Levee Trail adjacent to Agua Fria River.
- Levee Trail – A 12-foot multi-use trail adjacent to the proposed development's Agua Fria River frontage with multiple access gates to the trail from the River Run development.

River Run will be developed as a private, single-family residential subdivision with two (2) access points located off of 119th Avenue and an emergency access from Thomas Road. All streets within the River Run subdivision are private and will be maintained by the HOA. The developer will be constructing the 119th Avenue half-street improvements, which include curb, gutter, sidewalk and streetlights along the eastern portion of the development, the main entrance to the development from 119th Avenue, and the secondary emergency access from Thomas Road.

Enhanced entry/gateway monumentation and overall project theming will be provided within the community and both entrances. A perimeter wall will be designed to provide for community security and safety and will be enhanced by a comprehensive landscape theme, including attractive features signifying a sense of arrival to the community.

The residential community reflects the character of the surrounding communities yet brings a uniqueness to the City. All residential homes within River Run will comply with the Single-Family Residential Design Manual. Materials and colors will blend with the character of the surrounding environment through paint colors and roofing materials. All elevations for the single-family house products in the development will require City Administrative approvals.

PUBLIC PARTICIPATION:

Public notification is not required for Final Plat applications.

PLANNING COMMISSION ACTION:

The Planning Commission does not review Final Plat applications.

ANALYSIS:

The proposed Final Plat 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 Final Plat is in conformance with the City of Avondale Zoning Ordinance, Subdivision Regulations and River Run Planned Area Development (PAD), as amended, and meets all conditions of these prior approvals.

The proposed Final Plat conforms to the approved Preliminary Plat for River Run and dedicates easements as necessary to serve the future development.

All conditions of River Run Preliminary Plat approval that are required to be completed prior to Final Plat approval have been completed.

DISCUSSION:

1. The proposed Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
2. The proposed Final Plat is in conformance with the River Run PAD Development Plan, as amended, including conditions of approval.
3. The proposed Final Plat is in conformance with the approved River Run Preliminary Plat, including conditions of approval.
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 impacts.

RECOMMENDATION:

No public hearing is required. The City Council will **APPROVE** Application PL-20-0134, River Run, a request for approval of the Final Plat for River Run, subject to the following one (1) condition of approval:

1. The recorded plat shall be in conformance with the River Run Final Plat submitted on December 12, 2020.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-20-0134 River Run, a request for approval of the Final Plat for the 103-lot River Run single-family residential subdivision, subject to one (1) recommended condition of approval as listed in the staff report.



Aerial Photograph



Subject Property



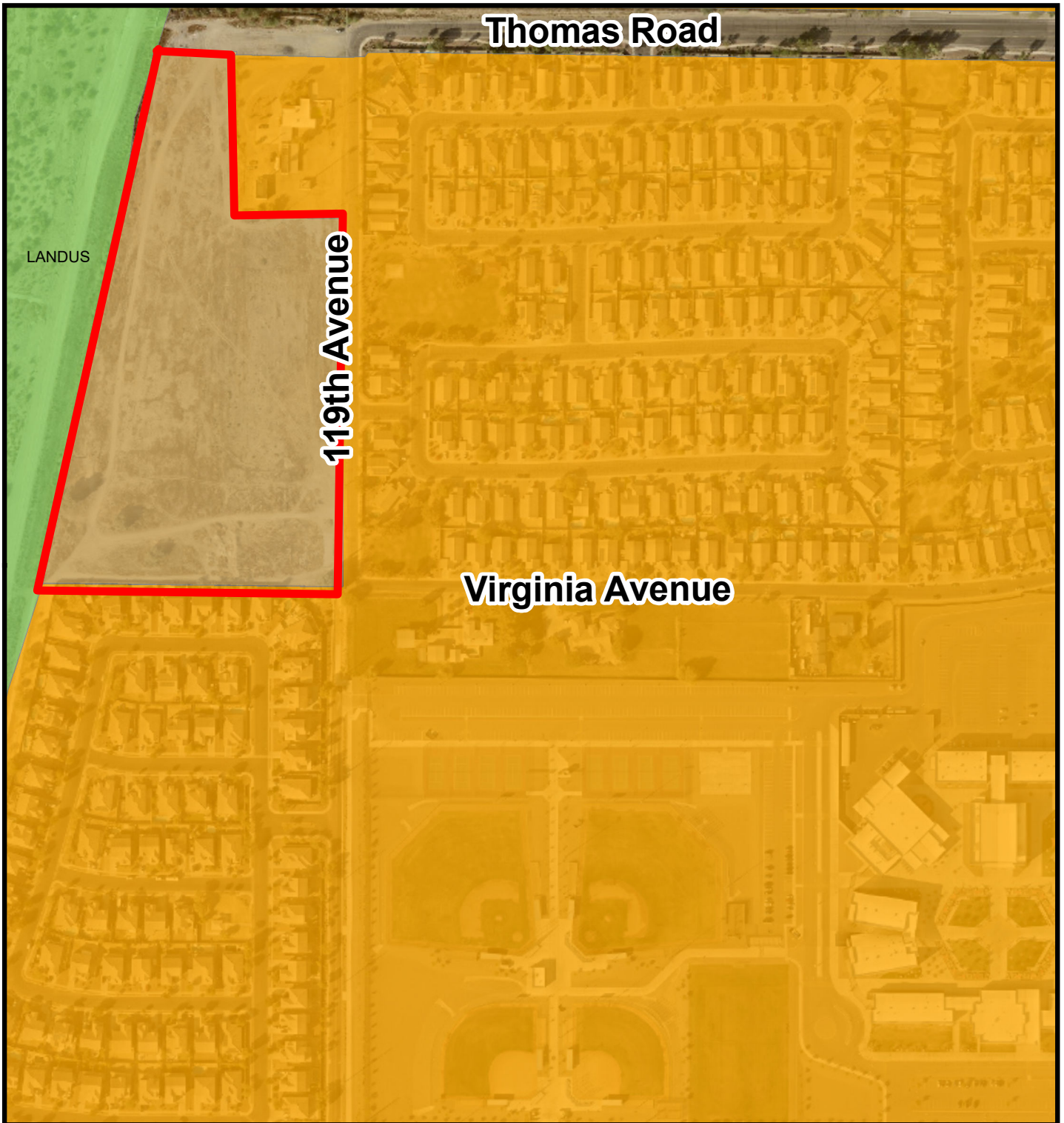


Zoning Vicinity Map

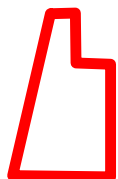


Subject Property





General Plan Land Use Map



Subject
Property



Medium Density Residential



Medium/High Density Residential



Open Space and Parks



SUMMARY OF RELATED FACTS

APPLICATION PL-20-0134

<i>THE PROPERTY</i>	
SIZE	Approximately 14.52 gross acres
LOCATION	Approximately 270 feet west of the southwest corner of 119 th Avenue and Thomas Road.
PHYSICAL CHARACTERISTICS	Flat irregular shaped parcel of land.
EXISTING LAND USE	Undeveloped parcel
EXISTING ZONING	River Run Planned Area Development (PAD)
ZONING HISTORY	The site was annexed in June 2018. At the same hearing of the annexation approval, City Council approved a Minor General Plan Amendment, and Rezone to Planned Area Development Amendment. A Preliminary Plat for River Run was approved by City Council in November 2019. The approved Preliminary Plat divides the property into 130 single-family residential lots in conformance with the approved River Run PAD.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	The Stewart Rock and Quarry Mine zoned Industrial (A-1) and Agriculture (AG).
EAST	The Garden Park subdivision, zoned PAD, a fully developed 146-lot single-family residential subdivision.
SOUTH	Donatella II, a fully developed 236-lot, single-family residential subdivision, zoned R1-6.
WEST	The Aqua Fria River under the jurisdiction of Maricopa County, zoned RU-43.

<i>GENERAL PLAN</i>	
The River Run property is designated Medium High Density Residential (MHDR). The MHDR designation allows for development of single-family detached, single-family attached, townhomes, condominiums, patio homes and casitas in a density range of 4.0 to 12.0 dwelling units per acre.	
<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Pendergast Elementary School District and Tolleson Union High School District
ELEMENTARY SCHOOL	Canyon Breeze Elementary School
HIGH SCHOOL	Westview High School
<i>STREETS</i>	
119th Avenue	
Classification	Minor Collector
Existing half-street right-of-way	40 Feet
Standard half-street right-of-way	40 feet
Existing half-street improvements	None
Standard half-street improvements	1 travel lane, bike lane, curb and gutter, sidewalk, streetlights, and landscaping

Thomas Road	
Classification	Minor Arterial
Existing half-street right-of-way	None
Standard half-street right-of-way	6 feet
Existing half-street improvements	None
Standard half-street improvements	Two (2) travel lanes, turn lane bike lane, curb and gutter, sidewalk, streetlights, and landscaping
Virginia Avenue	
Classification	Local
Existing half-street right-of-way	25 feet
Standard half-street right-of-way	25 feet
Existing half-street improvements	Complete
Standard half-street improvements	Right-of-way dedication required. Improvements previously completed – 1 travel lane, curb and gutter, sidewalk, and streetlights.
<i>UTILITIES</i>	
The site has access to an existing 12-inch water line and a 21-inch sewer main in 119 th Avenue.	

Exhibit E

Approved River Run Preliminary Plat

APPROVED

PRELIMINARY PLAT
RIVER RUN
AVONDALE, ARIZONA

A PORTION OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST
OF THE GILA RIVER AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

LOT AREA

LOT #	WIDTH	S.F.	AC.
1	42	3,402	0.08
2	32	2,208	0.05
3	50	4,050	0.09
4	42	3,402	0.08
5	32	2,208	0.05
6	32	2,208	0.05
7	32	2,208	0.05
8	42	3,402	0.08
9	42	3,402	0.08
10	32	2,208	0.05
11	32	2,208	0.05
12	32	2,208	0.05
13	42	3,402	0.08
14	60	4,310	0.10
15	32	2,208	0.05
16	42	3,402	0.08
17	42	3,402	0.08
18	32	2,208	0.05
19	32	2,208	0.05
20	50	4,050	0.09
21	50	4,050	0.09
22	32	2,208	0.05
23	32	2,208	0.05
24	32	2,208	0.05
25	32	2,208	0.05
26	42	3,402	0.08
27	32	2,208	0.05
28	32	2,208	0.05
29	32	2,208	0.05
30	50	4,050	0.09
31	50	4,050	0.09
32	32	2,208	0.05
33	32	2,208	0.05
34	42	3,402	0.08
35	42	3,402	0.08
36	32	2,208	0.05
37	32	2,208	0.05
38	50	4,050	0.09
39	50	4,050	0.09
40	32	2,208	0.05
41	32	2,208	0.05
42	32	2,208	0.05
43	42	3,402	0.08
44	42	3,402	0.08
45	32	2,208	0.05
46	32	2,208	0.05
47	32	2,208	0.05
48	50	4,050	0.09
49	50	4,050	0.09
50	32	2,208	0.05
51	32	2,208	0.05
52	42	3,402	0.08
53	50	4,050	0.09
54	32	2,208	0.05
55	32	2,208	0.05
56	42	3,402	0.08
57	42	3,402	0.08
58	32	2,208	0.05
59	32	2,208	0.05
60	50	4,050	0.09
61	50	4,050	0.09
62	32	2,208	0.05
63	32	2,208	0.05
64	42	3,402	0.08
65	42	3,402	0.08
66	32	2,208	0.05
67	32	2,208	0.05
68	50	4,050	0.09
69	50	4,050	0.09
70	32	2,208	0.05

LOT AREA (CONT)

LOT #	WIDTH	S.F.	AC.
71	42	3,402	0.08
72	42	3,402	0.08
73	42	3,402	0.08
74	32	2,208	0.05
75	32	2,208	0.05
76	50	4,050	0.09
77	50	4,050	0.09
78	32	2,208	0.05
79	32	2,208	0.05
80	42	3,402	0.08
81	42	3,402	0.08
82	32	2,208	0.05
83	32	2,208	0.05
84	50	4,050	0.09
85	50	4,050	0.09
86	32	2,208	0.05
87	32	2,208	0.05
88	42	3,402	0.08
89	42	3,402	0.08
90	32	2,208	0.05
91	32	2,208	0.05
92	50	4,050	0.09
93	50	4,050	0.09
94	32	2,208	0.05
95	32	2,208	0.05
96	42	3,402	0.08
97	42	3,402	0.08
98	32	2,208	0.05
99	32	2,208	0.05
100	50	4,050	0.09
101	50	4,050	0.09
102	42	3,402	0.08
103	50	4,050	0.09

LEGEND PROPOSED

- WATER VALVE
- SEWER MANHOLE
- DRAINAGE FLOW DIRECTION
- INTERIOR LIGHTING
- TRAFFIC MOVEMENT
- FINISHED FLOOR
- WATER METER CLUSTER (NUMBER VARIES)

LEGEND EXISTING

- FOUND MONUMENT (TYPE SHOWN)
- PROPERTY LINE
- WATER VALVE
- WATER METER
- FIRE HYDRANT
- GAS VALVE
- CONTOURS
- OVERHEAD ELECTRIC LINE
- OVERHEAD TELEPHONE LINE
- CONCRETE SURFACE
- MEASURED & RECORDED
- FENCE
- PUBLIC UTILITY EASEMENT
- ELECTRIC UTILITY BOX
- SPN
- POWER POLE
- CURB & GUTTER
- STORMDRAIN MANHOLE
- SEWER MANHOLE
- TELEPHONE JUNCTION BOX
- PAVED SURFACE
- EX. STREET LIGHT
- BC BM BRASS CAP DOWN

LEGAL DESCRIPTION

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 36 FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 36 BEARS SOUTH 89 DEGREES 15 MINUTES 23 SECONDS EAST A DISTANCE OF 2610.11 FEET;
THENCE SOUTH 89 DEGREES 15 MINUTES 23 SECONDS EAST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER A DISTANCE OF 2179.59 FEET TO A POINT ON THE EASTERLY LINE OF THE AQUA FRIA CHANNEL, SAID POINT ALSO BEING THE POINT OF BEGINNING,
THENCE CONTINUING SOUTH 89 DEGREES 15 MINUTES 23 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 178.51 FEET ;
THENCE SOUTH 60 DEGREES 07 MINUTES 22 SECONDS WEST PARALLEL WITH AND 252.00 FEET WEST OF THE EAST LINE OF SAID NORTHWEST QUARTER A DISTANCE OF 492.37 FEET;
THENCE SOUTH 89 DEGREES 17 MINUTES 19 SECONDS EAST A DISTANCE OF 232.01 FEET TO A POINT ON SAID EAST LINE;
THENCE SOUTH 00 DEGREES 07 MINUTES 22 SECONDS WEST ALONG SAID EAST LINE A DISTANCE OF 864.20 FEET TO A POINT ON THE NORTH LINE OF DOMATELA AS RECORDED IN BOOK 797 OF MAPS, PAGE 41, M.C.B.,
THENCE NORTH 89 DEGREES 17 MINUTES 19 SECONDS WEST ALONG SAID NORTH LINE A DISTANCE OF 703.49 FEET TO A POINT ON SAID EASTERLY LINE OF AQUA FRIA RIVER CHANNEL;
THENCE NORTH 11 DEGREES 51 MINUTES 27 SECONDS EAST ALONG SAID EASTERLY LINE A DISTANCE OF 1342.11 FEET TO THE POINT OF BEGINNING.
THE ABOVE DESCRIBED PARCEL CONTAINS 14.32 ACRES (632546 SQ. FT.)

SITE OPEN SPACE DATA

HIGH AND DRY (% OF TOTAL OS)	75.5 % OF NET
ACTIVE (% OF TOTAL OS)	51.5 % OF NET
PASSIVE (% OF TOTAL OS)	

SITE DATA

ZONING	RIVER RUN PAD
ACREAGE (GROSS)	14.52 AC.
ACREAGE (NET)	14.24 AC.
LOTS PROVIDED	103
DENSITY	7.09 UNITS/AC.
OPEN SPACE	5.33 AC.
OPEN SPACE PERCENT OF NET	0.37
LOT AREA (MINIMUM)	2,208 SF
LOT AREA (AVERAGE)	2,725 SF
LOT AREA (MAXIMUM)	0.06 AC.

TRACT USAGE TABLE

TRACT ID	TRACT AREA (AC.)	USAGE *	OWNER AND MAINTENANCE RESPONSIBILITY
TRACT A	2.03	2, 3, 4	H.O.A.
TRACT B	2.88	1, 2, 3	H.O.A.
TRACT C	0.99	1, 2, 3	H.O.A.
TRACT D	0.86	1, 2, 3	H.O.A.
TRACT E	0.05	1, 2	H.O.A.
TRACT F	0.05	1, 2	H.O.A.
TRACT G	0.05	1, 2	H.O.A.
TRACT H	0.05	1, 2	H.O.A.
TRACT I	0.05	1, 2	H.O.A.
TRACT J	0.05	1, 2	H.O.A.
TRACT K	0.05	1, 2	H.O.A.
TRACT L	0.05	1, 2	H.O.A.
TRACT M	0.05	1, 2	H.O.A.
TRACT N	0.05	1, 2	H.O.A.
TRACT O	0.05	1, 2	H.O.A.
TRACT P	0.05	1, 2	H.O.A.
TRACT Q	0.05	1, 2	H.O.A.
TRACT R	0.05	1, 2	H.O.A.
TRACT S	0.05	1, 2	H.O.A.
TRACT T	0.05	1, 2	H.O.A.
TRACT U	0.05	1, 2	H.O.A.
TRACT V	0.05	1, 2	H.O.A.
TRACT W	0.05	1, 2	H.O.A.
TRACT X	0.05	1, 2	H.O.A.
TRACT Y	0.05	1, 2	H.O.A.
TRACT Z	0.05	1, 2	H.O.A.
TRACT AA	0.05	1, 2	H.O.A.
TRACT AB	0.05	1, 2	H.O.A.
TRACT AC	0.05	1, 2	H.O.A.
TRACT AD	0.05	1, 2	H.O.A.
TRACT AE	0.05	1, 2	H.O.A.
TRACT AF	0.05	1, 2	H.O.A.
TRACT AG	0.05	1, 2	H.O.A.
TRACT AH	0.05	1, 2	H.O.A.
TRACT AI	0.05	1, 2	H.O.A.
TRACT AJ	0.05	1, 2	H.O.A.
TRACT AK	0.05	1, 2	H.O.A.
TRACT AL	0.05	1, 2	H.O.A.
TRACT AM	0.05	1, 2	H.O.A.
TRACT AN	0.05	1, 2	H.O.A.
TRACT AO	0.05	1, 2	H.O.A.
TRACT AP	0.05	1, 2	H.O.A.
TRACT AQ	0.05	1, 2	H.O.A.
TRACT AR	0.05	1, 2	H.O.A.
TRACT AS	0.05	1, 2	H.O.A.
TRACT AT	0.05	1, 2	H.O.A.
TRACT AU	0.05	1, 2	H.O.A.
TRACT AV	0.05	1, 2	H.O.A.
TRACT AW	0.05	1, 2	H.O.A.
TRACT AX	0.05	1, 2	H.O.A.
TRACT AY	0.05	1, 2	H.O.A.
TRACT AZ	0.05	1, 2	H.O.A.
TRACT BA	0.05	1, 2	H.O.A.
TRACT BB	0.05	1, 2	H.O.A.
TRACT BC	0.05	1, 2	H.O.A.
TRACT BD	0.05	1, 2	H.O.A.
TRACT BE	0.05	1, 2	H.O.A.
TRACT BF	0.05	1, 2	H.O.A.
TRACT BG	0.05	1, 2	H.O.A.
TRACT BH	0.05	1, 2	H.O.A.
TRACT BI	0.05	1, 2	H.O.A.
TRACT BJ	0.05	1, 2	H.O.A.
TRACT BK	0.05	1, 2	H.O.A.
TRACT BL	0.05	1, 2	H.O.A.
TRACT BM	0.05	1, 2	H.O.A.
TRACT BN	0.05	1, 2	H.O.A.
TRACT BO	0.05	1, 2	H.O.A.
TRACT BP	0.05	1, 2	H.O.A.
TRACT BQ	0.05	1, 2	H.O.A.
TRACT BR	0.05	1, 2	H.O.A.
TRACT BS	0.05	1, 2	H.O.A.
TRACT BT	0.05	1, 2	H.O.A.
TRACT BU	0.05	1, 2	H.O.A.
TRACT BV	0.05	1, 2	H.O.A.
TRACT BW	0.05	1, 2	H.O.A.
TRACT BX	0.05	1, 2	H.O.A.
TRACT BY	0.05	1, 2	H.O.A.
TRACT BZ	0.05	1, 2	H.O.A.
TRACT CA	0.05	1, 2	H.O.A.
TRACT CB	0.05	1, 2	H.O.A.
TRACT CC	0.05	1, 2	H.O.A.
TRACT CD	0.05	1, 2	H.O.A.
TRACT CE	0.05	1, 2	H.O.A.
TRACT CF	0.05	1, 2	H.O.A.
TRACT CG	0.05	1, 2	H.O.A.
TRACT CH	0.05	1, 2	H.O.A.
TRACT CI	0.05	1, 2	H.O.A.
TRACT CJ	0.05	1, 2	H.O.A.
TRACT CK	0.05	1, 2	H.O.A.
TRACT CL	0.05	1, 2	H.O.A.
TRACT CM	0.05	1, 2	H.O.A.
TRACT CN	0.05	1, 2	H.O.A.
TRACT CO	0.05	1, 2	H.O.A.
TRACT CP	0.05	1, 2	H.O.A.
TRACT CQ	0.05	1, 2	H.O.A.
TRACT CR	0.05	1, 2	H.O.A.
TRACT CS	0.05	1, 2	H.O.A.
TRACT CT	0.05	1, 2	H.O.A.
TRACT CU	0.05	1, 2	H.O.A.
TRACT CV	0.05	1, 2	H.O.A.
TRACT CW	0.05	1, 2	H.O.A.
TRACT CX	0.05	1, 2	H.O.A.
TRACT CY	0.05	1, 2	H.O.A.
TRACT CZ	0.05	1, 2	H.O.A.
TRACT DA	0.05	1, 2	H.O.A.
TRACT DB	0.05	1, 2	H.O.A.
TRACT DC	0.05	1, 2	H.O.A.
TRACT DD	0.05	1, 2	H.O.A.
TRACT DE	0.05	1, 2	H.O.A.
TRACT DF	0.05	1, 2	H.O.A.
TRACT DG	0.05	1, 2	H.O.A.
TRACT DH	0.05	1, 2	H.O.A.
TRACT DI	0.05	1, 2	H.O.A.
TRACT DJ	0.05	1, 2	H.O.A.
TRACT DK	0.05	1, 2	H.O.A.
TRACT DL	0.05	1, 2	H.O.A.
TRACT DM	0.05	1, 2	H.O.A.
TRACT DN	0.05	1, 2	H.O.A.
TRACT DO	0.05	1, 2	H.O.A.
TRACT DP	0.05	1, 2	H.O.A.
TRACT DQ	0.05	1, 2	H.O.A.
TRACT DR	0.05	1, 2	H.O.A.
TRACT DS	0.05	1, 2	H.O.A.
TRACT DT	0.05	1, 2	H.O.A.
TRACT DU	0.05	1, 2	H.O.A.
TRACT DV	0.05	1, 2	H.O.A.
TRACT DW	0.05	1, 2	H.O.A.
TRACT DX	0.05	1, 2	H.O.A.
TRACT DY	0.05	1, 2	H.O.A.
TRACT DZ	0.05	1, 2	H.O.A.
TRACT EA	0.05	1, 2	H.O.A.
TRACT EB	0.05	1, 2	H.O.A.
TRACT EC	0.05	1, 2	H.O.A.
TRACT ED	0.05	1, 2	H.O.A.
TRACT EE	0.05	1, 2	H.O.A.
TRACT EF	0.05	1, 2	H.O.A.
TRACT EG	0.05	1, 2	H.O.A.
TRACT EH	0.05	1, 2	H.O.A.
TRACT EI	0.05	1, 2	H.O.A.
TRACT EJ	0.05	1, 2	H.O.A.
TRACT EK	0.05	1, 2	H.O.A.
TRACT EL	0.05	1, 2	H.O.A.
TRACT EM	0.05	1, 2	H.O.A.
TRACT EN	0.05	1, 2	H.O.A.
TRACT EO	0.05	1, 2	H.O.A.
TRACT EP	0.05	1, 2	H.O.A.
TRACT EQ	0.05	1, 2	H.O.A.
TRACT ER	0.05	1, 2	H.O.A.
TRACT ES	0.05	1, 2	H.O.A.
TRACT ET	0.05	1, 2	H.O.A.
TRACT EU	0.05	1, 2	H.O.A.
TRACT EV	0.05	1, 2	H.O.A.
TRACT EW	0.05	1, 2	H.O.A.
TRACT EX	0.05	1, 2	H.O.A.
TRACT EY	0.05	1, 2	H.O.A.
TRACT EZ	0.05	1, 2	H.O.A.
TRACT FA	0.05	1, 2	H.O.A.
TRACT FB	0.05	1, 2	H.O.A.
TRACT FC	0.05	1, 2	H.O.A.
TRACT FD	0.05	1, 2	H.O.A.
TRACT FE	0.05	1, 2	H.O.A.
TRACT FF	0.05	1, 2	H.O.A.
TRACT FG	0.05	1, 2	H.O.A.
TRACT FH	0.05	1, 2	H.O.A.
TRACT FI	0.05	1, 2	H.O.A.
TRACT FJ	0.05	1, 2	H.O.A.
TRACT FK	0.05	1, 2	H.O.A.
TRACT FL	0.05	1, 2	H.O.A.
TRACT FM	0.05	1, 2	H.O.A.
TRACT FN	0.05	1, 2	H.O.A.
TRACT FO	0.05	1, 2	H.O.A.
TRACT FP	0.05	1, 2	H.O.A.
TRACT FQ	0.05	1, 2	H.O.A.
TRACT FR	0.05	1, 2	H.O.A.
TRACT FS	0.05	1, 2	H.O.A.
TRACT FT	0.05	1, 2	H.O.A.
TRACT FU	0.05	1, 2	H.O.A.
TRACT FV	0.05	1, 2	H.O.A.
TRACT FW	0.05	1, 2	H.O.A.
TRACT FX	0.05	1, 2	H.O.A.
TRACT FY	0.05	1, 2	H.O.A.
TRACT FZ	0.05	1, 2	H.O.A.
TRACT GA	0.05	1, 2	H.O.A.
TRACT GB	0.05	1, 2	H.O.A.
TRACT GC	0.05	1, 2	H.O.A.
TRACT GD	0.05	1, 2	H.O.A.
TRACT GE	0.05	1, 2	H.O.A.
TRACT GF	0.05	1, 2	H.O.A.
TRACT GG	0.05	1, 2	H.O.A.
TRACT GH	0.05	1, 2	H.O.A.
TRACT GI	0.05	1, 2	H.O.A.
TRACT GJ	0.05	1, 2	H.O.A.
TRACT GK	0.05	1, 2	H.O.A.
TRACT GL	0.05	1, 2	H.O.A.
TRACT GM	0.05	1, 2	H.O.A.
TRACT GN	0.05	1, 2	H.O.A.
TRACT GO	0.05	1, 2	H.O.A.
TRACT GP	0.05	1, 2	H.O.A.
TRACT GQ	0.05	1, 2	H.O.A.
TRACT GR	0.05	1, 2	H.O.A.
TRACT GS	0.05	1, 2	H.O.A.
TRACT GT	0.05	1, 2	H.O.A.
TRACT GU	0.05	1, 2	H.O.A.
TRACT GV	0.05	1, 2	H.O.A.
TRACT GW	0.05	1, 2	H.O.A.
TRACT GX	0.05	1, 2	H.O.A.
TRACT GY	0.05	1, 2	H.O.A.
TRACT GZ	0.05	1, 2	H.O.A.
TRACT HA	0.05	1, 2	H.O.A.
TRACT HB	0.05	1, 2	H.O.A.
TRACT HC	0.05	1, 2	H.O.A.
TRACT HD	0.05	1, 2	H.O.A.
TRACT HE	0.05	1, 2	H.O.A.
TRACT HF	0.05	1, 2	H.O.A.
TRACT HG	0.05	1, 2	H.O.A.
TRACT HH	0.05	1, 2	H.O.A.
TRACT HI	0.05	1, 2	H.O.A.
TRACT HJ	0.05	1, 2	H.O.A.
TRACT HK	0.05	1, 2	H.O.A.
TRACT HL	0.05	1, 2	H.O.A.
TRACT HM	0.05	1, 2	H.O.A.
TRACT HN	0.05	1, 2	H.O.A.
TRACT HO	0.05	1, 2	H.O.A.
TRACT HP	0.05	1, 2	H.O.A.
TRACT HQ	0.05	1, 2	H.O.A.
TRACT HR	0.05	1, 2	H.O.A.
TRACT HS	0.05	1, 2	H.O.A.
TRACT HT	0.05	1, 2	H.O.A.
TRACT HU	0.05	1, 2	H.O.A.
TRACT HV	0.05	1, 2	H.O.A.
TRACT HW	0.05	1, 2	H.O.A.
TRACT HX	0.05	1, 2	H.O.A.
TRACT HY	0.05	1, 2	H.O.A.
TRACT HZ	0.05	1, 2	H.O.A.
TRACT IA	0.05	1, 2	H.O.A.
TRACT IB	0.05	1, 2	H.O.A.
TRACT IC	0.05	1, 2	H.O.A.
TRACT ID	0.05	1, 2	H.O.A.
TRACT IE	0.05	1, 2	H.O.A.
TRACT IF	0.05	1, 2	H.O.A.
TRACT IG	0.05	1, 2	H.O.A.
TRACT IH	0.05	1, 2	H.O.A.
TRACT II	0.05	1, 2	H.O.A.
TRACT IJ	0.05	1, 2	H.O.A.
TRACT IK	0.05	1, 2	H.O.A.
TRACT IL	0.05	1, 2	H.O.A.
TRACT IM	0.05	1, 2	H.O.A.
TRACT IN	0.05	1, 2	H.O.A.
TRACT IO	0.05	1, 2	H.O.A.
TRACT IP	0.05	1, 2	H.O.A.
TRACT IQ	0.05	1, 2	H.O.A.
TRACT IR	0.05	1, 2	H.O.A.
TRACT IS	0.05	1, 2	H.O.A.
TRACT IT	0.05	1, 2	H.O.A.
TRACT IU	0.05	1, 2	H.O.A.
TRACT IV	0.05	1, 2	H.O.A.
TRACT IW	0.05	1, 2	H.O.A.
TRACT IX	0.05	1, 2	H.O.A.
TRACT IY	0.05	1, 2	H.O.A.
TRACT IZ	0.05	1, 2	H.O.A.
TRACT JA	0.05	1, 2	H.O.A.
TRACT JB	0.05	1, 2	H.O.A.
TRACT JC	0.05	1, 2	H.O.A.
TRACT JD	0.05	1, 2	H.O.A.
TRACT JE	0.05	1, 2	H.O.A.
TRACT JF	0.05	1, 2	H.O.A.
TRACT JG	0.05	1, 2	H.O.A.
TRACT JH	0.05	1, 2	H.O.A.
TRACT JI	0.05	1, 2	H.O.A.
TRACT JJ	0.05	1, 2	H.O.A.
TRACT JK	0.05	1, 2	H.O.A.
TRACT JL	0.05	1, 2	H.O.A.
TRACT JM	0.05	1, 2	H.O.A.
TRACT JN	0.05	1, 2	H.O.A.
TRACT JO	0.05	1, 2	H.O.A.
TRACT JP	0.05	1, 2	H.O.A.
TRACT JQ	0.05	1, 2	H.O.A.
TRACT JR	0.05	1, 2	H.O.A.
TRACT JS	0.05	1, 2	H.O.A.
TRACT JT	0.05	1, 2	H.O.A.
TRACT JU	0.05	1, 2	H.O.A.
TRACT JV	0.05	1, 2	H.O.A.
TRACT JW	0.05	1, 2	H.O.A.
TRACT JX	0.05	1, 2	H.O.A.
TRACT JY	0.05	1, 2	H.O.A.
TRACT JZ	0.05	1, 2	H.O.A.
TRACT KA	0.05	1, 2	H.O.A.
TRACT KB	0.05	1, 2	H.O.A.
TRACT KC	0.05	1, 2	H.O.A.
TRACT KD	0.05	1, 2	H.O.A.
TRACT KE	0.05	1, 2	H.O.A.
TRACT KF	0.05	1, 2	H.O.A.
TRACT KG	0.05	1, 2	H.O.A.
TRACT KH	0.05	1, 2	H.O.A.
TRACT KI	0.05	1, 2	H.O.A.
TRACT KJ	0.05	1, 2	H.O.A.
TRACT KK	0.05	1, 2	H.O.A.
TRACT KL	0.05	1, 2	H.O.A.
TRACT KM	0.05	1, 2	H.O.A.
TRACT KN	0.05	1, 2	H.O.A.
TRACT KO	0.05	1, 2	H.O.A.
TRACT KP	0.05	1, 2	H.O.A.
TRACT KQ	0.05	1, 2	H.O.A.
TRACT KR	0.05	1, 2	H.O.A.
TRACT KS	0.05	1, 2	H.O.A.
TRACT KT	0.05	1, 2	H.O.A.
TRACT KU	0.05	1, 2	H.O.A.
TRACT KV	0.05	1, 2	H.O.A.
TRACT KW	0.05	1, 2	H.O.A.
TRACT KX	0.05	1, 2	H.O.A.
TRACT KY	0.05	1, 2	H.O.A.
TRACT KZ	0.05	1, 2	H.O.A.
TRACT LA	0.05	1, 2	H.O.A.
TRACT LB	0.05	1, 2	H.O.A.
TRACT LC	0.05	1, 2	H.O.A.
TRACT LD	0.05	1, 2	H.O.A.
TRACT LE	0.05	1, 2	H.O.A.
TRACT LF	0.05	1, 2	H.O.A.
TRACT LG	0.05	1, 2	H.O.A.
TRACT LH	0.05	1, 2	H.O.A.
TRACT LI	0.05	1, 2	H.O.A.
TRACT LJ	0.05	1, 2	H.O.A.
TRACT LK	0.05	1, 2	H.O.A.
TRACT LL	0.05	1, 2	H.O.A.
TRACT LM	0.05	1, 2	H.O.A.
TRACT LN	0.05	1, 2	H.O.A.
TRACT LO	0.05	1, 2	H.O.A.
TRACT LP	0.05	1, 2	H.O.A.
TRACT LQ	0.05	1, 2	H.O.A.
TRACT LR	0.05	1, 2	H.O.A.
TRACT LS	0.05	1, 2	H.O.A.
TRACT LT	0.05	1, 2	H.O.A.
TRACT LU	0.05	1, 2	H.O.A.
TRACT LV	0.05	1, 2	H.O.A.
TRACT LW	0.05	1, 2	H.O.A.
TRACT LX	0.05	1, 2	H.O.A.
TRACT LY	0.05	1, 2	H.O.A.
TRACT LZ	0.05	1, 2	H.O.A.
TRACT MA	0.05	1, 2	H.O.A.
TRACT MB	0.05	1, 2	H.O.A.
TRACT MC	0.05	1, 2	H.O.A.
TRACT MD	0.05		

PRELIMINARY
PLAT

REVISIONS:
REVISED: 05-06-19
REVISED: 07-16-19

RIVER RUN

119TH AVENUE
SOUTHWEST CORNER
AVENUE AND THOMAS ROAD

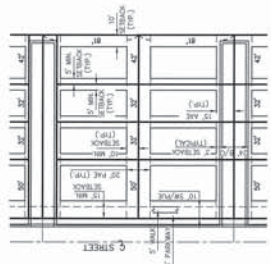


PROJECT DESIGN CONSULTANTS
Planning | Landscape Architecture | Engineering | Survey
Phoenix, AZ 85001
119th Ave SW, Suite 100
West Valley, AZ 85001

607-263-1100
607-263-1101
607-263-1102
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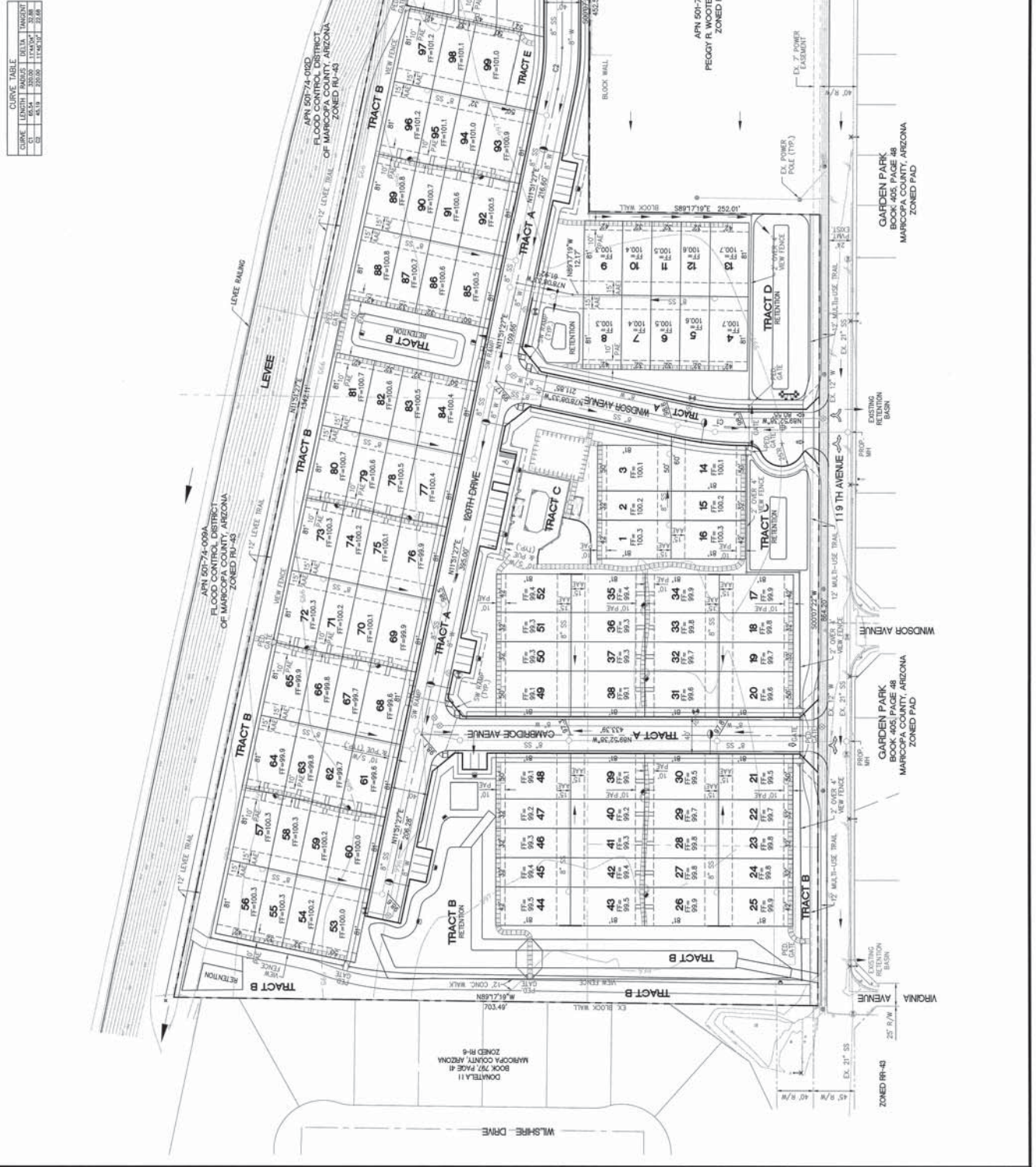


CURVE DATA			
CURVE	LENGTH	AREA	TANGENT
C1	65.54	100.00	33.94
C2	45.13	100.00	23.48



TYPICAL LOT DETAIL
(1'-50')

LEGEND
AAE - ALLEY ACCESS EASEMENT
PAE - PASSEO ACCESS EASEMENT



RIVER RUN FINAL PLAT

SWC 119TH AVENUE AND THOMAS ROAD

A SUBDIVISION SITUATED IN A PORTION OF THE NORTHWEST QUARTER
OF SECTION 36 OF T.2N., R.1W., G. & S.R.B. & M.
MARICOPA COUNTY, ARIZONA

OWNER/DEVELOPER

AVONDALE BTR OWNER LLC
WOODSMEAD HALL AT OLD PARKLAND
3953 MAPLE AVENUE, SUITE 300
DALLAS, TX 75219

ENGINEER/SURVEYOR

CLOUSE ENGINEERING INC.
5010 E. SHEA BOULEVARD
SUITE 110
SCOTTSDALE, AZ 85254
PHONE: (602) 395-9300
FAX: (602) 395-9310



VICINITY MAP
SECTION 36, T.2N., R.1W.

DEDICATION

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS: THAT AVONDALE BTR OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "RIVER RUN", A SUBDIVISION, SITUATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF "RIVER RUN", A SUBDIVISION AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE DIMENSIONS OF THE LOTS, STREETS, TRACTS AND EASEMENTS CONSTITUTING THE SAME AND THAT EACH LOT, STREET, TRACT AND EASEMENT SHALL BE KNOWN BY THE NUMBER, NAME OR LETTER GIVEN TO EACH RESPECTIVELY ON SAID PLAT. THE OWNER, AS LISTED ABOVE, HEREBY DEDICATES IN FEE ALL RIGHT TITLE AND INTEREST TO THE CITY FOR USE AS SUCH, THE THOMAS ROAD RIGHT OF WAY AS SHOWN ON SAID MAP AND INCLUDED IN THE ABOVE DESCRIBED PREMISES. EASEMENTS ARE DEDICATED FOR THE PURPOSES SHOWN.

TRACT "A" IS HEREBY DECLARED AS A PRIVATE DRIVE TO BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION, AN EASEMENT FOR PUBLIC WATER AND SEWER, REFUSE COLLECTION, DRAINAGE, PUBLIC UTILITIES AND FOR EMERGENCY AND SERVICE TYPE VEHICLE ACCESS IS HEREBY DEDICATED TO THE PUBLIC OVER TRACT "A".

TRACTS "B", "C", "D" AND "E" ARE HEREBY DECLARED AS COMMON AREAS TO BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION. A DRAINAGE, LANDSCAPE AND PUBLIC UTILITY EASEMENT ARE HEREBY DEDICATED OVER TRACTS "B", "C", "D" AND "E". A PUBLIC TRAIL EASEMENT IS HEREBY DEDICATED OVER TRACT "B", "C" AND "D".

THE CITY IS HEREBY GRANTED AN EASEMENT FOR MAINTENANCE OF LANDSCAPING, IRRIGATION, DRAINAGE FACILITIES, HARDSCAPE AND RETENTION AREAS ON THOSE PORTIONS OF TRACTS "B", "C", "D" AND "E" SHOWN ON THE MAINTENANCE IMPROVEMENT DISTRICT. THIS EASEMENT MAY BE EXERCISED BY THE CITY OF AVONDALE AT ANY SUCH TIME WHEN THE GRANTOR, ITS SUCCESSORS OR ASSIGNEES, INCLUDING A HOMEOWNERS ASSOCIATION FORMED OVER THIS SUBDIVISION FAILS TO EXIST AND PROVIDE THE REQUIRED MAINTENANCE AND OPERATION OF THE LANDSCAPING, IRRIGATION, DRAINAGE FACILITIES, RETENTION AREAS, AND/OR HARDSCAPING.

THE ALLEY ACCESS EASEMENTS AND THE PEDESTRIAN ACCESS EASEMENTS ARE HEREBY DECLARED AS PRIVATE EASEMENTS TO BE DEDICATED TO THE HOMEOWNERS ASSOCIATION FOR PRIVATE WATER AND SEWER LINES.

IN WITNESS WHEREOF: AVONDALE BTR OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, HAS CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____

BY: AVONDALE BTR OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, OWNER

BY: _____ OWNER

ACKNOWLEDGMENT

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }
BEFORE ME THIS _____ DAY OF _____, 2021, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED HERSELF TO BE _____ OF AVONDALE BTR OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGED THAT HE AS _____ BEING AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF: I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: _____ MY COMMISSION EXPIRES: _____
NOTARY PUBLIC

STREET CLASSIFICATION	R.O.W. DEDICATION	
	SF	AC
ARTERIAL	12,085.6918	0.2774

AREA MAP

SHEET INDEX

SHEET 1 - COVER SHEET
SHEET 2 - KEY MAP
SHEET 3 - FINAL PLAT
SHEET 4 - FINAL PLAT

BENCH MARK

FOUND BRASS CAP IN HAND HOLE AT THE INTERSECTION OF
THOMAS ROAD AND AVONDALE BOULEVARD, (CITY OF AVONDALE
DESIGNATION 117) ELEVATION=1010.35 (NAVD83)

BASIS OF BEARINGS

THE BASIS OF BEARING IS THE MONUMENT LINE OF 119TH AVENUE
BETWEEN ENCANTO AVENUE AND THOMAS ROAD USING A BEARING OF
N 0° 01' 22" E, ACCORDING TO THE FINAL PLAT FOR GARDEN PARK
AS RECORDED IN BOOK 405 OF MAPS, PAGE 48, M.C.R.

100 YEAR ASSURED WATER SUPPLY

THE AREA PLATTED HEREON LIES WITHIN THE DOMESTIC WATER SERVICE AREAS OF THE CITY OF AVONDALE
WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 ARIZONA
REVISED STATUTES.

NOTES

1. ALL STORM DRAINS WITHIN THE SITE AND WITHIN A DRAINAGE EASEMENT SHALL BE OWNED, OPERATED, AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
2. ALL UTILITY AND PUBLIC SERVICE EASEMENTS, INCLUDING ANY LIMITATIONS OF EASEMENTS, AND CONSTRUCTION WITHIN SUCH EASEMENTS SHALL BE LIMITED TO UTILITIES, LANDSCAPING, AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCES.
3. ALL EXISTING OVERHEAD UTILITIES SHALL BE INSTALLED UNDERGROUND IN ACCORDANCE WITH CITY OF AVONDALE MUNICIPAL CODE AND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. NO ALTERATIONS WILL BE MADE TO THE STORM WATER RETENTION AREAS AND APPROVED OR EXISTING CONVEYANCE PATTERNS THAT ARE A PART OF THESE PREMISES WITHOUT WRITTEN APPROVAL BY THE CITY OF AVONDALE.
5. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS SUBDIVISION WITHOUT WRITTEN AUTHORIZATION BY THE CITY OF AVONDALE.
6. NO WALLS/FENCES SHALL BE BUILT WITHOUT PRIOR CITY OF AVONDALE APPROVAL.
7. ALL GROUND-MOUNTED EQUIPMENT SHALL BE SCREENED/CONCEALED FROM STREET VIEW.
8. ALL DEVELOPMENTS SHALL BE MAINTAINED IN CONFORMANCE WITH THE APPROVED PRELIMINARY PLAT AND LANDSCAPE PLAN. ANY CHANGES THERETO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
9. THIS SUBDIVISION IS SUBJECT TO A MAINTENANCE IMPROVEMENT DISTRICT.
10. THE OWNER AND HOA HAVE AGREED TO OPERATE AND MAINTAIN ALL ROW LANDSCAPING.
11. TRACT "A" SHALL BE A PRIVATE STREET. THE H.O.A. WILL OWN, OPERATE, AND MAINTAIN THE PRIVATE STREET SECTION AND ALL LANDSCAPING AND STREETLIGHTS IN THIS TRACT. THE H.O.A. WILL BE SOLELY RESPONSIBLE FOR SWEEPING OF PRIVATE STREETS. ALL INTERNAL STREETS ARE PRIVATE.
12. THE CITY OF AVONDALE HAS THE RIGHT TO MAINTAIN AND OPERATE PUBLIC WATER AND SEWER LINES IN THE PRIVATE STREETS. THE CITY OF AVONDALE IS NOT RESPONSIBLE FOR THE RESTORATION OF PRIVATE STREET IMPROVEMENTS REMOVED OR DAMAGED DURING MAINTENANCE OR OPERATION OF PUBLIC WATER AND SEWER LINES. THE H.O.A. SHALL BE SOLELY RESPONSIBLE FOR DAMAGE AND REPAIR OF THE PRIVATE STREET DURING OPERATIONS, MAINTENANCE AND REPAIR OF CITY WATER AND SEWER.
13. ALL STREET LIGHTS ADJACENT TO TRACT "A" WILL BE OWNED, OPERATED AND MAINTAINED BY THE H.O.A. THE H.O.A. SHALL BE RESPONSIBLE TO KEEP THE STREETLIGHTS IN GOOD WORKING CONDITION AND ACTIVATED. A SEPARATE ELECTRIC METER AND BILL WILL BE PAID FOR BY THE H.O.A.
14. ALL STORM DRAIN WITHIN THE SITE WILL BE OWNED, OPERATED AND MAINTAINED BY THE H.O.A.
15. THE HOMEOWNERS ASSOCIATION (HOA) WILL BE RESPONSIBLE FOR MAINTENANCE OF THE PUBLIC TRAIL IN THE EASEMENT AREA AND FCDC PROPERTY INCLUDING ALL LANDSCAPING, LIGHTING AND TRAIL SURFACES.
16. ALL UTILITIES SHALL BE INSTALLED UNDERGROUND.
17. ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING 100 YEAR 2 HOUR STORM WITHIN 36 HOURS. OWNER MUST TAKE CORRECTIVE ACTIONS TO BRING THE BASIN INTO COMPLIANCE.

USE AND BENEFIT EASEMENT

1. LOTS SHOWN ON SAID PLAT SHALL HAVE A PRIVATE USE AND BENEFIT EASEMENT (UBE) OF NOT LESS THAN FIVE (5) FEET IN WIDTH (MEASURED FROM THE COMMON PROPERTY LINE TO THE EXTERIOR BUILDING STEM WALL OF THE AFFECTED LOT) AND EXTENDING FROM THE FRONT STEM WALL OF THE AFFECTED LOT TO THE REAR GARAGE WALL OF THE AFFECTED LOT, ALL AS ILLUSTRATED ON THE TYPICAL USE BENEFIT EASEMENT DETAIL.
2. THE UBE MAY BE USED a) BY THE BENEFITED LOT FOR LANDSCAPING, DRAINAGE CONVEYANCE AND MAINTENANCE PURPOSES AND b) BY THE AFFECTED LOT FOR DRAINAGE CONVEYANCE AND FOR MAINTENANCE OF THE SIDE YARD RETURN WALL AND THE EXTERIOR PORTION OF THE RESIDENCE AND GARAGE.
3. PERMANENT HARDSCAPE STRUCTURES (EXCEPT SIDE WALLS) AS DEFINED BY THE COVENANTS, CONDITIONS, RESTRICTIONS ARE PROHIBITED WITHIN THE UBE.
4. USES AND RESTRICTIONS, TERMS AND CONDITIONS GOVERNING THE UBE'S ARE SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THIS PLAT TO BE RECORDED HEREAFTER.

APPROVALS AND ACCEPTANCE OF DEDICATION

APPROVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA

THIS _____ DAY OF _____, 2021

MAYOR _____

DATE _____

ATTEST, CITY CLERK _____

DATE _____

CITY ENGINEER _____

DATE _____

CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES DESCRIBED AND PLATTED HEREON WERE MADE UNDER MY DIRECTION DURING THE MONTH OF JANUARY, 2021, AND THAT THE PLAT IS CORRECT AND ACCURATE AS SHOWN AND THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN. THAT THEIR POSITIONS ARE CORRECT AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

ROBERT J. BLAKE

REGISTERED LAND SURVEYOR #36070
ROBERT J. BLAKE
CLOUSE ENGINEERING INC.
1642 E. ORANGEWOOD AVENUE
PHOENIX, ARIZONA, 85009
PHONE: (602) 395-9300



GROSS ACRES: 14.5116 TOTAL LOTS: 103

DEVELOPER/OWNER
AVONDALE BTR OWNER LLC
PROJECT NAME
RIVER RUN
PLAT TYPE
FINAL PLAT

ORIGINAL PLAT DATE
03/24/20
LATEST REVISION DATE
08/14/21
SHEET NUMBER
1 OF 4
PROJECT NUMBER
190703

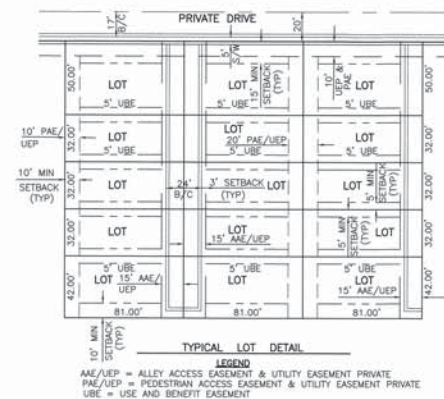
Clouse Engineering, Inc.
ENGINEERS • SURVEYORS
1642 E. Orangewood Ave. Phoenix, Arizona 85009
Tel: 602-395-9300 Fax: 602-395-9310

LAND AREA TABLE

LOT NO.	LOT AREA (SQ.FT.)	LOT NO.	LOT AREA (SQ.FT.)	LOT NO.	LOT AREA (SQ.FT.)
1	3,402 S.F.	35	3,402 S.F.	69	4,050 S.F.
2	2,592 S.F.	36	2,592 S.F.	70	2,592 S.F.
3	4,050 S.F.	37	4,050 S.F.	71	2,592 S.F.
4	3,402 S.F.	38	4,050 S.F.	72	3,402 S.F.
5	2,592 S.F.	39	4,050 S.F.	73	3,402 S.F.
6	2,592 S.F.	40	4,050 S.F.	74	2,592 S.F.
7	2,592 S.F.	41	2,592 S.F.	75	2,592 S.F.
8	3,402 S.F.	42	2,592 S.F.	76	4,050 S.F.
9	3,402 S.F.	43	3,402 S.F.	77	4,050 S.F.
10	2,592 S.F.	44	3,402 S.F.	78	2,592 S.F.
11	2,592 S.F.	45	2,592 S.F.	79	2,592 S.F.
12	2,592 S.F.	46	2,592 S.F.	80	3,402 S.F.
13	3,402 S.F.	47	2,592 S.F.	81	3,402 S.F.
14	3,402 S.F.	48	4,050 S.F.	82	2,592 S.F.
15	2,592 S.F.	49	4,050 S.F.	83	2,592 S.F.
16	3,402 S.F.	50	2,592 S.F.	84	4,050 S.F.
17	3,402 S.F.	51	2,592 S.F.	85	4,050 S.F.
18	2,592 S.F.	52	2,592 S.F.	86	2,592 S.F.
19	2,592 S.F.	53	4,050 S.F.	87	2,592 S.F.
20	4,050 S.F.	54	2,592 S.F.	88	3,402 S.F.
21	4,050 S.F.	55	2,592 S.F.	89	3,402 S.F.
22	2,592 S.F.	56	2,592 S.F.	90	2,592 S.F.
23	2,592 S.F.	57	3,402 S.F.	91	2,592 S.F.
24	2,592 S.F.	58	2,592 S.F.	92	4,050 S.F.
25	2,592 S.F.	59	2,592 S.F.	93	4,050 S.F.
26	2,592 S.F.	60	4,050 S.F.	94	2,592 S.F.
27	2,592 S.F.	61	4,050 S.F.	95	2,592 S.F.
28	2,592 S.F.	62	2,592 S.F.	96	3,402 S.F.
29	2,592 S.F.	63	2,592 S.F.	97	3,402 S.F.
30	2,592 S.F.	64	2,592 S.F.	98	2,592 S.F.
31	4,050 S.F.	65	3,402 S.F.	99	4,050 S.F.
32	2,592 S.F.	66	2,592 S.F.	100	4,846 S.F.
33	2,592 S.F.	67	2,592 S.F.	101	3,669 S.F.
34	3,402 S.F.	68	4,050 S.F.	102	3,402 S.F.
				103	4,050 S.F.

	INDICATES A CORNER OF THIS SUBDIVISION AND SUBDIVISION BOUNDARY SEE M.A.G. STANDARD DETAIL 120-1-B
	INDICATES A POINT OF CONTROL- SET BRASS CAP (FLUSH), PER M.A.G. DET. 120-1-B.
	INDICATES SECTION/QUARTER CORNER
P.U.E.	INDICATES PUBLIC UTILITY EASEMENT
P.A.E.	INDICATES PEDESTRIAN ACCESS EASEMENT (PRIVATE)
S.W.E.	INDICATES SIDEWALK EASEMENT
V.N.A.E.	INDICATES VEHICULAR NON-ACCESS EASEMENT
E.V.A.E.	INDICATES EMERGENCY VEHICLE ACCESS EASEMENT
R.C.E.	INDICATES REFUSE COLLECTION EASEMENT
U.B.E.	INDICATES USE AND BENEFIT EASEMENT
U.E.P.	INDICATES UTILITY EASEMENT PRIVATE
A.A.E.	INDICATES ALLEY ACCESS EASEMENT
_____	INDICATES RIGHT-OF-WAY
_____	INDICATES MONUMENT LINE
_____	INDICATES SUBDIVISION BOUNDARY
_____	INDICATES LOT LINE
_____	INDICATES PUBLIC UTILITY EASEMENT LINE
- - - - -	INDICATES PASSED ACCESS EASEMENT LINE
- - - - -	INDICATES ALLEY ACCESS EASEMENT LINE

TRACT TABLE		
TRACT	USE	AREA
TRACT "A"	PRIVATE DRIVE & P.U.E.	1.9177
TRACT "B"	OPEN SPACE, LANDSCAPING, DRAINAGE, RETENTION, P.U.E. AND PUBLIC TRAIL EASEMENT	2.9042
TRACT "C"	OPEN SPACE, LANDSCAPING, DRAINAGE, RETENTION, P.U.E. AND PUBLIC TRAIL EASEMENT	1.0454
TRACT "D"	OPEN SPACE, LANDSCAPING, DRAINAGE, RETENTION, P.U.E. AND PUBLIC TRAIL EASEMENT	0.7792
TRACT "E"	LANDSCAPING & P.U.E.	0.0565
TRACT "F"	OPEN SPACE, DRAINAGE	0.0403



THOMAS ROAD

TRACT "B"

102 101 100

97 98 99

96 95 94

89 90 91

88 87 86 85

TRACT "A"

9 10 11 12 13

8 7 6 5 4

TRACT "D"

TRACT "C"

3 14

2 15

① 16

TRACT "A"

52 35 34 17

51 36 33 18

50 37 32 19

49 38 31 20

CAMBRIDGE AVENUE

TRACT "A"

48 39 30 21

47 40 29 22

46 41 28 23

45 42 27 24

44 43 26 25

TRACT "B"

TRACT "B"

WINDSOR AVENUE

119TH AVENUE

WINDSOR AVENUE

120TH DRIVE

TRACT "A"

TRACT "B"

TRACT "C"

TRACT "D"

EXCEPTION
NOT A PART OF
THIS SUBDIVISION

3

4

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

GARDEN PARK
BOOK 405, PAGE 48

0

VIRGINIA AVENUE

DONATELA 2 AMENDED
BOOK 797 OF MAPS, PAGE 41 M.C.R.

KEY MAP

① DENOTES SHEET NO.

○ DENOTES BEGINNING & ENDING LOT NO.

Clouse Engineering, Inc.
ENGINEERS • SURVEYORS
5010 E. Shea Blvd Suite 110 Scottsdale, AZ 85254
Tel 602-998-9300 Fax 602-998-8310

REVISIONS/OWNER AVONDALE BTR OWNER LLC PROJECT NAME RIVER RUN PLAT TYPE FINAL PLAT	SEALS 
ORIGINAL PLAT DATE 03/24/20 LATEST REVISION DATE 08/4/21 SHEET NUMBER 2 OF 4 PROJECT NUMBER 190703	

FINAL PLAT FOR RIVER RUN

NW COR
SEC 36
T2N, R1W
NOTHING FOUND OR SET

N 1/4 COR
SEC 36
T2N, R1W
FD 3" BC 1" DOWN

2178.90'

N89°47'55"W 2610.09'

252.00'

THOMAS ROAD

102

101

100

TRACT "B"

TRACT "A"

TRACT "C"

TRACT "D"

TRACT "E"

TRACT "F"

TRACT "G"

TRACT "H"

TRACT "I"

TRACT "J"

TRACT "K"

TRACT "L"

TRACT "M"

TRACT "N"

TRACT "O"

TRACT "P"

TRACT "Q"

TRACT "R"

TRACT "S"

TRACT "T"

TRACT "U"

TRACT "V"

TRACT "W"

TRACT "X"

TRACT "Y"

TRACT "Z"

TRACT "AA"

TRACT "AB"

TRACT "AC"

TRACT "AD"

TRACT "AE"

TRACT "AF"

TRACT "AG"

TRACT "AH"

TRACT "AI"

TRACT "AJ"

TRACT "AK"

TRACT "AL"

TRACT "AM"

EXCEPTION

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED

UNSUBDIVIDED



CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	40.96'	200.00'	01°14'04"
C2	45.06'	220.00'	01°14'04"
C3	49.15'	240.00'	01°14'04"
C4	12.90'	12.58'	058°45'23"
C5	57.43'	28.00'	117°30'47"
C6	12.90'	12.58'	058°45'23"
C7	49.73'	28.00'	101°45'39"
C8	7.70'	28.00'	019°45'08"
C9	65.54'	320.00'	01°14'04"
C10	69.63'	340.00'	01°14'04"
C11	61.44'	300.00'	01°14'04"
C12	47.45'	340.00'	007°59'45"
C13	22.19'	340.00'	003°44'19"

LINE TABLE		
LINE #	LENGTH	BEARING
L1	16.00'	N78°14'34"W
L2	21.21'	N33°14'34"W
L3	21.21'	N56°45'26"E
L4	21.21'	N45°01'22"E
L5	21.21'	N44°58'38"W
L6	18.11'	N89°58'38"W
L7	10.61'	N89°58'38"W

UNSUBDIVIDED
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

N11°45'28"E 1338.85'
1272.52'

N11°45'28"E 648.61'
1272.52'

N11°45'28"E 648.61'
1272.52'

N11°45'28"E 648.61'
1272.52'

N11°45'28"E 648.61'
1272.52'

N11°45'28"E 648.61'
1272.52'

120TH DRIVE

TRACT "A"

TRACT "B"

TRACT "C"

TRACT "D"

TRACT "E"

TRACT "F"

TRACT "G"

TRACT "H"

TRACT "I"

TRACT "J"

TRACT "K"

TRACT "L"

TRACT "M"

TRACT "N"

TRACT "O"

TRACT "P"

TRACT "Q"

TRACT "R"

TRACT "S"

TRACT "T"

TRACT "U"

TRACT "V"

TRACT "W"

TRACT "X"

TRACT "Y"

TRACT "Z"

TRACT "AA"

TRACT "AB"

TRACT "AC"

TRACT "AD"

TRACT "AE"

TRACT "AF"

TRACT "AG"

TRACT "AH"

TRACT "AI"

TRACT "AJ"

TRACT "AK"

TRACT "AL"

TRACT "AM"

TRACT "AN"

TRACT "AO"

TRACT "AP"

TRACT "AQ"

TRACT "AR"

TRACT "AS"

TRACT "AT"

TRACT "AU"

TRACT "AV"

TRACT "AW"

TRACT "AX"

TRACT "AY"

TRACT "AZ"

TRACT "BA"

TRACT "BB"

TRACT "BC"

TRACT "BD"

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TRACT "BX"

TRACT "BY"

TRACT "BZ"

TRACT "CA"

TRACT "CB"

TRACT "CC"

TRACT "CD"

TRACT "CE"

TRACT "CF"

TRACT "CG"

TRACT "CH"

TRACT "CI"

TRACT "CJ"

TRACT "CK"

TRACT "CL"

TRACT "CM"

TRACT "CN"

TRACT "CO"

TRACT "CP"

TRACT "CQ"

TRACT "CR"

TRACT "CS"

TRACT "CT"

TRACT "CU"

TRACT "CV"

TRACT "CW"

TRACT "CX"

TRACT "CY"

TRACT "CZ"

TRACT "DA"

TRACT "DB"

TRACT "DC"

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TRACT "EB"

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TRACT "EJ"

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TRACT "EO"

TRACT "EP"

TRACT "EQ"

TRACT "ER"

TRACT "ES"

TRACT "ET"

TRACT "EU"

TRACT "EV"

TRACT "EW"

TRACT "EX"

TRACT "EY"

TRACT "EZ"

TRACT "FA"

TRACT "FB"

TRACT "FC"

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TRACT "FO"

TRACT "FP"

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TRACT "GB"

TRACT "GC"

TRACT "GD"

TRACT "GE"

TRACT "GF"

TRACT "GG"

TRACT "GH"

TRACT "GI"

TRACT "GJ"

TRACT "GK"

TRACT "GL"

TRACT "GM"

TRACT "GN"

TRACT "GO"

TRACT "GP"

FINAL PLAT FOR RIVER RUN



LINE #	LENGTH	BEARING
L1	16.00'	N78°14'34"W
L8	21.21'	N49°01'22"E
L9	21.21'	N44°58'38"W
L10	23.27'	N50°53'24"E
L11	18.93'	N39°08'36"W
L12	93.78'	S78°14'34"E
L13	146.45'	S89°58'38"E
L14	50.99'	N78°14'34"W
L15	53.91'	N78°14'34"W
L16	127.75'	S89°58'38"E
L17	63.03'	N11°45'26"E
L18	258.00'	N00°01'22"E

Clouse Engineering, Inc.
ENGINEERS • SURVEYORS
3010 E. 1st Ave. Suite 110, Scottsdale, AZ 85244
Tel: 602-395-8200 Fax: 602-395-9310

AVONDALE BTR OWNER LLC
PROJECT NAME
RIVER RUN
PLAN TYPE
FINAL PLAT



ORIGINAL PLAN DATE
03/24/20
LATEST REVISION DATE
08/4/21
SHEET NUMBER
4 OF 4
PROJECT NUMBER
190703

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Ordinance 2039-0821 - ALP Industrial Park Rezoning from Community Commercial (C-2) to General Industrial (A-1) - Application PL-21-0050

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction.
-

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Ordinance 2039-0821, approving a request by Jinia Sarker, Cawley Architects to rezone 2.67 gross acres of land located approximately 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street from Community Commercial (C-2) to General Industrial (A-1). Light industrial, office, and indoor auto body repair uses are proposed. The Council will take appropriate action.

BACKGROUND:

The subject property (Exhibits A and B) is located approximately 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street. The property was annexed into the City's corporate limits on April 20, 1960 and rezoned to Community Commercial (C-2) upon annexation. The rectangularly shaped site includes approximately 2.67 gross acres of vacant, undeveloped property upon which a light industrial development is proposed.

The property is designated by the General Plan 2030 Land Use Map (Exhibit C) as Industrial, which is a land use designation intended to provide employment opportunities for heavy manufacturing within enclosed or partially enclosed structures. This category is typically characterized by uses that may need special consideration and may include refining, assembly, fabrication of products, demolition, solar, or wholesaling. The areas designated for industrial uses have adequate transportation and activity access with an emphasis on minimal conflict with existing adjacent land uses.

The site has direct frontage on Eliseo C. Felix Jr. Way, and three (3) driveway entrances are proposed. Water

and sewer service to the subject site will be provided via existing lines located in the Eliseo C. Felix Jr. Way.

The existing uses and zoning of surrounding properties include:

NORTH: C-2 zoned property developed with a shopping center. There is also a vacant C-2 zoned property on the corner of Eliseo C. Felix Jr. Way and Van Buren Street.

EAST: C-2 zoned property developed with a shopping center and Storage Solutions, a mini-storage facility, both zoned C-2.

SOUTH: A-1 (General Industrial) zoned property developed with CARSTAR, an auto body repair business.

WEST: R-4 (Multi-Family Residential) zoned property, developed with Newport Apartments, a 204-unit multi-family residential development.

SUMMARY OF REQUEST:

The applicant is requesting to rezone the subject property from Community Commercial (C-2) to General Industrial (A-1) (Exhibit E). The rezoning request applies to 2.67 gross acres inclusive of the 2.43 net-acre subject property and the half-width of the adjacent Eliseo C. Felix Jr. Way right-of-way. Light industrial uses such as warehousing, wholesaling, and assembly are proposed, as well as ancillary office space and an indoor auto body repair use.

The applicant is proposing to develop the property with two (2) light industrial buildings, both around 33 feet in height (Exhibit F). A total of eleven (11) new suites are proposed. Development of the property is expected to occur in a single phase. The proposed architecture of the buildings meets the City's Commercial and Industrial design guidelines, featuring a contemporary design with a mix of materials and colors, including articulated facades and steel canopies (Exhibit G). The developer will be required to obtain Site Plan and Design Review approval prior to applying for building and civil permits to construct.

A 25-foot landscape buffer planted with trees and landscaping will act as a visual sound buffer and help mitigate any potential impacts to the multi-family residential property to the west. Additionally, the building meets required setbacks and will be setback 75 feet from the west property line, with the loading docks facing north and south. Parking is provided in between the buildings and on the perimeter of the site, outside of landscape setback areas.

PUBLIC PARTICIPATION:

A Neighborhood Meeting to discuss the proposal with neighboring property owners and other interested parties was held at 6:00 P.M. on June 3, 2021. Due to the ongoing Covid-19 pandemic, the meeting was held virtually via Zoom. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic, were completed in at least fifteen (15) days prior to the meeting as required. In addition to City Staff and the applicant's team, three (3) people attended the virtual meeting which included two (2) Councilmembers (Exhibit H). Discussion was primarily related to the following topics and questions:

- ***The auto body repair use would create competition with the existing auto body repair businesses. The owner had another auto body business in the area that failed. How would the City benefit from the addition of an auto body repair business, as there are several others in Avondale?*** The applicant responded that the owner is considering opening the auto body business he previously owned and sold a few years ago. Staff indicated that if approved, all A-1 uses would be permitted on-site, which does include auto body repair.
- ***Does this development require a Conditional Use Permit? Where would the auto body repair use occur on-site?*** Staff indicated that a Conditional Use Permit is not required for the proposed uses and that auto body repair can only occur indoors, per the Avondale Zoning Ordinance.
- ***What buffer is in place adjacent to the multi-family site to the west?***

The building has been setback 75 feet from the west property line that abuts a multi-family residential development. A 25-foot landscape buffer with a row of trees is being proposed as a noise barrier and to allow for visibility control, and the loading docks are not facing west.

No comments pertaining to the proposal was posted on the City's aVOICE digital forum, and no additional public comments have been received to date.

All required notifications for the Planning Commission and City Council public hearings were completed. All property owners within 1,000 feet of the subject site were notified of the time, date, and location of the Planning Commission and City Council meetings via postcards, the meetings were advertised in the Southwest Valley Arizona Republic, and a public hearing notice sign identifying meeting dates, times, and locations were installed on the property. All notifications included Zoom meeting information and links.

PLANNING COMMISSION ACTION:

On July 21, 2021, Planning Commission conducted a public hearing and voted 6-0 to recommend approval of the proposed rezoning subject to two (2) recommended conditions. Commission had no questions or comments.

ANALYSIS:

The proposed rezoning to General Industrial (A-1) will allow for the proposed light industrial, office, and indoor auto-body repair uses by-right. The subject property has remained vacant since its annexation into the City in 1960, which indicates that the light industrial uses may be more viable than commercial uses. The development will complement the surrounding area since the majority of the Eliseo C. Felix Jr. Way corridor is industrial in nature. Measures have been taken to mitigate any potential impacts to surrounding properties. Further, the A-1 uses will be compatible with the General Plan 2030 Land Use Designation of Industrial and supports Avondale's economic vitality goals of enhancing regional economic development.

DISCUSSION:

- The proposed rezoning to A-1 (General Industrial) is in direct conformance with the proposed General Plan Land Use Map designation of Industrial.
- The proposed rezoning will result in compatible land use relationships.
- Adequate public infrastructure to support the proposed development either presently exists or will be constructed by the developer.
- The recommended conditions of approval are reasonable to ensure conformance with the provisions of the Zoning Ordinance and all other applicable City codes, ordinances, and policies.

BUDGET IMPACT:

No budget impacts.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** Ordinance approving Application PL-21-0050 ALP Industrial Park, a request to rezone approximately 2.67 gross acres from Community Commercial (C-2) to General Industrial (A-1), subject to the following two (2) conditions of approval:

1. Development shall conform to the General Industrial (A-1) district standards and the Commercial and Industrial Design Manual.
2. All off-site improvements shall be completed by the developer prior to issuance of the first Certificate of

Occupancy.

PROPOSED MOTION:

I move that the City Council **ADOPT** Ordinance Approving Application PL-21-0050 ALP Industrial Park, a request to rezone approximately 2.67 gross-acres from Community Commercial (C-2) to General Industrial (A-1), subject to two (2) conditions of approval as listed in the staff report.

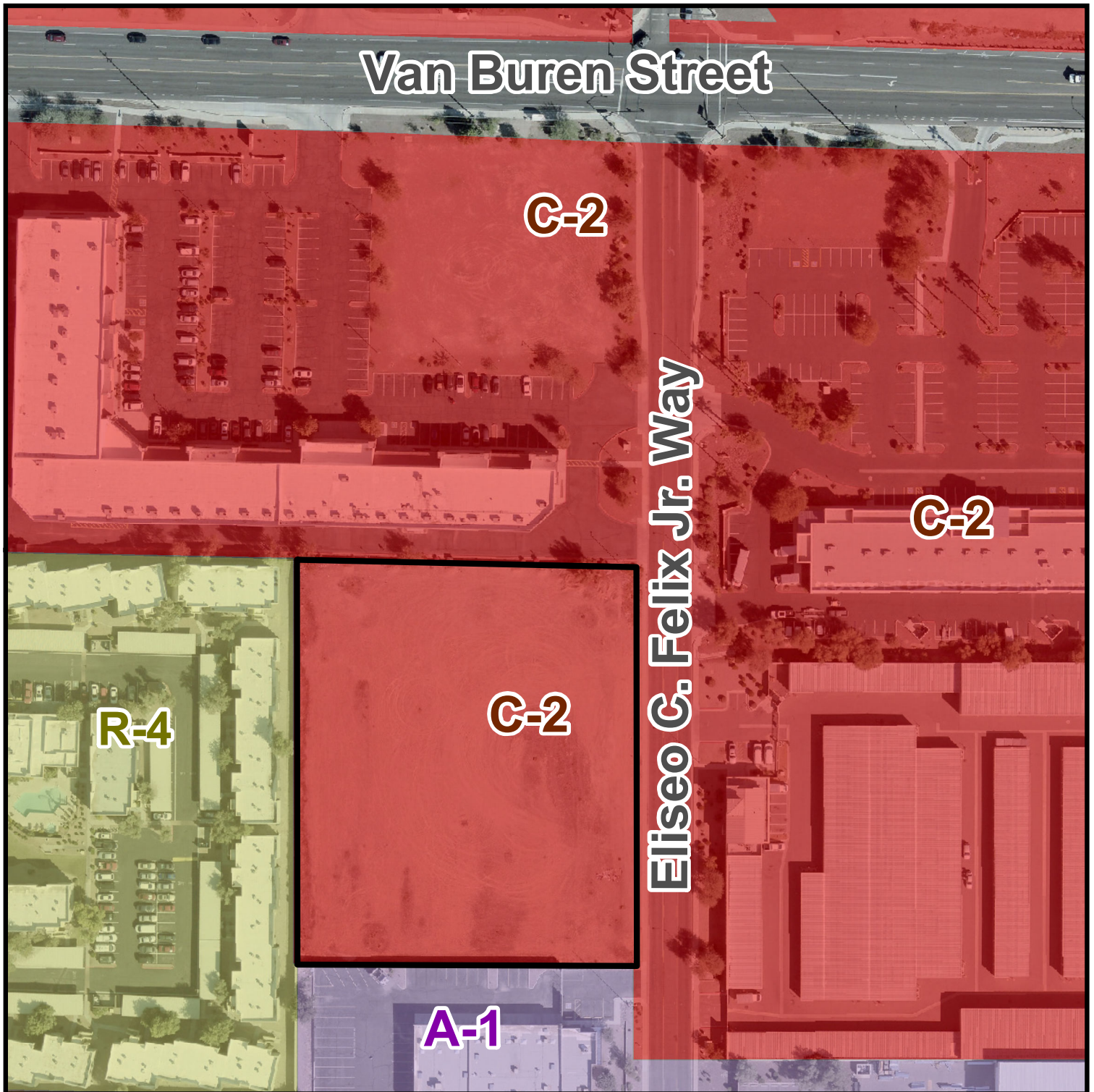


Aerial Photograph



 Project Location



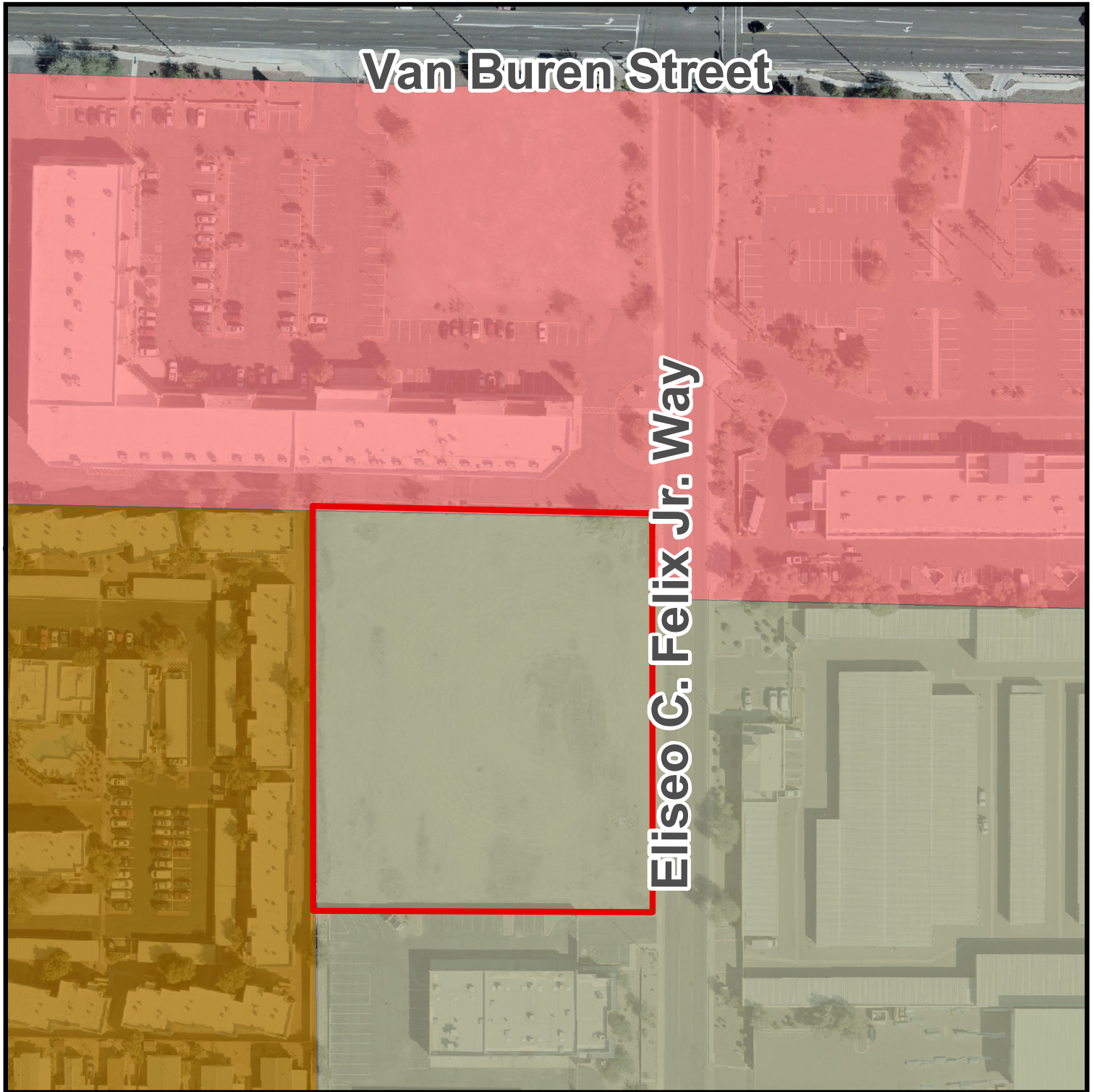


Zoning Vicinity Map



 Project Location





General Plan Land Use Map



-  Local Commercial
-  High Density Residential
-  Industrial



Project
Location



*SUMMARY OF RELATED FACTS
APPLICATION PL-21-0050*

<i>THE PROPERTY</i>	
PROPERTY SIZE	Approximately 2.67 gross acres
LOCATION	Approximately 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street
PHYSICAL CHARACTERISTICS	The rectangular subject property is vacant and undeveloped.
GENERAL PLAN LAND USE DESIGNATION	Industrial, which is a land use designation intended to provide employment opportunities for heavy manufacturing within enclosed or partially enclosed structures. This category is typically characterized by uses that may need special consideration and may include refining, assembly, fabrication of products, demolition, solar, or wholesaling. The areas designated for industrial uses have adequate transportation and activity access with an emphasis on minimal conflict with existing adjacent land uses.
EXISTING ZONING	C-2 (Community Commercial)
ZONING HISTORY	The subject property was annexed in April 1960 and zoned C-2 upon annexation.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF	C-2 zoned property developed with a shopping center. There is also a vacant C-2 zoned property on the hard corner of Eliseo C. Felix Jr. Way and Van Buren Street.
EAST	C-2 zoned property developed with a shopping center and Storage Solutions, a mini-storage facility, both zoned C-2.
SOUTH	A-1 zoned property developed with Carstar, an auto-body repair business.
WEST	R-4 (Multi-Family Residential) zoned property, developed with Newport Apartments, a 204-unit multi-family development.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Agua Fria Union High School, Avondale Elementary
ELEMENTARY SCHOOL	Michael Anderson Elementary
HIGH SCHOOL	Agua Fria High School

<i>STREETS</i>	
Eliseo C. Felix Jr. Way	
Classification	Industrial Collector
Existing half street right-of-way	30 feet
Standard half street right-of-way	30 feet
Existing half street improvements	Two (2) travel lanes, half center turn lane, curb, gutter, and attached sidewalk

Standard half street improvements	Two (2) travel lanes, half center turn lane, curb, gutter, attached sidewalk, streetlights, and landscaping
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<i>UTILITIES</i>	
City of Avondale is the water and sewer provider for this parcel. Arizona Public Service (APS) provides electrical service to this area.	

Exhibit E

ALP Industrial Park Narrative

To: Planning and Development Services,
City of Avondale, Arizona

From: Jinia Sarkar, Sr. Project Manager

Subject: A.L.P. Industrial Park – Rezoning
request for C-2 to A-1

Date: July 07, 2021

NARRATIVE

A.L.P. Industrial Park

Lot size: 2.43 Acres, 106,026 S.F.

APN: 500-25-013B

New Construction of two buildings (total area: 32,270 S.F.)

Building A: 17,580 S.F., including a mezzanine for each suite

Building B: 14,690 S.F.; expand to 18,350 S.F. with a mezzanine for each suite

Purpose of Request:

Purpose of this request is to rezone a vacant site of 2.43 acres from currently zoned C-2 (Community Commercial) to proposed A-1 (General Industrial) zoning. Proposed A-1 zoning will allow for light industrial uses which includes indoor automotive body and paint facilities. The proposed development anticipates an indoor automotive body and paint shop to be in Building A. Primary business and uses within the balance of the proposed development will be light industrial uses with a minor amount of ancillary office space.

Existing land uses and developments along N. Eliseo C. Felix Jr. Way are primarily light industrial uses. There are also two other automotive repair businesses just south of the property. For the proposed development as well, light industrial uses are anticipated and will be more viable than commercial use.

Current C-2 zoning is favorable for commercial uses and does not allow for an indoor automotive body and paint shop or light industrial uses. These uses are permissible in A-1 zoning. Rezoning to A-1 will thus allow for light industrial uses such as warehousing, wholesaling, and assembly. There is also a building height restriction of 30 feet under C-2 zoning, and that does not allow for high clearance warehouse spaces. With 45 feet maximum building height under A-1 zoning, need for taller warehouse spaces for light industrial use can be achieved. Rezoning of this property will expand the allowable uses to support the active business environment existing within this corridor in Avondale.

Parcels to the south the property, along both sides of N. Eliseo C. Felix Jr. Way, are zoned A-1, and with the new A-1 zoning of the property, the development will be consistent with other parcels along that corridor.

Description of Proposal:

This project consists of two new light industrial buildings. Building A (17,580 s.f.) will provide an anticipated four suites with mezzanine, one of which will most likely include an automotive body and paint shop. Building 'A' will have an overall building height of 33'-4" with a clear height estimated at 24' A.F.F. Building 'B' (14,690 s.f.) is a shorter version of Building 'A' with an overall height of 27'-4". However, Building 'B' may extend up to 33'-4", if the leasing market warrants the inclusion of mezzanine space, similar to Building 'A' configuration. Building 'B' consists of six suites to be leased to tenants requiring minor office space, storage/warehouse needs or light industrial uses. The multi-tenant buildings with a total of 11 new suites, create flexible and adaptable spaces for a variety of future light-industrial businesses.

Location and Accessibility:

Proposed site is located approximately 430 feet south of southwest corner of N. Eliseo C. Felix Jr. Way and W. Van Buren St.

The site is surrounded by employment generating uses, i.e. Commercial (C-2) and Light Industrial (A-1) zonings. Proposed development of two light industrial buildings catering to minor office space, storage/warehouse needs, light industrial uses will be a suitable and valuable addition to the employment generating corridor.

This project also is consistent with the economic growth of the surrounding area. With proposed and existing nearby commercial and business developments along Van Buren St, proposed development shall further enhance City of Avondale's goals of regional economic development, supporting local entrepreneurship, strengthen western region as an economic district, which all are a part of the vision to bring about an element of Economic Vitality under City of Avondale's General Plan 2030.



Proposed Uses:

Primary business and uses within the proposed development will be light industrial uses with a minor amount of ancillary office space. There is a possibility that one of the uses will be that of an indoor automotive body and paint shop. This will be complimentary to other auto repair businesses to the south of the property. These uses are not supported by commercial land-use and are only permitted under industrial land-use.

Under 'City of Avondale General Plan 2030', industrial land-use category is intended to provide employment opportunities for heavy manufacturing within enclosed or partially enclosed structures. This category also allows for other businesses such as refining, assembly, fabrication of products, demolition, solar or wholesaling.

Proposed development anticipates such businesses, that fall under industrial land-use category, for its future tenants. Hence, a change in zoning from C-2 to A-1 is being requested for.

Land Use and Zoning Patterns:

The site currently is a vacant plot and is surrounded by the following land uses and zoning:

North: C-2 (Community Commercial District)

East: C-2 (Community Commercial District)

South: A-1 (General Industrial)

West: R-4 (Multi-family Residential)



Land uses along N. Eliseo C. Felix Jr. Way are primarily general industrial uses. Current C-2 zoning of the site does not allow for industrial uses. Proposed change of zoning from C-2 to A-1 zoning of the site will be in coherence with the surrounding and shall further reinforce N. Eliseo C. Felix Jr. Way as an 'Industrial' corridor. The new development will complement and contribute to the already existing industrial uses in the immediate vicinity.

Proposed development is also cognizant of the adjacent multi-family residential development to the west of the property. Building has been setback by 75 feet from the west property line and no overhead doors are located along the west elevation of the building to avoid potential noises. The west façade of the building has been designed aesthetically for a pleasing visual appearance. A landscape buffer of 25 feet with trees and landscaping will also act as a visual and noise barrier between the two properties and will provide the residents a softer and pleasing view.

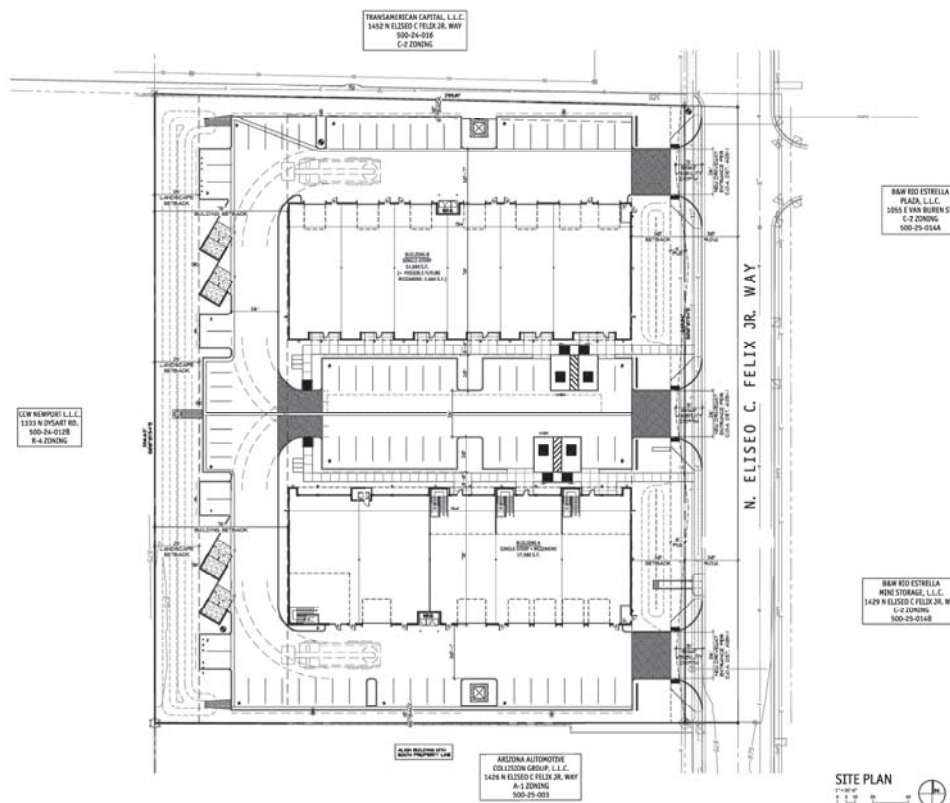
Site Physical Characteristics:

The site is located on a flat land. As per grade levels indicated in topographic survey, the site has negligible slope. This is advantageous for the site to be developed for light industrial use.

Floodplain:

According to the Federal Emergency Management Agency Flood Insurance Rate Map Panel Number 04013C2155M, dated September 18th, 2020 the parcel is located in Zone X area, which is defined as areas of 0.2% annual chance flood; area of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood. Refer to Appendix B for FEMA FIRM Map.

Circulation System and Parking:



Entry to the proposed development will be from N. Eliseo C. Felix Jr. Way with three new driveway entrances and utilizing four drive lanes with parking along each. Driveway entrances provide access to each building. Parking along periphery of the site supports employee parking needs and access to the rear of each building. Primary entry drive in the center of the development establishes a grand avenue with parking for customers and pedestrian access to the suites. This grand avenue is visually strong and dynamic to provide orientation to customers and enhance the development. Architecture of the buildings will provide direction to each suite via the recessed storefront and metal frame canopy. Secondary entries off Eliseo C. Felix Jr. Way service the rear of both buildings.

Proposed development is accessible only from N. Eliseo C. Felix Jr. and no cross-access or shared driveways are proposed between adjacent properties.

Parking analysis:

Parking	Required	Provided
Parking spaces (Regular)		79
Parking Spaces (Compact)		8
ADA Parking Spaces		4
Total	74	91

Traffic Analysis:

Based on the Traffic Impact Analysis Procedures, a Traffic Impact Statement is required rather than Traffic Impact Analysis, because the site is projected to generate less than 100 trips in the peak hour. Traffic Impact Statement was conducted to determine and mitigate traffic impacts related to the proposed development.

The site is located on the west side of Eliseo Felix Jr Way, south of Van Buren street in Avondale. The project is planned to have three access driveways located on Eliseo Felix Jr. Way.

Eliseo Felix Jr. Way. Is classified as a collector street and the speed limit adjacent to the development is 25 miles per hour.

Estimates of the traffic volume generated by the proposed development were determined from transportation planning data taken from Institute of Transportation Engineers (ITE) 'Trip Generation Manual, 10th Edition, 2017'. Based on this estimate, traffic impact was concluded as follows:

"Due to the low forecasted peak hour volumes at the subjected site, site generated traffic by the proposed development is not anticipated to cause detrimental impacts to the surrounding roadway network."

'Traffic Impact Statement' report is included with Rezoning application.

Proposed Design:

This project consists of two new light industrial buildings oriented along a central drive to present a grand avenue with parking and wide plaza-like sidewalks. Entrances to all suites face inwards towards this central "grand" drive and are highlighted by design elements and features to provide scale and variation in materials and colors.

The main construction material for the building will be CMU articulated with various coursing enhancements and color. Additionally, the design provides unique features such as steel canopies to articulate the façade, expressing contemporary architectural details and refinement. The façade of the buildings is undulating with minor masses projecting from the primary building envelope. The projecting masses engage the steel canopies to create a layered and graceful building design.

The scale, proportions, and effective use of glazing and shading devices along with building materials allow this building to adequately meet the design qualifications for the proposed A-1 zoning and provide a well-defined and articulated building appropriate for Avondale, Arizona. The property does not have any other stipulated set of design guidelines and the design and materials are in concert with light industrial uses and building types.

Overall design of the proposed development has evolved with the consciousness of having low development impact to the surrounding area by being in coherence with the scale of buildings around, use of natural materials as the primary construction material, abundant landscaping, and an appealing building design. Driveway between the two buildings creates a central tree lined vista that brings about a soft element within the industrial buildings.

Water Analysis:

Per available utility maps and as-built records, there is an existing 8-inch public water main located within the Eliseo Felix Jr. Way, east of the project. There are no existing domestic water or fire services stubbed into the project. There are existing fire hydrants adjacent to the project on the west side of Eliseo Felix Jr. Way, one hydrant north of the project and the other hydrant to the south.

The project is designed to have a water supply fixture unit count of 192.0 (96.0 GPM per building). The project is designed to have 100 linear feet of 2-inch distribution pipe. Per the International Plumbing Code Table E201.1, based on the provided pressure of over 60 PSI, a run on 2-inch distribution pipe, approximately 100 LF, with a 2-inch meter has the capacity to carry approximately 368 WSFU. Thus, the expected maximum demand of 192 WSFU is acceptable.

Building A will be approximately 17,500 square feet and Building B will be approximately 14,500 square feet and will be type V-B construction. Per the International Fire Code, Table B105.1, the building requires minimum fire flow of 3,250 GPM for a 3-hour duration. A recent fire flow test was conducted on December 29th, 2020 and the minimum GPM available at 20PSI is 3,922 GPM. When considering a 10% safety factor, the minimum GPM available at 20 PSI is 3,612 GPM, exceeding the minimum fire flow test requirements for the new building size and construction type.

Sewer Analysis:

Per available utility maps and as-built records, there is an existing 10" public sewer main located within the Eliseo Felix Jr Way, east of the project. There are no existing sewer services stubbed into the project.

Drainage Analysis:

According to a recent topographic survey and field investigations, the project is not impacted by offsite runoff with Eliseo Felix Jr Way. The new building finished floor elevations have been set at a minimum of 12-inch above the calculated flow within the adjacent right-of-way.

Runoff generated by Eliseo Felix Jr. Way flows within the right-of-way and is intercepted by an existing sidewalk scupper north and south of the project area with the intent of capturing and ultimately retaining the 100-yr, 2-hour design storm volume from the adjacent half street. No sidewalk scuppers or catch basins exist along Eliseo Felix Jr. Way project frontage. This will be changed in the developed condition.

Please see documents included with the Rezoning package for proposed project design and detailed analysis.

The applicant and team are committed to bringing in another valued project to City of Avondale and are excited to be a part of the development of the area.

Sincerely,
Jinia Sarkar
Sr. Project Manager

Exhibit F

Conceptual Site Plan



SITE PLAN

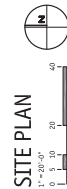
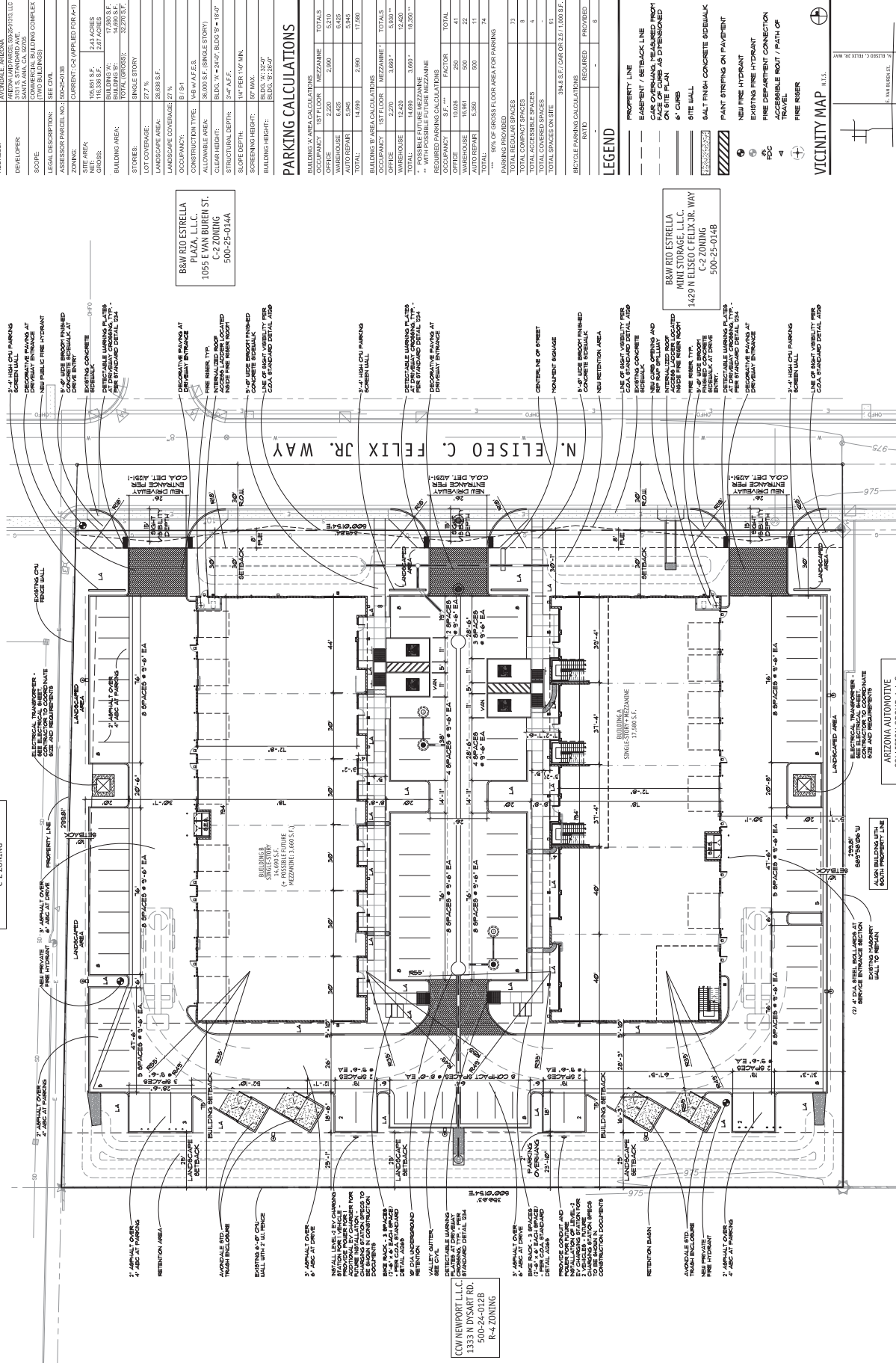
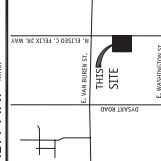
VICINITY MAP ^{N.T.S.}

Exhibit G

Conceptual Building Elevations

GENERAL NOTES

- SEE STRUCTURAL FOR Lintel INFORMATION.
SEE DOOR SCHEDULE FOR DOOR HEIGHTS.
SEE STRUCTURAL FOR CONTROL JOINTS.

MATERIAL SAMPLE APPROVAL

1. PRIOR TO ORDERING, G.C. TO PROVIDE INDIVIDUAL SAMPLES OF ALL BUILDING COLORS AND MATERIALS FOR REVIEW AND APPROVAL BY THE ARCHITECT AND OWNER (1% PAINTED CHU, ETC.)
2. ALL INDIVIDUAL SAMPLES TO BE PRESENTED AT ONE TIME, ON-SITE IN SIZES OF NO LESS THAN 3" X 12".

MATERIAL KEY

[illegible]

STORFRONT / GLAZING KEY

STANDARD / COATING REF.	
MATERIAL	COLOR
FRAMES	CLEAR ANODIZED ALUMINUM
GLAZING	1" INSULATED GRAY

1. SEE WINDOW TYPES FOR LOCATIONS OF TEMPLER GLASS.

COLOR KEY

KEY	MANUFACTURER NAME
1	MANUFACTURER NAME
2	MANUFACTURER NAME
3	MANUFACTURER NAME
4	MANUFACTURER NAME

1. SEALANTS FOR JOINTS TO MATCH EXISTING MATERIAL COLORS - NO WHITE OR OFF WHITE COLORS.
2. PAINTER TO PROVIDE TWO COATS SEALER TO ALL EXPOSED NATURAL BLOCK, PRECAST CONCRETE, UNPAINTED CONCRETE AND OTHER MATERIALS TO PROVIDE A WEATHER SEALED PROJECT.
3. G.C. IS RESPONSIBLE FOR SUBMITTING ALL PRE-MANUFACTURED MATERIALS AND COLORS TO ARCHITECT FOR REVIEW AND APPROVAL.
4. G.C. TO OBTAIN APPROVAL FROM UTILITY COMPANY BEFORE PAINTING TRANSPORTER.



Exhibit H

Neighborhood Meeting Summary

Project Name: Arizona Land Parcel (PL-21-0050)

Date: June 3, 2021

Location: Via Zoom Teleconference

Attendees: Michelle Simerdla, Planner, City of Avondale
Brian Craig, Planning Manager, City of Avondale
Vice Mayor Veronica Malone, City of Avondale
Councilwoman Patricia Dennis, City of Avondale
David Fulk, Architect, Cawley Architects
Jinia Sarkar, Sr. Project Manager, Cawley Architects
Troy Buck, Business Owner in Avondale

NEIGHBORHOOD MEETING NOTES

The meeting started on schedule at 6:00pm. Attendees introduced themselves.

As an introduction to the meeting, David Fulk from Cawley Architects presented design concept and parameters of the proposed project.

Questions were asked by two attendees:

Attendee: Troy Buck, Business Owner in Avondale

Concern: Attendee's concern was competition with existing auto-body repair businesses on the street and if the City would benefit from the addition of a new auto-body shop when there are several others in Avondale..

Response by Architect: Owner owns auto-body business in California and wants to bring in his business from California.

Concern: Attendee's concern was that the owner previously had another auto-body business in the area that did not succeed and if it would be viable to bring in the same business again if this has failed before.

Response by Architect: Owner is considering operating his auto-body business that he owned previously in the area, which he had sold to another business owner a few years back. He is considering to reintroduce an auto-body business in the new proposed development.

Attendee: Councilwoman Patricia Dennis, City of Avondale

Concern: Councilwoman asked the question regarding requirement of a Conditional Use-Permit for proposed use in the Zoning.

Response by Planner: Conditional Use-Permit is not required for auto-repair business in Zoning A-1, that is being requested for.

Concern: Councilwoman asked the question regarding auto-body not limiting their services to the indoors and moving outside in the parking area.

Response by Planners: All activities of auto-body shop to remain indoors and license will be revoked if activities are moved outside illegally.

Concern: Councilwoman wanted to know what kind of separation was being provided for noise and visual control from the adjacent multi-family residential property.

Response by Architects: Building has been set back 75 feet from the west property line that abuts the multi-family residential property. A 25 foot landscape buffer with row of trees is being proposed as a noise barrier and for visibility control. In addition to these, no overhead doors face the residential property and that also helps in noise control.

Question by Architect: Architect asked citizen Troy Buck what business he owned.

Response by citizen: Citizen Troy Buck mentioned that he owned an auto-body business two parcels south of the proposed development.

Vice Mayor, Veronica Malone signed in to hear questions and concerns that were being raised. She had no comments and signed off at 6:20pm.

There were no other concerns raised and the meeting was concluded at 7:00pm.

ORDINANCE NO. 2039-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 2.67 ACRES GENERALLY LOCATED 430 FEET SOUTH OF THE SOUTHWEST CORNER OF ELISEO C. FELIX JR WAY AND VAN BUREN STREET, AS SHOWN IN APPLICATION PL-21-0050, FROM COMMUNITY COMMERCIAL (C-2) TO GENERAL INDUSTRIAL (A-1).

WHEREAS, the Council of the City of Avondale (the “City Council”) desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”), pursuant to ARIZ. REV. STAT. § 9-462.04, to change the zoning description for $\pm$ 2.67 gross acres generally located 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street, as shown in application PL-21-0050, from Community Commercial (C-2) to General Industrial (A-1) (the “Zoning Atlas Amendment”); and

WHEREAS, all due and proper notices of the public hearings on the Zoning Atlas Amendment held by the City of Avondale Planning Commission (the “Commission”) and by the City Council were given in the time, form and substance provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, on July 21, 2021, the Commission held a public hearing on the Zoning Atlas Amendment, after which hearing the Commission recommended approval; and

WHEREAS, the City Council held an additional public hearing regarding the Zoning Atlas Amendment on August 23, 2021; and

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Arizona Constitution, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this Ordinance.

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 Zoning Atlas Amendment for $\pm$ 2.67 gross acres generally located 430 feet south of the southwest corner of Eliseo C. Felix Jr. Way and Van Buren Street, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by

reference, is hereby approved, rezoning such property from Community Commercial (C-2) to General Industrial (A-1), subject to the City of Avondale adopted codes, requirements, standards and regulations, and the following stipulations:

1. Development shall conform to the General Industrial (A-1) district standards and the Commercial and Industrial Design Manual.
2. All off-site improvements shall be completed by the developer prior to issuance of a Certificate of Occupancy.

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 execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2039-0821

[Legal Description and Map]

See following pages.

EXHIBIT "A"

DESCRIPTION OF ZONING BOUNDARY AVONDALE, AZ 85323

That portion of Tract A, RIO ESTRELLA COMMERCE PARK, according to Book 328 of Maps, Page 46, records of Maricopa County, Arizona, and Eliseo C Felix Junior Parkway lying within a portion of the Northwest quarter of Section 11, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

*COMMENCING at a 3-inch City of Avondale brass cap in handhole marking the Northwest corner of said Section 11, from which a 3-inch Maricopa County brass cap flush marking the North quarter corner of said Section 11 bears South 88 degrees 22 minutes 11 seconds East 2,638.60 feet;
THENCE South 88 degrees 22 minutes 11 seconds East 1,319.30 feet along the North line of said Northwest quarter to the centerline of said Eliseo C Felix Junior Parkway;
THENCE South 00 degrees 02 minutes 02 seconds East 431.51 feet along said centerline to the POINT OF BEGINNING;
THENCE South 00 degrees 02 minutes 02 seconds East 349.16 feet continuing along said centerline to the Easterly extension of the South line of said Tract A;
THENCE South 89 degrees 57 minutes 58 seconds West 329.69 feet along said South line to a nail in washer stamped "KLEIN 42137" marking the Southwest corner of said Tract A;
THENCE North 00 degrees 01 minute 27 seconds West 356.63 feet along the West line of said Tract A to a 1/2-inch rebar with aluminum cap stamped "KLEIN 42137";
THENCE South 88 degrees 44 minutes 06 seconds East 329.72 feet to the POINT OF BEGINNING.*



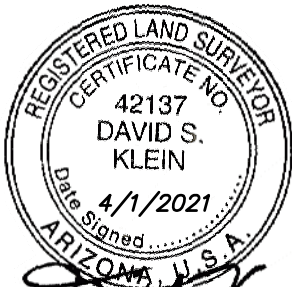
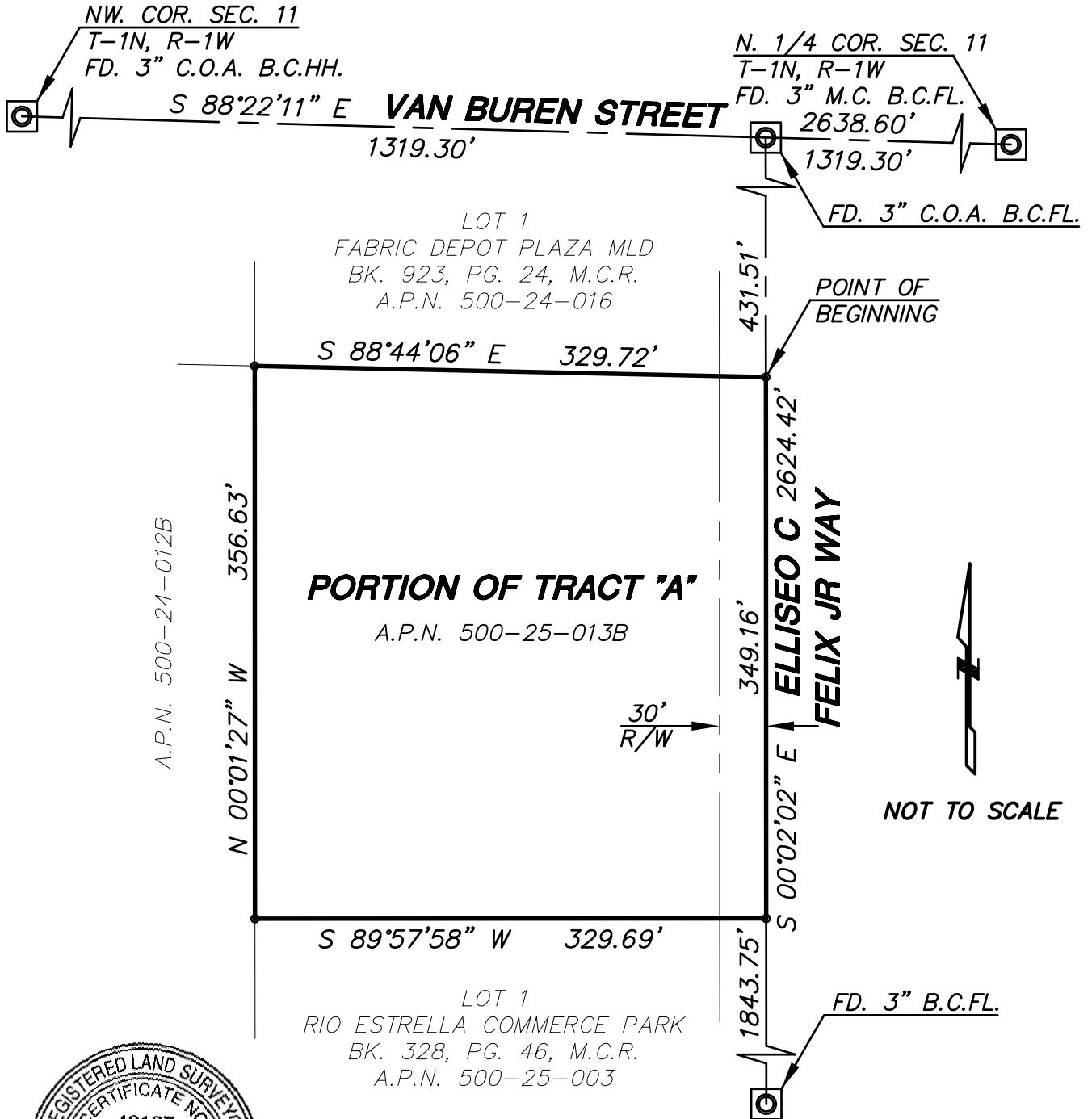
2122 W. Lone Cactus Dr.
Ste. 11, Phoenix, AZ 85027
623-869-0223 (office)
623-869-0726 (fax)
www.superiorsurveying.com
info@superiorsurveying.com

DATE: 4/1/2021

JOB NO.: 202010033

EXHIBIT "B"

DEPICTION OF ZONING BOUNDARY
AVONDALE, AZ 85323



SUPERIOR
SURVEYING SERVICES, INC.

2122 W. Lone Cactus Dr.
Ste. 11, Phoenix, AZ 85027
623-869-0223 (office)
623-869-0726 (fax)
www.superiorsurveying.com
info@superiorsurveying.com

DATE: 4/1/2021

JOB NO.: 202010033

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Ordinance 2040-0821 – Major Amendment to Avondale Automall Planned Area Development (PAD) – Application PL-21-0047

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction.
-

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Ordinance 2040-0821, approving a request by Mr. Paul E. Gilbert, Beus Gilbert McGroder PLLC, for a Major Amendment to the Avondale Automall Planned Area Development (PAD) to revise the permitted uses to allow, subject to approval of a Conditional Use Permit, an automotive dealership selling used vehicles only on approximately 9.11 acres at the northeast corner of 107th Avenue and Roosevelt Street, provided that the used automotive dealership has a minimum consolidated annual revenue of \$500 million dollars and maintains a minimum of 140 vehicles on display at all times on the Avondale Automall property. The request will revise permitted uses within the PAD for only the 9.11-acre subject property, Assessor Parcels 102-54-045D and 102-54-101; used automotive dealerships will remain prohibited within the remainder of the Automall except where a 2020 PAD Amendment allowed for the use on an adjoining property. A request for approval of a Conditional Use Permit for a proposed AutoNation used automotive dealership on the subject property will be considered separately; approval of the PAD Amendment is required for the Commission to consider the requested Conditional Use Permit. The Council will take appropriate action.

BACKGROUND:

The 9.11-acre subject property consists of two (2) contiguous parcels located at the northeast corner of 107th Avenue and Roosevelt Street (Exhibits A and B). The easternmost parcel was developed in 2004 with an automotive dealership facility (originally a Volvo dealership) consisting of a showroom building, service building, and vehicle inventory storage and display areas; the parcel has been unused since the closure of an Alfa Romeo/Fiat dealership on the site in 2017. The westernmost parcel has not previously been developed but has, on occasion, been used as a site for temporary storage of overflow vehicle inventory for various

dealerships in the Avondale Automall; the parcel is not currently in use.

The subject property was annexed in May 1986 and had been zoned Agricultural (AG) until being rezoned to Avondale Automall Planned Area Development (PAD) in December 1999. The 1999 Avondale Automall PAD allowed for 50 acres at the western end of the Automall, inclusive of the subject property, to be developed with a retail shopping center in accordance with the Community Commercial (C-2) zoning district.

A Major Amendment to the Avondale Automall PAD was approved in April 2003. The 2003 Major Amendment eliminated the original requirement that the Automall's westernmost 50 acres develop as a retail shopping center, instead allowing for development of additional automotive dealerships on that land (inclusive of the subject property). Per the 2003 Major Amendment, dealerships selling both new and used vehicles are currently permitted on the subject property; however, dealerships selling only used vehicles are not permitted.

A second Major Amendment to the Avondale Automall PAD was approved in August 2020. The 2020 Amendment revised the permitted uses for a single lot directly east of the subject site (Lot 11B), allowing a used automotive dealership on that specific parcel subject to City Council approval of a Conditional Use Permit (CUP). The 2020 Amendment also established performance criteria for used automotive dealerships on Lot 11B, including minimum annual revenue and inventory requirements, to ensure that only high quality used automotive dealerships would operate within the Automall. Concurrently, City Council approved a CUP allowing Echo Park Automotive, a used automotive dealer, to operate on Lot 11B; the approved CUP is conditioned upon Echo Park Automotive limiting sales of inventory older than four (4) years from initial registration date, with a purchase price of \$15,000.00 or less, to no more than twenty (20) percent of vehicles sold within any calendar year. Following the PAD Amendment and CUP approvals, Echo Park Automotive commenced operations on Lot 11B in late 2020. Because the 2020 Amendment pertained only to a single lot and not the entirety of the Automall, use of the 9.11-acre subject site as a used automotive dealership is currently prohibited.

The Automall is designated by the General Plan 2030 Land Use Map as Business Park. The Business Park land use category is intended to allow for large scale campus development that provides abundant employment opportunities and offers amenities such as: attractive streetscapes with excess landscaped setbacks, appropriate screening from the I-10 freeway, pedestrian connections, efficient circulation, and refuge areas for active and passive activities to keep a healthy lifestyle for all employees. The category accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers, motor sports related industry manufacturers, and limited warehouse and support services that support these primary employment uses.

The property is also located within the boundaries of the Freeway Corridor Specific Plan (FCSP), which places a priority on the City's appearance from the I-10 by establishing supplemental design requirements for sites that are visible from the freeway.

The existing uses and zoning of surrounding properties include:

NORTH OF DEALER DRIVE: The I-10 Freeway; adjacent to the Automall, I-10 is a 12-lane highway with additional eastbound and westbound frontage roads located within a 600-foot wide corridor.

EAST: Echo Park Automotive, a used automotive dealership in operation on the property since late 2020. The Echo Park site is zoned Automall Planned Area Development (PAD); a Major PAD Amendment and CUP to allow use of the site as a used automotive dealership subject to performance criteria was approved in August 2020.

SOUTH OF ROOSEVELT STREET: Griffith Planned Area Development (PAD), with existing uses including a used automotive dealership (Wii Auto Sales) and an Enterprise car rental facility. Several undeveloped parcels within the Griffith PAD are also located along the south side of Roosevelt Street.

WEST: Horne Mazda and Rodeo Kia, automotive dealerships that sell both new and used vehicles, zoned Automall PAD. Both dealerships were developed in the mid-2000s. West of 107th Avenue is undeveloped

property currently in agricultural production, zoned Avondale Gateway Center PAD. The Avondale Gateway Center PAD allows for development of the 107th Avenue frontage with retail uses.

SUMMARY OF REQUEST:

The applicant is requesting approval of a Major Amendment (Exhibit E) to the Avondale Automall Planned Area Development (PAD) allowing for one (1) used automotive dealership to operate on the 9.11-acre property subject to City Council approval of a CUP for that dealership. The proposed PAD Amendment, if approved, would apply only to the 9.11-acre subject property; the permitted and conditional uses identified within the existing PAD would remain valid in the remainder of the Automall.

Identical to the 2020 Amendment to the Avondale Automall PAD that allowed for an Echo Park Automotive used vehicle dealership on an adjoining parcel east of this site, the proposed PAD Amendment will establish performance criteria intended to ensure that only high quality used automotive dealerships would operate within the Automall. Criteria established by the proposed Amendment require a dealership to have a minimum consolidated annual revenue of \$500 million dollars and display a minimum of 140 vehicles on the site at all times.

This proposed Major PAD Amendment is the first step towards use of the site as a used automotive dealership. As indicated above, Council's approval of a CUP, evaluating a specific proposal for operation of a used automotive dealership on the property, is also required. A CUP for an AutoNation used automotive dealership on the subject property has been filed and is scheduled to be heard on the same agenda as this PAD Amendment; additional information on the proposed AutoNation dealership, including a description of how the dealership will utilize both the property's existing (presently vacant) dealership facilities and develop additional land for supplementary inventory display and storage, can be found within the staff report for the companion CUP request. Approval of this PAD Amendment is required for the Council to consider approval of the CUP application.

PUBLIC PARTICIPATION:

A Neighborhood Meeting to discuss the proposal with neighboring property owners and other interested parties was held at 6:00 P.M. on Tuesday, May 11, 2021. Due to the ongoing Covid-19 pandemic, the meeting was held virtually via Zoom. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic, were completed in at least fifteen (15) days prior to the meeting as required. In addition to City Staff and the applicant's team, two (2) persons attended the virtual meeting which included one Councilmember (Exhibit G). Questions and comments included:

- ***Will traffic signals be installed at the intersection of 107th Avenue and Dealer Drive and/or at the intersection of 107th Avenue and Roosevelt Street to alleviate left-turn difficulties onto southbound 107th Avenue?*** The applicant, Paul Gilbert, stated that no signals were proposed as part of the applications under review and consideration. City Staff indicated that a signal at 107th Avenue and Roosevelt Street was identified in the City's Infrastructure Improvements Plan (IIP) to be constructed by the City using development impact fees, though a specific year for construction hasn't been identified. A signal is not planned at 107th Avenue and Dealer Drive as, from a spacing standpoint, that location would be too close to the I-10 interchange and the planned signal at 107th Avenue and Roosevelt Street.
- ***How frequently are used dealerships checked for compliance with the inventory age and value restrictions?*** The applicant indicated that the stipulation requires the dealership to provide a report to the City within 75 days of request.
- ***When did the Echo Park used automotive dealership open on the adjoining property?*** The applicant indicated that the Echo Park dealership only opened a few months ago and that the City had recently requested the sales data pertaining to inventory age and value for that site. Echo Park was in the process of preparing that report as required.
- ***Concern regarding impacts of used vehicle dealerships on the Automall's existing new and used vehicle dealerships.*** The applicant stated his belief that a successful dealership operating on the site will only have positive impacts on existing dealerships by bringing additional customers to the Automall who may find preferred vehicles at other dealerships, stating that "a rising tide lifts all ships."

A representative of AutoNation, Alexander Shporer, confirmed that AutoNation operates several used automotive dealerships in other auto malls including in auto malls which include franchised new car dealerships operated by AutoNation.

In response to the question, “Do you have any comments on a proposed Major Planned Area Development (PAD) Amendment and Conditional Use Permit request to allow an AutoNation used vehicle dealership at the northeast corner of 107th Avenue and Roosevelt Street in the Avondale Automall?”, four (4) comments were posted on the City’s aVOICE digital forum, as follows:

- “Just build it”
- “Will there be multiple vehicles (sic) entrances to help enhance traffic control?”
- Two (2) anonymous persons responded “NO”. It is unclear if the respondents were indicating that they did not have comments in direct response to the posed question, or if they were opposed to the PAD Amendment and CUP requests.

All required notifications for the Planning Commission and City Council public hearings were completed. All property owners within 1,000 feet of the subject site were notified of the time, date, and location of the Planning Commission and City Council meetings via postcards, the meetings were advertised in the Southwest Valley Arizona Republic, and a public hearing notice sign identifying meeting dates, times, and locations was installed on the property. All notifications included Zoom meeting information and links as applicable. No additional public comments have been received to date.

PLANNING COMMISSION ACTION:

On June 16, 2021, Planning Commission conducted a public hearing and voted 6-1 to recommend approval of the proposed rezoning subject to three(3) recommended conditions. Commission had the following questions or comments:

- Vice Chair Thompson inquired as to the origin of the performance criteria regulating the revenue and inventory. Staff advised that the criteria were developed based upon research into the characteristics of the top five (5) to ten (10) national used automotive dealership brands, particularly in regard to sales volume, revenue, and quality. Mr. Paul Gilbert, representing the applicant, advised the numbers were derived collaboratively with input provided from the City Manager with the goal of maintaining the highest quality for the Automall.
- Commissioner Warren asked if the performance criteria were the same standards used for Echo Park Automotive last year. Staff confirmed that the proposed standards are identical to what was required of Echo Park Automotive in 2020.

ANALYSIS:

As the applicant explains in the PAD Amendment, the landscape of the automobile industry has changed significantly since 2003. Several domestic brands such as Mercury, Oldsmobile, Plymouth, and Pontiac have disappeared from the market, along with newer brands and imports such as Hummer, Isuzu, Saturn, and Suzuki, which are also no longer sold. The loss of these car manufacturers has led to a reduced need for dealership space, leaving the Avondale Automall with vacant buildings. Some of those vacancies have been filled with alternative uses, such as recreational vehicle sales, but some dealership buildings, including the building on the subject property, remain vacant.

Recently, the automobile sales industry has seen great success in dealerships that specialize in selling only recent model, low mileage used vehicles. To this end, an Echo Park used vehicle dealership began operating on an adjacent property in late 2020 with tremendous success, as exemplified by the strong sales tax revenue generation to the City. Approval of the proposed PAD Amendment would allow for one (1) additional used automotive dealership in the Automall, on the 9.11-acre subject property only, subject to approval of a CUP. Like with Echo Park, to ensure that only a high quality used automotive dealership will operate on the property, performance criteria requiring the dealership to have a minimum consolidated annual revenue of \$500 million dollars and maintain a minimum of 140 vehicles on display at all times are included as part of the request.

Existing restrictions prohibiting used vehicle dealerships on the remainder of properties in the Automall are not

impacted by the proposal. Furthermore, the City Council will have continued approval authority, for any dealership meeting the aforementioned criteria that is proposed on the subject property through the previously discussed CUP requirement. It is with that application that the specific operational characteristics and business model of a particular dealership can be evaluated and, if deemed necessary, additional conditions of approval can be included.

DISCUSSION:

The proposed Major PAD amendment meets the following findings:

- The proposed Amendment is in conformance with the General Plan 2030 Land Use Map.
- The proposed Amendment is in conformance with the Freeway Corridor Specific Plan.
- The proposed Amendment will result in compatible land use relationships.
- The recommended conditions of approval are reasonable to ensure conformance with the provisions of the Zoning Ordinance and all other applicable City codes, ordinances, and policies.

BUDGET IMPACT:

If approved, once the dealership is in operation, this will likely increase revenue for the city, but the amount is not forecasted due to the many economic variables that are unknown at this time.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** the Ordinance approving Application PL-21-0047 Avondale Automall, a request for a Major Amendment to the Avondale Automall Planned Area Development (PAD), subject to the following three (3) conditions of approval:

1. Development and use of the 9.11-acre subject property shall conform to the 2003 Amended Avondale Automall Planned Area Development (PAD) Narrative (the "2003 PAD") approved by Ordinance 927-03, except as explicitly modified in the "Avondale Automall PAD Zoning – 3rd Amendment" narrative electronically date stamped March 31, 2021 and approved as part of this application PL-21-0047.
2. The automotive dealership located on the subject property shall have a minimum consolidated annual revenue of \$500 million dollars.
3. The automotive dealership located on the subject property shall maintain a minimum of 140 vehicles on display at all times.

PROPOSED MOTION:

I move that City Council accept the findings and **ADOPT** the Ordinance approving Application PL-21-0047 Avondale Automall, a request for a Major Amendment to the Avondale Automall Planned Area Development (PAD), subject to three (3) conditions listed in the staff report.

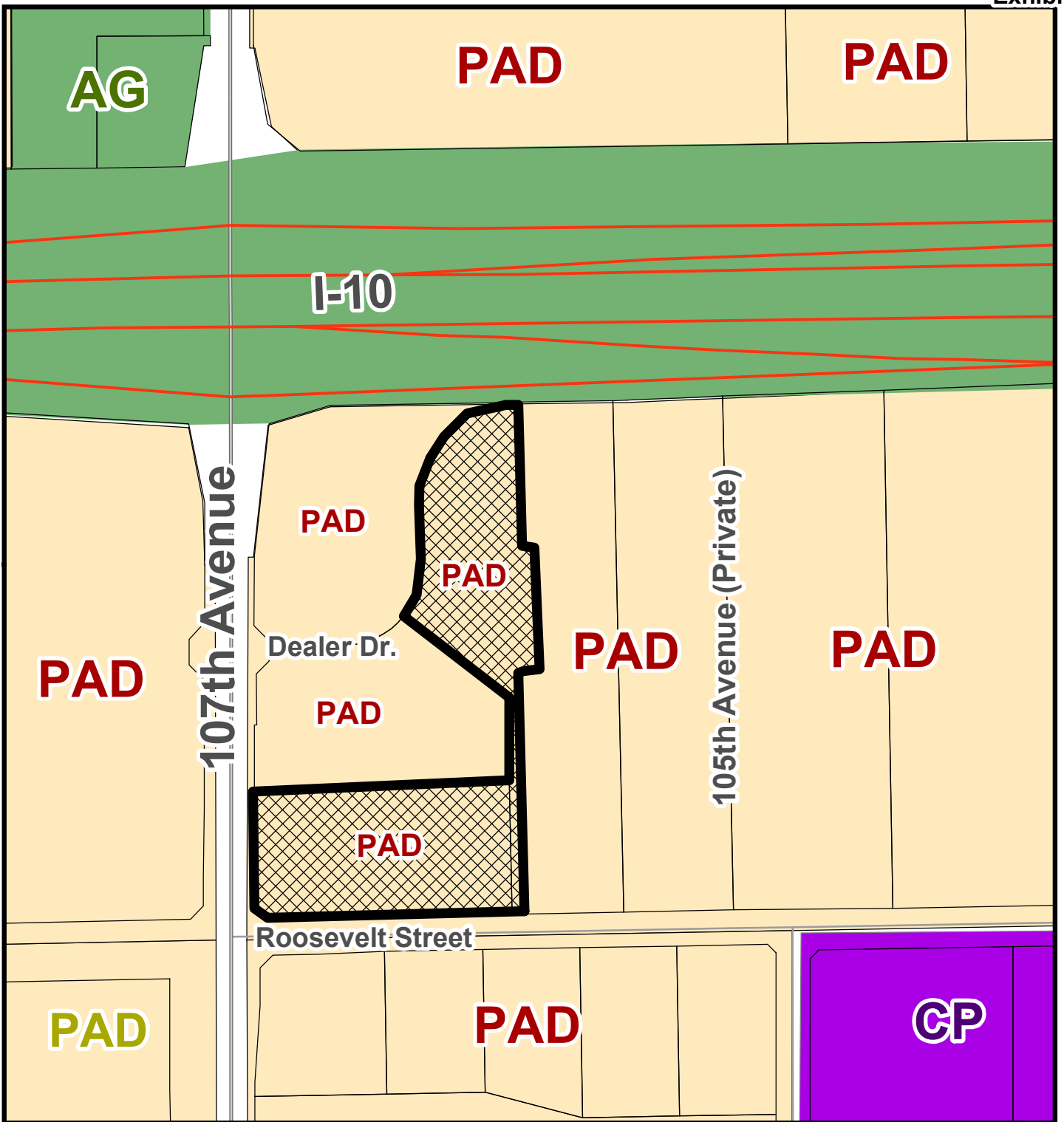


Aerial Photograph



Subject Property



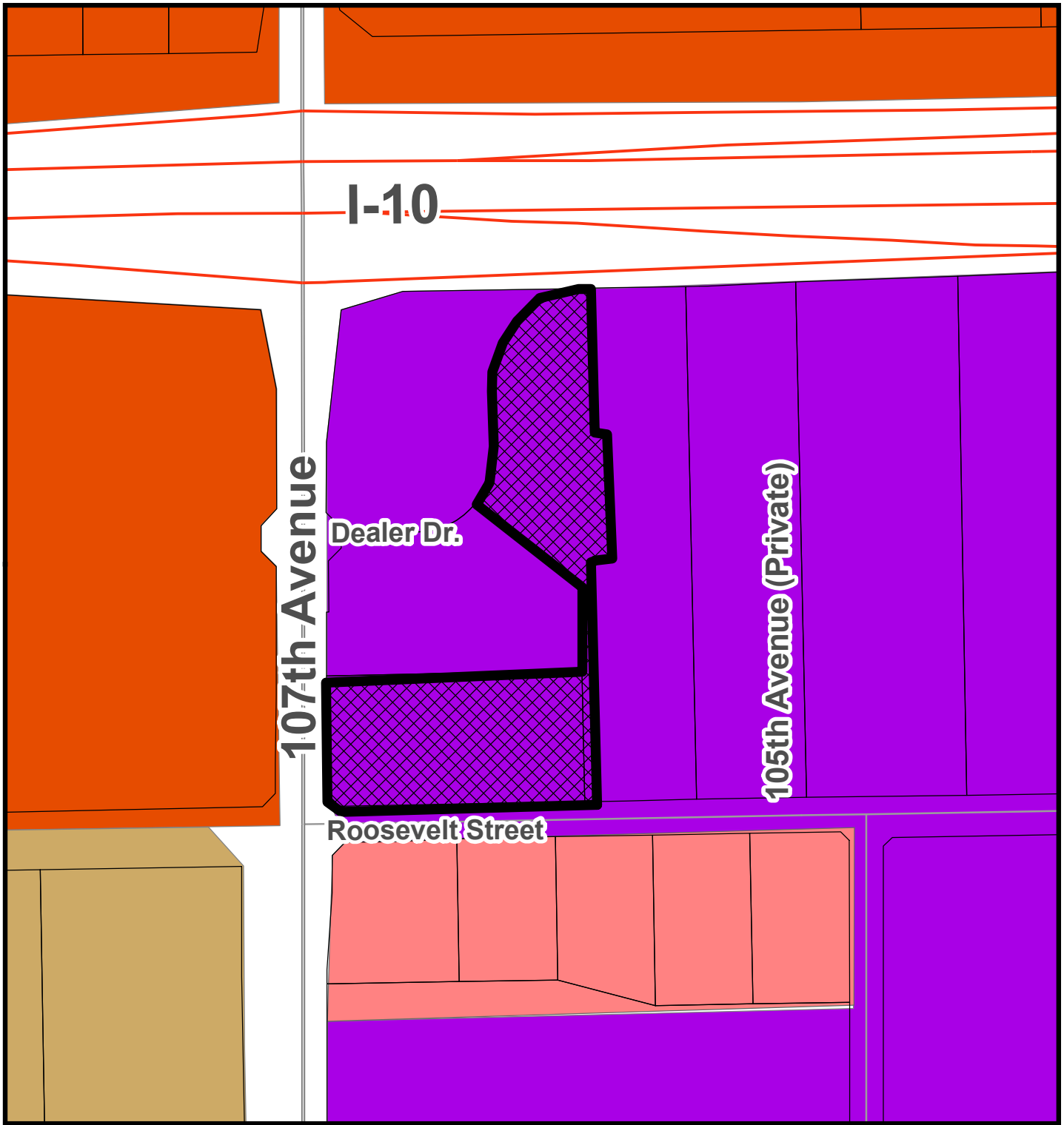


Zoning Vicinity Map



Subject Property





General Plan Land Use

-  Local Commercial
-  Medium/High Density Residential
-  Freeway Commercial
-  Business Park



Subject Property



*SUMMARY OF RELATED FACTS
APPLICATION PL-21-0047 AND PL-21-0049*

<i>THE PROPERTY</i>	
PARCEL SIZE	Approximately 9.11 gross acres
LOCATION	Northeast corner of 107 th Avenue and Roosevelt Street
EXISTING LAND USE	The subject property consists of two contiguous parcels. The easternmost parcel was developed in 2004 with an automotive dealership facility consisting of a showroom building, a service building, and vehicle inventory storage and display areas. The property has remained vacant since the closure of an Alfa Romeo/Fiat dealership on the site in 2017. The westernmost parcel has not previously been developed but has, on occasion, been used as a site for temporary storage of overflow vehicle inventory for dealerships in the Avondale Automall. The parcel is not currently in use.
EXISTING ZONING	Avondale Automall Planned Area Development (PAD)
ZONING HISTORY	The subject property was annexed in May 1986 and assigned Agricultural (AG) zoning. The property was rezoned to Avondale Automall Planned Area Development (PAD) in December 1999. The 1999 PAD allowed for 50 acres at the western end of the Automall, inclusive of the subject property, to be developed with a retail shopping center in accordance with the Community Commercial (C-2) zoning district. A Major Amendment to the Avondale Automall PAD was approved in April 2003. The approved amendment eliminated the requirement that the Automall's westernmost 50 acres would be developed as a retail shopping center, instead allowing for development of additional automotive dealerships on that land (inclusive of the subject property). Dealerships selling both new and used vehicles are currently permitted; dealerships selling only used vehicles are not permitted. A second Major Amendment to the Avondale Automall PAD was approved in August 2020. The 2020 Amendment revised the permitted uses for a single lot directly east of the subject site (Lot 11B), allowing an automotive dealership selling used vehicles only subject to City Council approval of a Conditional Use Permit. The 2020 Amendment also established performance criteria for used automotive dealerships to ensure that only high quality used automotive dealership will be allowed to operate within the Automall. Subsequently, Echo Park Automotive, a used vehicle dealership, has commenced operations on Lot 11B.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF DEALER DRIVE	I-10 Freeway. Adjacent to the Automall, I-10 is a 12-lane highway with additional eastbound and westbound frontage roads located within a 600-foot-wide corridor.

EAST	Echo Park Automotive, a used automotive dealership in operation on the property since late 2020. The Echo Park site is zoned Automall Planned Area Development (PAD); a Major PAD Amendment and Conditional Use Permit to allow use of the site as a used automotive dealership subject to several performance criteria was approved in August 2020.
SOUTH OF ROOSEVELT STREET	Griffith Planned Area Development (PAD), with existing uses including a used automotive dealership (Wii Auto Sales) and an Enterprise car rental facility. Several undeveloped parcels within the Griffith PAD are also located along the south side of Roosevelt Street.
WEST	Horne Mazda and Rodeo Kia, automotive dealerships that sell both new and used vehicles, zoned Automall PAD. Both dealerships were developed in the mid-2000s. West of 107th Avenue is undeveloped property currently in agricultural production, zoned Avondale Gateway Center PAD. The Avondale Gateway Center PAD allows for development of the 107th Avenue frontage with retail uses.

<i>GENERAL PLAN</i>	
The Automall is designated by the General Plan 2030 Land Use Map as Business Park. The Business Park land use category is intended to allow for large scale campus development that provides abundant employment opportunities and offers amenities such as: attractive streetscapes with excess landscaped setbacks, appropriate screening from the I-10 freeway, pedestrian connections, efficient circulation, and refuge areas for active and passive activities to keep a healthy lifestyle for all employees. The category accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers, motor sports related industry manufacturers, and limited warehouse and support services that support these primary employment uses.	

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOL	Student's Choice (No defined school). The closest district school is Collier Elementary School, located at the southwest corner of Coldwater Springs Boulevard and 118 th Avenue within the Coldwater Springs community.
HIGH SCHOOL	Tolleson Union High School, located at the southwest corner of Van Buren Street and 94 th Avenue within the City of Tolleson.

<i>ADJACENT STREETS</i>	
107th Avenue	
Classification	Minor Arterial
Existing half street right-of-way	60 feet
Standard half street right-of-way	55 feet
Existing half street improvements	Two (2) travel lanes, deceleration or right turn lanes as needed, half center turn lane, bike lane, curb, gutter, attached sidewalk, and streetlights.
Standard half street improvements	Two (2) travel lanes, deceleration or right turn lanes as needed, half center turn lane, bike lane,

Exhibit D

	curb, gutter, detached sidewalk, streetlights, and landscaping.
Roosevelt Street	
Classification	Major Collector
Existing half street right-of-way	45 feet
Standard half street right-of-way	40 feet
Existing half street improvements	One (1) travel lane, half center turn lane, curb, gutter, detached sidewalk, streetlights, and landscaping
Standard half street improvements	One (1) travel lane, half center turn lane, bike lane, curb, gutter, detached sidewalk, streetlights, and landscaping
Dealer Drive	
Classification	Private Street
Existing half street right-of-way	None
Standard half street right-of-way	None
Existing half street improvements	One (1) travel lane, curb, gutter, streetlights, and landscaping
Standard half street improvements	One (1) travel lane, curb, gutter, streetlights, and landscaping

UTILITIES	
Water service to the property is available via an existing 8-inch water line within Dealer Drive, an existing 12-inch water line within Roosevelt Street, and an existing 16-inch water line in 107 th Avenue.	
Sewer service to the property is available via an existing 15-inch sewer line within Roosevelt Street and an existing 8-inch sewer line within 107 th Avenue.	
SRP provides electrical service in this portion of Avondale.	

Exhibit E

Proposed PAD Amendment Narrative

Avondale Automall

Avondale Automall

PAD Zoning – 3rd Amendment

March 24, 2021

History and Narrative

In 1999 the approximately 150 acres south of Interstate 10 between 99th Avenue and 107th Avenue was rezoned from Agriculture to Planned Area Development to allow for the creation of an automall along with a retail shopping center on the westernmost 50 acres.

In 2003, due to the success of the automall, the westernmost 50 acres was rezoned to expand the automall and allow for “Outdoor Automobile Sales: New and Used” along with other associated uses.

Since 2003 the landscape of the automobile industry has changed significantly. Historical marques such as Mercury, Oldsmobile, Plymouth, and Pontiac have vanished along with newer brands and imports such as Hummer, Isuzu, Saturn, and Suzuki are no longer sold. Loss of these manufactures has led to a reduced need for dealership space, leaving the Avondale Automall with vacant buildings. Some of that space has been filled with alternative uses, such as recreational vehicle and trailer sales, but dealership buildings remain vacant or with a high degree of turnover. Recently, the automobile sales industry has seen great success in dealerships that specialize in selling only gently used late model vehicles. In 2020, the Avondale Automall zoning was amended to allow a single dealership property consisting of about 6 acres for Echo Park to locate their used vehicle dealership within the Automall.

With this amendment, we wish to obtain zoning for a second dealership property for an AutoNation dealership that sells only used vehicles.

Rezoning Request

In addition to the allowed uses provided within the Avondale Automall Planned Area Development (PAD), as amended, the following additional use shall be allowed subject to a Conditional Use Permit on 9.114 gross acres of the automall:

Automotive Dealerships Selling Used Vehicles Only – provided that the dealer has a minimum consolidated annual revenue of \$500 million and shall maintain a minimum of 140 vehicles on display at all times on the Avondale Automall property.

This use shall only be considered in the area depicted on the Aerial Photo (Exhibit A) and as further described in the legal description (Exhibit B) and shall be limited to only one (1) used-vehicle dealership meeting the conditional use criteria described above.

With the exception of the above additional use, all applicable development standards and sign standards shall be subject to the existing Avondale Automall Planned Area Development (PAD), as amended.



 = 3rd Amendment Boundary

ZONING DESCRIPTION
LOTS 11A & 12B OF AVONDALE AUTOMALL
AVONDALE, ARIZONA

February 1, 2021
Job No. P5304
Page 1 of 2

A PARCEL INCLUDING LOT 12B OF BOOK 710, PAGE 17 AND LOT 11A OF BOOK 1460, PAGE 31, RECORDS OF MARICOPA COUNTY, ARIZONA, RESIDING IN THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER OF SAID SECTION 5;

THENCE NORTH 00 DEGREES 15 MINUTES 35 SECONDS WEST, ALONG THE CENTERLINE OF NORTH 107TH AVENUE, BEING THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 350.93 FEET;

THENCE NORTH 89 DEGREES 44 MINUTES 25 SECONDS EAST, DEPARTING SAID 107TH AVENUE, A DISTANCE OF 55.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 12B;

THENCE NORTH 88 DEGREES 49 MINUTES 01 SECONDS EAST, A DISTANCE OF 600.17 FEET TO THE NORTHEAST CORNER OF SAID LOT 12B;

THENCE NORTH 01 DEGREE 10 MINUTES 59 SECONDS WEST, ALONG THE WESTERLY PROPERTY LINES OF SAID LOT 11A, A DISTANCE OF 202.38 FEET;

THENCE NORTH 51 DEGREES 39 MINUTES 37 SECONDS WEST, A DISTANCE OF 311.82 FEET TO THE POINT OF A NON-TANGENT CURVE CONCAVE TO THE WEST, WITH A CHORD BEARING OF NORTH 18 DEGREES 34 MINUTES 42 SECONDS EAST, A CHORD DISTANCE OF 123.41 FEET;

THENCE NORTHERLY ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 182.50 FEET, THROUGH A CENTRAL ANGLE OF 39 DEGREES 31 MINUTES 22 SECONDS, A DISTANCE OF 125.89 FEET TO A POINT OF TANGENCY ON THE WESTERLY PROPERTY LINE OF SAID LOT 11A;

THENCE NORTH 01 DEGREE 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 154.72 FEET TO A POINT OF CURVE TO THE RIGHT;

THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 217.50 FEET, THROUGH A CENTRAL ANGLE OF 90 DEGREES 10 MINUTES 10 SECONDS, A DISTANCE OF 342.29 FEET;

THENCE NORTH 01 DEGREE 00 MINUTES 49 SECONDS WEST, A DISTANCE OF 9.51 FEET;

THENCE NORTH 88 DEGREES 59 MINUTES 11 SECONDS EAST, A DISTANCE OF 21.21 FEET TO THE NORTHEAST CORNER OF SAID LOT 11A

THENCE SOUTH 01 DEGREE 10 MINUTES 58 SECONDS EAST, ALONG THE EASTERLY PROPERTY LINES OF SAID LOT 11A, A DISTANCE OF 338.28 FEET;

THENCE NORTH 88 DEGREES 49 MINUTES 01 SECONDS EAST, A DISTANCE OF 33.64 FEET;

THENCE SOUTH 01 DEGREE 10 MINUTES 59 SECONDS EAST, A DISTANCE OF 291.43 FEET;

THENCE SOUTH 88 DEGREES 49 MINUTES 01 SECONDS WEST, A DISTANCE OF 43.22 FEET;

THENCE SOUTH 01 DEGREE 10 MINUTES 59 SECONDS EAST, A DISTANCE OF 618.92 FEET TO THE

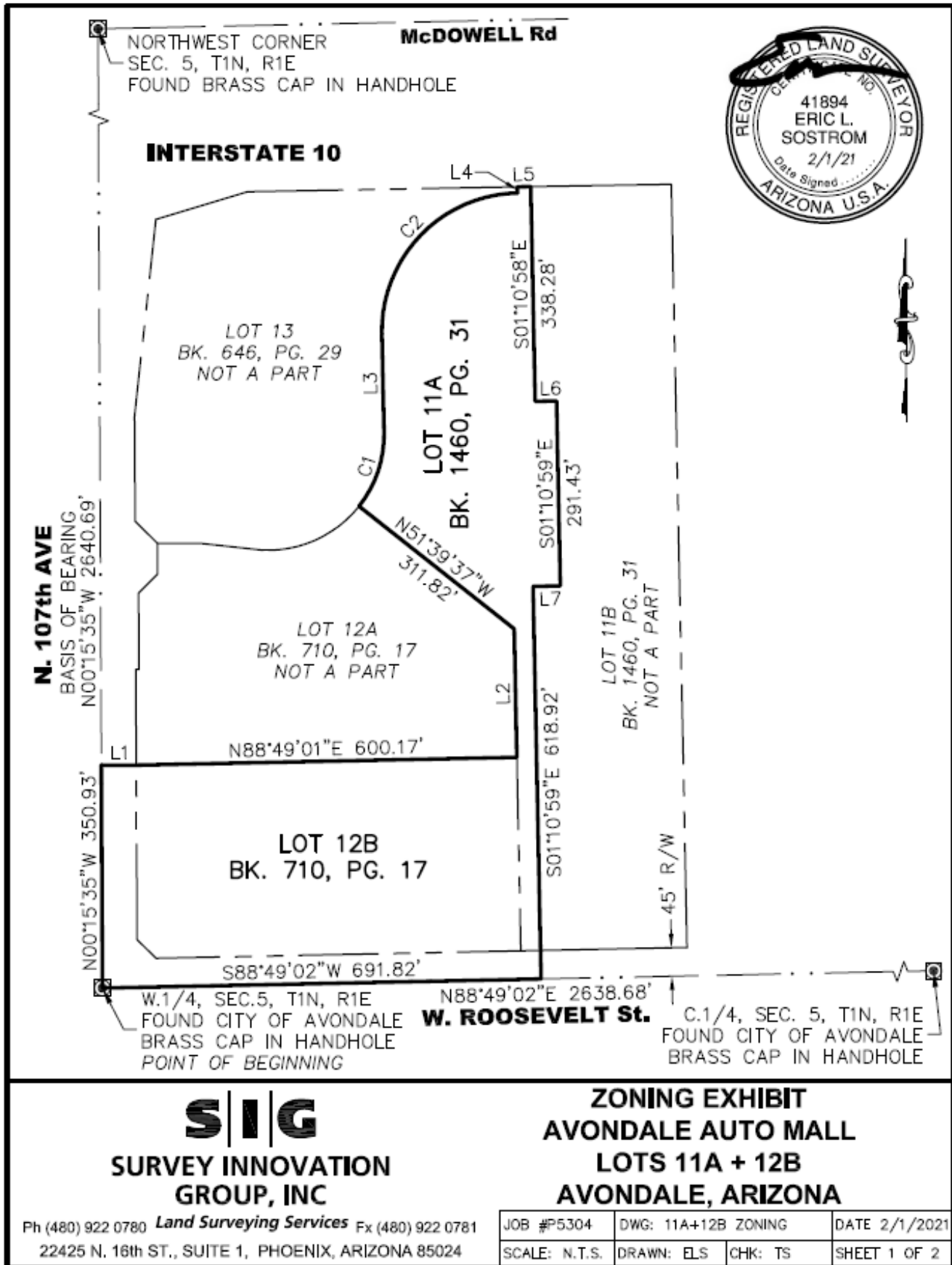
Page 2 of 2

SOUTHERLY PROLONGATION OF THE EASTERLY PROPERTY LINE OF SAID LOT 11A, AND THE CENTERLINE OF WEST ROOSEVELT STREET;

THENCE SOUTH 88 DEGREES 49 MINUTES 02 SECONDS WEST, ALONG THE CENTERLINE OF SAID WEST ROOSEVELT STREET, A DISTANCE OF 691.82 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 397,018 SQUARE FEET OR 9.114 ACRES, MORE OR LESS.







LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N89°44'25"E	55.00'
L2	N01°10'59"W	202.38'
L3	N01°10'59"W	154.72'
L4	N01°00'49"W	9.51'
L5	N88°59'11"E	21.21'
L6	N88°49'01"E	33.64'
L7	S88°49'01"W	43.22'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	39°31'22"	182.50'	125.89'	N18°34'42"E 123.41'
C2	90°10'10"	217.50'	342.29'	N43°54'06"E 308.05'

S|I|G
SURVEY INNOVATION
GROUP, INC

Ph (480) 922 0780 *Land Surveying Services* Fx (480) 922 0781
 22425 N. 16th ST., SUITE 1, PHOENIX, ARIZONA 85024

ZONING EXHIBIT
AVONDALE AUTO MALL
LOTS 11A + 12B
AVONDALE, ARIZONA

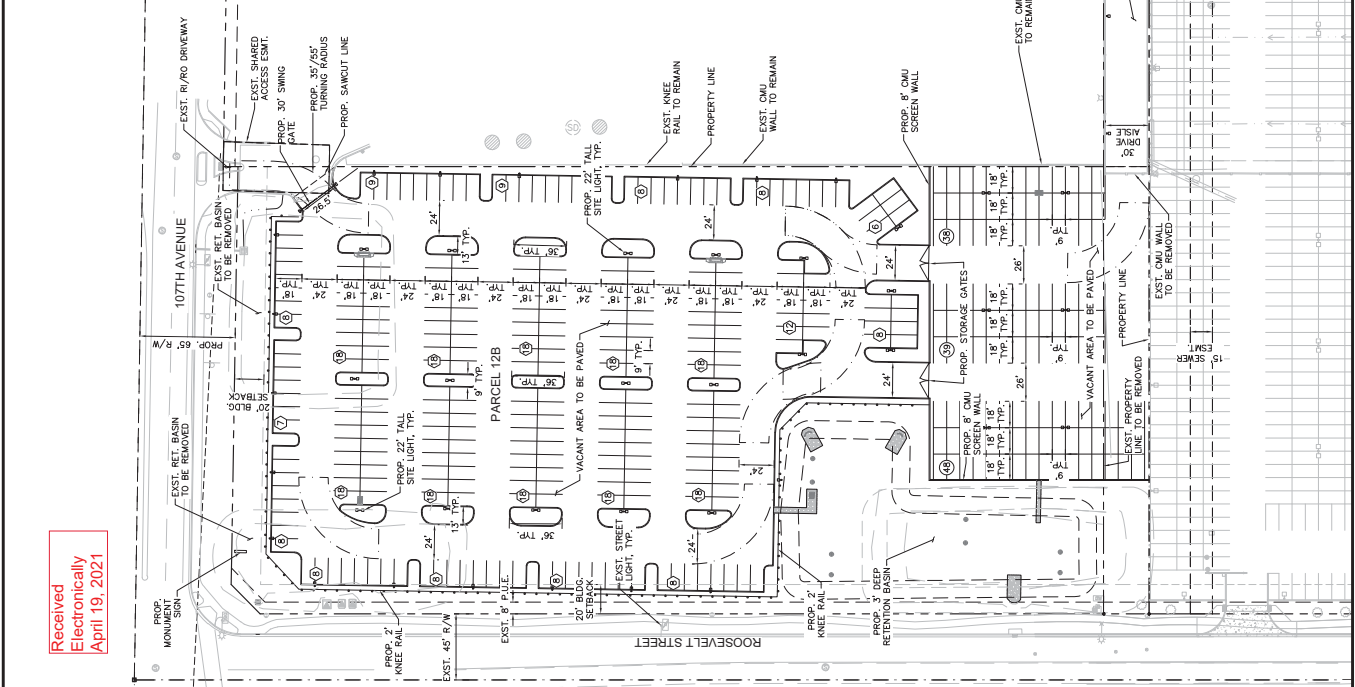
JOB #P5304	DWG: 11A+12B ZONING	DATE 2/1/2021
SCALE: N.T.S.	DRAWN: ELS	CHK: TS
		SHEET 2 OF 2

Exhibit F

Conceptual Site Plan

AutoNation at Avondale Automall

Received
Electronically
April 19, 2021



SITE DATA
A.P.N. 102-54-046
ZONING PAD
EXISTING PARCEL:
NET AREA(11A): 165,297.4 SF (3,798.4 AC)
GROSS AREA(11A): 165,297.4 SF (3,798.4 AC)
GROSS AREA(12B): 183,353.3 SF (4,209.4 AC)
EXISTING BUILDING AREA:
DEALERSHIP(11A): 6,516 SF
TOTAL BUILDING FLOOR AREA: 10,895 SF
PERCENT OF SITE UNDER ROOF(11A): 10.89%
PERCENT OF SITE UNDER ROOF(12B): 0.57%
MINIMUM YARD SETBACKS:
FRONT: 20'
REAR: 10'
INTERIOR: NONE
MAXIMUM BUILDING HEIGHT:
EXISTING BUILDING HEIGHT: 25.5'
REQUIRED PARKING:
INDOOR SHOWROOM: 4,500 SF / 500 SPACES
TOTAL REQUIRED PARKING: 13 SPACES
PROVIDED PARKING:
① DISPLAY PARKING: 386 SPACES
② INVENTORY PARKING: 123 SPACES
③ CUSTOMER PARKING: 49 SPACES
④ MAINTENANCE PARKING: 22 SPACES
TOTAL: 580 SPACES

SITE PLAN NOTES:

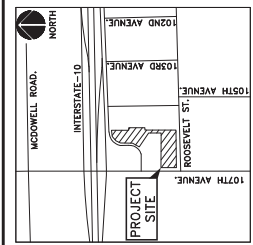
- 1) ALL UTILITY LINES LESS THAN 60" IN DIAMETER SHALL BE UNDERGROUND WITH THE FIRST PHASE OF DEVELOPMENT.
- 2) ALL GROUND-MOUNTED EQUIPMENT SHALL BE UNDERGROUND WITH THE FIRST PHASE OF DEVELOPMENT.
- 3) PLANTS LOCATED WITHIN REQUIRED ASHTO SIGHT VISIBILITY TRIANGLES SHALL BE PRUNED REGULARLY TO MAINTAIN CLEARANCE OF 14' MINIMUM CLEARANCE SHALL BE MAINTAINED TO BE LOWER THAN 2' (SHRUBS) OR TALLER THAN 7' (BOTTOM OF TREE CANOPY).
- 4) ALL DEVELOPMENTS SHALL BE COVERED WITH A MINIMUM OF 2" OF FINE GRADE GRANITE FOR DUST CONTROL AT TIME OF CONSTRUCTION.
- 5) ALL DEVELOPMENTS SHALL BE MAINTAINED IN ACCORDANCE WITH THE CITY OF AVONDALE LANDSCAPE PLAN. ANY CHANGES THEREO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
- 6) THE PROJECT SHALL BE DESIGNED TO COMPLY WITH ALL SUPPLEMENTAL REGULATIONS, PLANNING DESIGN MANUAL, COMMUNITY DESIGN MANUAL, AVONDALE STREET ZONING ORDINANCE, GENERAL PLAN, AVONDALE STREET TREE MASTER PLAN, AND ANY APPLICABLE SPECIFIC TREE MASTER PLAN, AND ANY APPLICABLE SPECIFIC TREE MASTER PLAN, AND ANY APPLICABLE SPECIFIC TREE MASTER PLAN.
- 7) OUTDOOR STORAGE OF GOODS AND MATERIALS IS PROHIBITED.



APN: 102-54-046
DEED: 2019-00075
NOT A PART

APN: 102-54-046
DEED: 2019-00075
NOT A PART

APN: 102-54-102
DEED: 2019-00075
NOT A PART



PROJECT NO.: 2019-00075
SCALE (H): 1"=40'
SCALE (V): NONE
DRAWN BY: DBB
DESIGN BY: BEQ
CHECK BY: TAJ
DATE: 04/09/21

NOT FOR CONSTRUCTION
FOR REVIEW ONLY
KIMLEY-HORN & ASSOCIATES, INC.
REGISTERED PROFESSIONAL ENGINEER
PE NO.: 100000000
EXPIRATION DATE: 12/31/2022

Exhibit G

Neighborhood Meeting Summary

Avondale Automall Major PAD Amendment

AUTONATION OUTREACH MEETING
May 11, 2021

Attendees:

Pat Dennis, Councilmember
Patricia Perkins, Automall POA

Charles Montoya, Avondale City Manager
Lindsey Duncan, Avondale Deputy City Manager
Kevin Murphy, Development and Engineering Services Director
Brian Craig, Planning Manager
Ken Galica, Division Lead Planner

Chris Wenk, AutoNation
Alexander Shporer, AutoNation
Paul Gilbert, Beus Gilbert McGroder
Andy Jochums, Beus Gilbert McGroder

Questions and Discussions:

Patti Perkins –

Will there be a traffic light at 107th Avenue and Dealer Drive?

- Paul Gilbert – Not specifically proposed as part of these applications.
- Ken Galica – Dealer Drive could be too close to the freeway intersection for a signal, but the City will look into it

What about Roosevelt as an alternative?

- Ken Galica – The City has a future signal planned there.

Councilmember Pat Dennis –

Her concern is that that left turns are unsafe from Dealer Drive.

- Supports signal at Roosevelt as long as there is access
 - aerials and site plans were discussed

How often are the sales of used vehicles checked for compliance with the age and value restrictions?

- Paul Gilbert – The stipulation for Echo Park, which is to be replicated here requires the report be provided to the City whenever it is requested.

When did Echo Park open?

- Paul Gilbert – Only a few months ago.
 - With assistance from City staff, it was discussed that a status report from Echo Park has already been made to provided sales data through the end of the fiscal year, June 30th.

Concern with impact to other dealerships and this may “Diminish them to sell used vehicles.”

- Paul Gilbert shared that “rising tide raises all ships” and Alexander Shporer discussed existing locations and operations of other AutoNation USA stores in other automalls and even located next to AutoNation franchise dealerships.

Councilmember Dennis indicated she will want to see data before the hearings.

Ken Galica – Provided hearing schedule and will be sharing links with Patti Perkins

-- Paul Gilbert and Patti Perkins exchanged contact information --

ORDINANCE NO. 2040-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE PLANNED AREA DEVELOPMENT ZONING FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF ROOSEVELT STREET AND 107TH AVENUE, AS SHOWN IN APPLICATION PL-20-0119, BY AMENDING THE ALLOWABLE USES AND THE DEVELOPMENT AND DESIGN STANDARDS.

WHEREAS, on December 20, 1999, the Council of the City of Avondale (the “City Council”) amended the City of Avondale Zoning Atlas by adopting Ordinance 722-99, rezoning approximately 150 acres of real property generally located at the southwest corner of 99th Avenue and Interstate 10 to a Planned Area Development known as Avondale Automall (the “Avondale Automall PAD”); and

WHEREAS, on April 21, 2003, the City Council amended the Avondale Automall PAD by adopting Ordinance 927-03 amending the permitted uses and property development standards for approximately 50 acres located at the southeast corner of 107th Avenue and Interstate 10; and

WHEREAS, on August 24, 2020, the City Council amended the Avondale Automall PAD by adopting Ordinance 2024-0720 amending the permitted uses and property development standards for approximately 6.258 acres of real property designated as Lot 11B and located at the northwest corner of Roosevelt Street and 107th Avenue; and

WHEREAS, the Property Developer has requested a modification to the Avondale Automall PAD to incorporate a new permitted use (the “Modifications”) for ± 9.114 acres of real property designated as Lot 11A and Lot 12B and located at the northeast corner of Roosevelt Street and 107th Avenue, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference (the “Subject Property”); and

WHEREAS, the City Council now desires to approve the Modifications to the Avondale Automall PAD by adopting the amendment as shown in Application PL-21-0047 (the “PAD Zoning – 3rd Amendment”); and

WHEREAS, all due and proper notices of the public hearing on the PAD Zoning – 3rd Amendment held before the City of Avondale Planning Commission (the “Commission”) and by the City Council were given in the time, form and substance provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, on June 16, 2021, the Commission held a public hearing on the PAD Zoning – 3rd Amendment, after which the Commission recommended approval; and

WHEREAS, the City Council held an additional public hearing regarding the PAD Zoning – 3rd Amendment on August 23, 2021; and

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Arizona Constitution, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this Ordinance.

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 PAD Zoning – 3rd Amendment for the Avondale Automall PAD, as shown in Application PL-21-0047, is hereby approved subject to the City of Avondale adopted codes, requirements, standards and regulations and the following stipulations:

1. Except as modified by these conditions of approval, development of the Subject Property shall conform to the Avondale Automall “PAD Zoning – 3rd Amendment” narrative electronically date stamped April 19, 2021.
2. The automotive dealership located on the Subject Property shall have a minimum consolidated annual revenue of \$500 million.
3. The automotive dealership located on the Subject Property shall maintain a minimum of 140 vehicles on display at all times.

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 execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2040-0821

[Legal Description and Map of Subject Property]

See following pages.

ZONING DESCRIPTION
LOTS 11A & 12B OF AVONDALE AUTOMALL
AVONDALE, ARIZONA

February 1, 2021
Job No. P5304
Page 1 of 2

A PARCEL INCLUDING LOT 12B OF BOOK 710, PAGE 17 AND LOT 11A OF BOOK 1460, PAGE 31, RECORDS OF MARICOPA COUNTY, ARIZONA, RESIDING IN THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER OF SAID SECTION 5;

THENCE NORTH 00 DEGREES 15 MINUTES 35 SECONDS WEST, ALONG THE CENTERLINE OF NORTH 107TH AVENUE, BEING THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 350.93 FEET;

THENCE NORTH 89 DEGREES 44 MINUTES 25 SECONDS EAST, DEPARTING SAID 107TH AVENUE, A DISTANCE OF 55.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 12B;

THENCE NORTH 88 DEGREES 49 MINUTES 01 SECONDS EAST, A DISTANCE OF 600.17 FEET TO THE NORTHEAST CORNER OF SAID LOT 12B;

THENCE NORTH 01 DEGREE 10 MINUTES 59 SECONDS WEST, ALONG THE WESTERLY PROPERTY LINES OF SAID LOT 11A, A DISTANCE OF 202.38 FEET;

THENCE NORTH 51 DEGREES 39 MINUTES 37 SECONDS WEST, A DISTANCE OF 311.82 FEET TO THE POINT OF A NON-TANGENT CURVE CONCAVE TO THE WEST, WITH A CHORD BEARING OF NORTH 18 DEGREES 34 MINUTES 42 SECONDS EAST, A CHORD DISTANCE OF 123.41 FEET;

THENCE NORTHERLY ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 182.50 FEET, THROUGH A CENTRAL ANGLE OF 39 DEGREES 31 MINUTES 22 SECONDS, A DISTANCE OF 125.89 FEET TO A POINT OF TANGENCY ON THE WESTERLY PROPERTY LINE OF SAID LOT 11A;

THENCE NORTH 01 DEGREE 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 154.72 FEET TO A POINT OF CURVE TO THE RIGHT;

THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 217.50 FEET, THROUGH A CENTRAL ANGLE OF 90 DEGREES 10 MINUTES 10 SECONDS, A DISTANCE OF 342.29 FEET;

THENCE NORTH 01 DEGREE 00 MINUTES 49 SECONDS WEST, A DISTANCE OF 9.51 FEET;

THENCE NORTH 88 DEGREES 59 MINUTES 11 SECONDS EAST, A DISTANCE OF 21.21 FEET TO THE NORTHEAST CORNER OF SAID LOT 11A

THENCE SOUTH 01 DEGREE 10 MINUTES 58 SECONDS EAST, ALONG THE EASTERLY PROPERTY LINES OF SAID LOT 11A, A DISTANCE OF 338.28 FEET;

THENCE NORTH 88 DEGREES 49 MINUTES 01 SECONDS EAST, A DISTANCE OF 33.64 FEET;

THENCE SOUTH 01 DEGREE 10 MINUTES 59 SECONDS EAST, A DISTANCE OF 291.43 FEET;

THENCE SOUTH 88 DEGREES 49 MINUTES 01 SECONDS WEST, A DISTANCE OF 43.22 FEET;

THENCE SOUTH 01 DEGREE 10 MINUTES 59 SECONDS EAST, A DISTANCE OF 618.92 FEET TO THE

Survey Innovation Group, Inc.

SOUTHERLY PROLONGATION OF THE EASTERLY PROPERTY LINE OF SAID LOT 11A, AND THE CENTERLINE OF WEST ROOSEVELT STREET;

THENCE SOUTH 88 DEGREES 49 MINUTES 02 SECONDS WEST, ALONG THE CENTERLINE OF SAID WEST ROOSEVELT STREET, A DISTANCE OF 691.82 FEET TO THE POINT OF **BEGINNING**.

SAID PARCEL CONTAINS 397,018 SQUARE FEET OR 9.114 ACRES, MORE OR LESS.



NORTHWEST CORNER
SEC. 5, T1N, R1E
FOUND BRASS CAP IN HANDHOLE

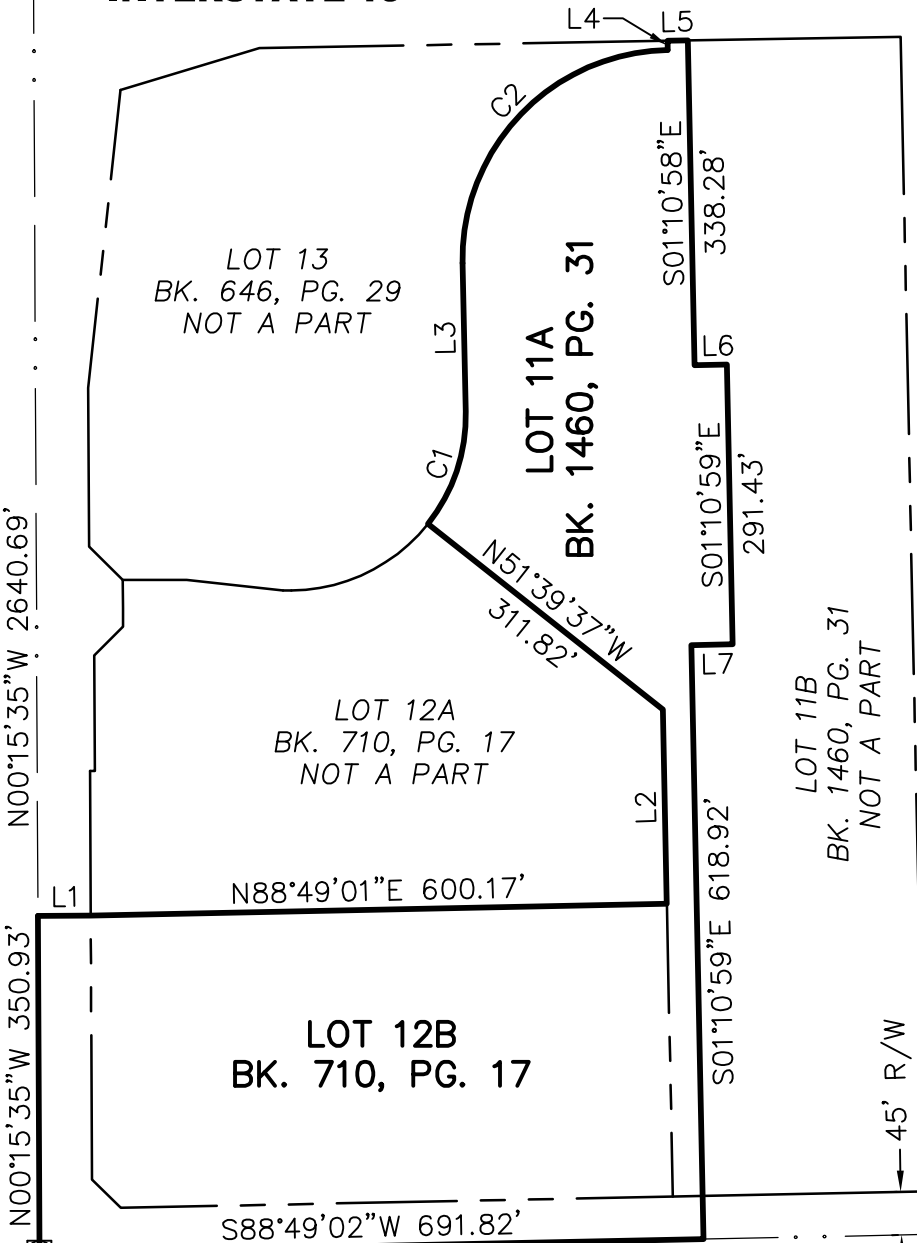
McDOWELL Rd



INTERSTATE 10

N. 107th AVE

BASIS OF BEARING
N00°15'35"W 2640.69'



W.1/4, SEC.5, T1N, R1E
FOUND CITY OF AVONDALE
BRASS CAP IN HANDHOLE
POINT OF BEGINNING

W. ROOSEVELT St.

C.1/4, SEC. 5, T1N, R1E
FOUND CITY OF AVONDALE
BRASS CAP IN HANDHOLE

SIG

**SURVEY INNOVATION
GROUP, INC**

**ZONING EXHIBIT
AVONDALE AUTO MALL
LOTS 11A + 12B
AVONDALE, ARIZONA**

Ph (480) 922 0780 *Land Surveying Services* Fx (480) 922 0781
22425 N. 16th ST., SUITE 1, PHOENIX, ARIZONA 85024

JOB #P5304	DWG: 11A+12B ZONING	DATE 2/1/2021
SCALE: N.T.S.	DRAWN: ELS	CHK: TS
		SHEET 1 OF 2



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N89°44'25"E	55.00'
L2	N01°10'59"W	202.38'
L3	N01°10'59"W	154.72'
L4	N01°00'49"W	9.51'
L5	N88°59'11"E	21.21'
L6	N88°49'01"E	33.64'
L7	S88°49'01"W	43.22'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	39°31'22"	182.50'	125.89'	N18°34'42"E 123.41'
C2	90°10'10"	217.50'	342.29'	N43°54'06"E 308.05'

SIG
SURVEY INNOVATION
GROUP, INC

ZONING EXHIBIT
AVONDALE AUTO MALL
LOTS 11A + 12B
AVONDALE, ARIZONA

Ph (480) 922 0780 *Land Surveying Services* Fx (480) 922 0781
 22425 N. 16th ST., SUITE 1, PHOENIX, ARIZONA 85024

JOB #P5304	DWG: 11A+12B ZONING	DATE 2/1/2021
SCALE: N.T.S.	DRAWN: ELS	CHK: TS
		SHEET 2 OF 2

CITY COUNCIL REPORT

SUBJECT: Public Hearing – Conditional Use Permit for AutoNation Used Automotive Dealership – Application PL-21-0049

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction.
-

PURPOSE:

City Council will hold a public hearing and consider a request by Mr. Paul E. Gilbert, Beus Gilbert McGroder PLLC, for approval of a Conditional Use Permit (CUP) to allow an AutoNation used automotive dealership to operate on approximately 9.11 acres at the northeast corner of 107th Avenue and Roosevelt Street, Assessor Parcels 102-54-045D and 102-54-101. The proposed AutoNation would occupy a currently vacant dealership facility consisting of two (2) buildings totaling 10,895 square feet in area, surrounding paved area to be used for parking and display of the dealership's vehicle inventory, and a currently undeveloped portion of land abutting Roosevelt Street that would be improved to accommodate additional inventory parking and display. A request for approval of a Major Planned Area Development (PAD) Amendment revising the Avondale Automall PAD's permitted uses to allow a used automotive dealership on the property subject to Conditional Use Permit approval will be considered separately; approval of the PAD Amendment is required before approval of this CUP may be considered. The Council will take appropriate action.

BACKGROUND:

The 9.11-acre subject property consists of two (2) contiguous parcels located at the northeast corner of 107th Avenue and Roosevelt Street (Exhibits A and B). The easternmost parcel was developed in 2004 with an automotive dealership facility (originally a Volvo dealership) consisting of a showroom building, service building, and vehicle inventory storage and display areas; the parcel has been unused since the closure of an Alfa Romeo/Fiat dealership on the site in 2017. The westernmost parcel has not previously been developed but has, on occasion, been used as a site for temporary storage of overflow vehicle inventory for various dealerships in the Avondale Automall; the parcel is not currently in use.

The subject property was annexed in May 1986 and had been zoned Agricultural (AG) until being rezoned to Avondale Automall Planned Area Development (PAD) in December 1999. The 1999 Avondale Automall PAD allowed for 50 acres at the western end of the Automall, inclusive of the subject property, to be developed with a retail shopping center in accordance with the Community Commercial (C-2) zoning district.

A Major Amendment to the Avondale Automall PAD was approved in April 2003. The 2003 Major Amendment eliminated the original requirement that the Automall's westernmost 50 acres develop as a retail shopping center, instead allowing for development of additional automotive dealerships on that land (inclusive of the subject property). Per the 2003 Major Amendment, dealerships selling both new and used vehicles are currently permitted on the subject property; however, dealerships selling only used vehicles are not permitted.

A second Major Amendment to the Avondale Automall PAD was approved in August 2020. The 2020 Amendment revised the permitted uses for a single lot directly east of the subject site (Lot 11B), allowing a used automotive dealership on that specific parcel subject to City Council approval of a Conditional Use Permit (CUP). The 2020 Amendment also established performance criteria for used automotive dealerships on Lot 11B, including minimum annual revenue and inventory requirements, to ensure that only high quality used automotive dealerships would operate within the Automall. Concurrently, City Council approved a CUP allowing Echo Park Automotive, a used automotive dealer, to operate on Lot 11B; the approved CUP is conditioned upon Echo Park Automotive limiting sales of inventory older than four (4) years from initial registration date, with a purchase price of \$15,000.00 or less, to no more than twenty (20) percent of vehicles sold within any calendar year. Following the PAD Amendment and CUP approvals, Echo Park Automotive commenced operations on Lot 11B in late 2020. Because the 2020 Amendment pertained only to a single lot and not the entirety of the Automall, use of the 9.11-acre subject site as a used automotive dealership is currently prohibited.

The Automall is designated by the General Plan 2030 Land Use Map as Business Park. The Business Park land use category is intended to allow for large scale campus development that provides abundant employment opportunities and offers amenities such as: attractive streetscapes with excess landscaped setbacks, appropriate screening from the I-10 freeway, pedestrian connections, efficient circulation, and refuge areas for active and passive activities to keep a healthy lifestyle for all employees. The category accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers, motor sports related industry manufacturers, and limited warehouse and support services that support these primary employment uses.

The property is also located within the boundaries of the Freeway Corridor Specific Plan (FCSP), which places a priority on the City's appearance from the I-10 by establishing supplemental design requirements for sites that are visible from the freeway.

The existing uses and zoning of surrounding properties include:

NORTH OF DEALER DRIVE: The I-10 Freeway; adjacent to the Automall, I-10 is a 12-lane highway with additional eastbound and westbound frontage roads located within a 600-foot-wide corridor.

EAST: Echo Park Automotive, a used automotive dealership in operation on the property since late 2020. The Echo Park site is zoned Automall Planned Area Development (PAD); a Major PAD Amendment and CUP to allow use of the site as a used automotive dealership subject to performance criteria was approved in August 2020.

SOUTH OF ROOSEVELT STREET: Griffith Planned Area Development (PAD), with existing uses including a used automotive dealership (Wii Auto Sales) and an Enterprise car rental facility. Several undeveloped parcels within the Griffith PAD are also located along the south side of Roosevelt Street.

WEST: Horne Mazda and Rodeo Kia, automotive dealerships that sell both new and used vehicles, zoned Automall PAD. Both dealerships were developed in the mid-2000s. West of 107th Avenue is undeveloped property currently in agricultural production, zoned Avondale Gateway Center PAD. The Avondale Gateway Center PAD allows for development of the 107th Avenue frontage with retail uses.

SUMMARY OF REQUEST:

The applicant is requesting approval of a CUP to allow for the operation of one (1) used automotive dealership on the subject property consisting of two (2) parcels located at the northeast corner of 107th Avenue and Roosevelt Street within the Avondale Automall (Exhibit E). The request is contingent upon City Council approval of a Major Amendment to the Avondale Automall Planned Area Development (PAD) to conditionally permit one (1) used vehicle only dealership provided that the dealer has a minimum consolidated annual revenue of \$500 million and shall maintain a minimum of 140 vehicles on display at all times.

If approved, this CUP request will allow AutoNation, an automotive retailer specializing in the sale of nearly new, pre-owned vehicles, to operate on the subject site. AutoNation intends to utilize the previously developed, currently vacant automotive dealership facility on the eastern parcel while constructing additional vehicle display and inventory storage area on the currently vacant western parcel (Exhibit F). The proposed retail hours of operation will be from 8:30 A.M. to 9:00 P.M., seven days per week.

The existing facilities on the eastern parcel will continue to be used in a similar manner to how they have been used since original development of the site in 2004; the existing 6,516 square foot sales showroom building adjacent to Dealer Drive will be used as the sales showroom for AutoNation, the existing 4,379 square foot service building south of the showroom would be utilized for minor vehicle reconditioning, washing, and detailing of vehicles being sold by AutoNation, and the surrounding paved area would be used for the storage and display of vehicles. The existing buildings would receive an exterior paint refresh (Exhibit H) but remain similar in appearance to how they exist today.

Development of the new vehicle display and storage on the western parcel will include provision of landscaped setbacks along both 107th Avenue and Roosevelt Street and will also feature landscape islands within the inventory display area (Exhibit G). New lighting will also be added to the newly developed portion of the site, to be commensurate with the lighting on the previously developed portion. All areas designed for display and storage of vehicles will be paved.

In addition to the existing access to the property from Dealer Drive, which will remain, direct access to the new display area will also be provided from 107th Avenue via a driveway shared with the Rodeo Kia dealership to the north. The two parcels will be connected internally via a 30-foot-wide drive aisle.

PUBLIC PARTICIPATION:

A Neighborhood Meeting to discuss the proposal with neighboring property owners and other interested parties was held at 6:00 P.M. on Tuesday, May 11, 2021. Due to the ongoing Covid-19 pandemic, the meeting was held virtually via Zoom. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic, were completed in at least fifteen (15) days prior to the meeting as required. In addition to City Staff and the applicant's team, two (2) persons attended the virtual meeting which included one Councilmember (Exhibit G). Questions and comments included:

- ***Will traffic signals be installed at the intersection of 107th Avenue and Dealer Drive and/or at the intersection of 107th Avenue and Roosevelt Street to alleviate left-turn difficulties onto southbound 107th Avenue?*** The applicant, Paul Gilbert, stated that no signals were proposed as part of the applications under review and consideration. City Staff indicated that a signal at 107th Avenue and Roosevelt Street was identified in the City's Infrastructure Improvements Plan (IIP) to be constructed by the City using development impact fees, though a specific year for construction hasn't been identified. A signal is not planned at 107th Avenue and Dealer Drive as, from a spacing standpoint, that location would be too close to the I-10 interchange and the planned signal at 107th Avenue and Roosevelt Street.
- ***How frequently are used dealerships checked for compliance with the inventory age and value restrictions?*** The applicant indicated that the stipulation requires the dealership to provide a report to the City within 75 days of request.
- ***When did the Echo Park used automotive dealership open on the adjoining property?*** The applicant indicated that the Echo Park dealership only opened a few months ago and that the City had

recently requested the sales data pertaining to inventory age and value for that site. Echo Park was in the process of preparing that report as required.

- **Concern regarding impacts of used vehicle dealerships on the Automall's existing new and used vehicle dealerships.** The applicant stated his belief that a successful dealership operating on the site will only have positive impacts on existing dealerships by bringing additional customers to the Automall who may find preferred vehicles at other dealerships, stating that "a rising tide lifts all ships." A representative of AutoNation, Alexander Shporer, confirmed that AutoNation operates several used automotive dealerships in other auto malls including in auto malls which include franchised new car dealerships operated by AutoNation.

In response to the question, "Do you have any comments on a proposed Major Planned Area Development (PAD) Amendment and Conditional Use Permit request to allow an AutoNation used vehicle dealership at the northeast corner of 107th Avenue and Roosevelt Street in the Avondale Automall?", four (4) comments were posted on the City's aVOICE digital forum, as follows:

- "Just build it"
- "Will there be multiple vehicles (sic) entrances to help enhance traffic control?"
- Two (2) anonymous persons responded "NO". It is unclear if the respondents were indicating that they did not have comments in direct response to the posed question, or if they were opposed to the PAD Amendment and CUP requests.

All required notifications for the Planning Commission and City Council public hearings were completed. All property owners within 1,000 feet of the subject site were notified of the time, date, and location of the Planning Commission and City Council meetings via postcards, the meetings were advertised in the Southwest Valley Arizona Republic, and a public hearing notice sign identifying meeting dates, times, and locations was installed on the property. All notifications included Zoom meeting information and links as applicable. No additional public comments have been received to date.

PLANNING COMMISSION ACTION:

On June 16, 2021, Planning Commission conducted a public hearing and voted 6-1 to recommend approval of the proposed Conditional Use Permit subject to three (3) recommended conditions. Commission had the following questions or comments:

- Vice Chair Thompson inquired as to the origin of the performance criteria regulating the revenue and inventory. Staff advised that the criteria were developed based upon research into the characteristics of the top five (5) to ten (10) national used automotive dealership brands, particularly in regard to sales volume, revenue, and quality. Mr. Paul Gilbert, representing the applicant, advised the numbers were derived collaboratively with input provided from the City Manager with the goal of maintaining the highest quality for the Automall.
- Commissioner Warren asked if the performance criteria were the same standards used for Echo Park Automotive last year. Staff confirmed that the proposed standards are identical to what was required of Echo Park Automotive in 2020.

ANALYSIS:

To grant a Conditional Use Permit, five findings must be met as outlined in Zoning Ordinance Section 108.B. Each finding is presented below along with Staff's analysis.

1. That the proposed use (a) is consistent with the land use designation set forth in the general plan, (b) will further the City's general guidelines and objectives for development of the area, as set forth in the general plan and (c) will be consistent with the desired character for the surrounding area.

The subject property (within the Avondale Automall) is designated as Business Park by the General Plan and is also within the boundaries of the Freeway Corridor Specific Plan (FCSP). The Business Park land use category is intended to allow for large scale campus development that provides abundant employment opportunities. The category accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers, motor sports related industry manufacturers, and limited warehouse and support services that support these primary

employment uses. The Avondale Automall PAD zoning is consistent with the Business Park designation, as it is a corporate commerce use.

The FCSP stresses the importance of the Automall, stating it is “a vital economic engine for the City and an equally strong employment center.” Supporting the Automall’s continued viability by adapting to changing market realities is essential to ensuring its impact as an economic engine and employment creator is maintained.

Lastly, though it will sell only pre-owned vehicles, the proposed AutoNation will be essentially indistinguishable from any other automotive dealership within the Automall. The performance criteria included in the companion PAD Amendment and through this CUP will ensure that the dealership is held to a high standard in terms of the value and age of the used vehicles being sold. The proposed use is consistent with the character of the Automall.

2. That the use will be (a) compatible with other adjacent and nearby land uses and (b) will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood or the public welfare in general.

The intensity of the use, traffic generation, hours of operation, and other operational characteristics of the AutoNation will be consistent and compatible with the existing automotive dealerships operating within the Automall. As noted above, by virtue of the performance standards that will ensure that the dealership will primarily sell nearly new, low mileage vehicles, the proposed AutoNation will be indiscernible from existing dealerships.

3. That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation, and meet all required development standards including, but not limited to, setbacks, parking, screening, and landscaping.

The easternmost parcel was developed with an automotive dealership in 2004. No new buildings or modifications to the existing site, with the exception of minor façade enhancements to existing buildings are proposed. The proposed AutoNation dealership will resume the intended use of the site which had occurred on the property from 2004 until 2019, with the only difference being the age of the inventory being sold on the property.

The westernmost parcel, to be developed with additional vehicle display and storage area, is designed to achieve all requirements of the Avondale Automall PAD in regards to setbacks, landscaping, parking, screening, and lighting.

Access to the planned AutoNation will be provided via an existing driveway from the easternmost parcel to Dealer Drive and a new, shared access to 107th Avenue (shared with Rodeo Kia) from the westernmost parcel. Cross access between the two contiguous parcels is provided via a planned 30-foot-wide drive aisle.

4. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

The proposed AutoNation will generate traffic consistent with the existing automotive dealership uses occurring in the Automall. Surrounding streets are designed to accommodate the traffic anticipated.

Access to the planned AutoNation will be provided via an existing driveway from the easternmost parcel to Dealer Drive and a new, shared access to 107th Avenue (shared with Rodeo Kia) from the westernmost parcel. Cross access between the two contiguous parcels is provided via a planned 30-foot wide drive aisle. A future signal, to facilitate left turn movements onto southbound 107th Avenue, is planned at the 107th Avenue and Roosevelt Street intersection; the signal is identified in the City’s Infrastructure Improvement Plan (IIP) for construction using development impact fee funding but has not yet been scheduled for construction.

5. That adequate conditions have been incorporated into the approval to ensure that any potential

adverse effects will be mitigated.

Three (3) conditions of approval are recommended.

Condition #1 ensures the proposed use develops in accordance with the site plan, building elevations, and project narrative provided to the City and attached as exhibits to this staff report.

Condition #2 specifies that the Conditional Use Permit will expire within two (2) years if the used automotive dealership use has not commenced on the property, as specified in the Zoning Ordinance.

Condition #3 is intended to provide an added measure of certainty that the AutoNation dealership's inventory will be primarily comprised of relatively new, low mileage, high value vehicles. The recommended condition, identical to the condition required of the abutting Echo Park used automotive dealership, allows for no more than twenty (20) percent of the vehicles sold during any calendar year to be older than four (4) years old from the date the vehicle was first registered, except that vehicles more than (4) years old will not count towards this percentage if they are sold for more than \$15,000.00. AutoNation will be required to provide a year-to-date sales report documenting the number of vehicles sold and number of vehicles over four (4) years old sold for less than \$15,000.00 within 75 days of request by the City.

DISCUSSION:

The proposed Conditional Use Permit for AutoNation meets all five (5) findings for approval as outlined in the Analysis section of this report.

BUDGET IMPACT:

If approved, once the dealership is in operation, this will likely increase revenue for the city, but the amount is not forecasted due to the many economic variables that are unknown at this time.

RECOMMENDATION:

City Council will conduct a public hearing and **APPROVE** Application PL-21-0049 AutoNation, a request for a Conditional Use Permit to allow a used automotive dealership in the Avondale Automall Planned Area Development (PAD), subject to the following three (3) conditions of approval:

1. Development and use of the site shall generally conform to the Conditional Use Permit narrative, site plan, and landscape plan received electronically on April 19, 2021, and the building elevations received electronically on June 1, 2021.
2. In accordance with Section 108 of the Zoning Ordinance, the Conditional Use Permit shall expire within two (2) years from the date of approval if the use has not commenced.
3. No more than twenty (20) percent of the vehicles sold in retail transactions during any calendar year shall be older than four (4) years old from the date it was first registered, or if they are, no less than \$15,000.00 in purchase price. Upon the request of the City of Avondale, AutoNation shall, upon thirty (30) days' notice, provide within forty-five (45) days, a year-to-date report indicating the total number of vehicles sold in retail transactions as well as the number of vehicles sold that are older than four years and less than \$15,000.00 in purchase price.

PROPOSED MOTION:

I move that City Council accept the findings and **APPROVE** Application PL-21-0049 AutoNation, a request for a Conditional Use Permit to allow a used automotive dealership in the Avondale Automall Planned Area Development (PAD), subject to three (3) recommended conditions of approval as listed in the staff report.

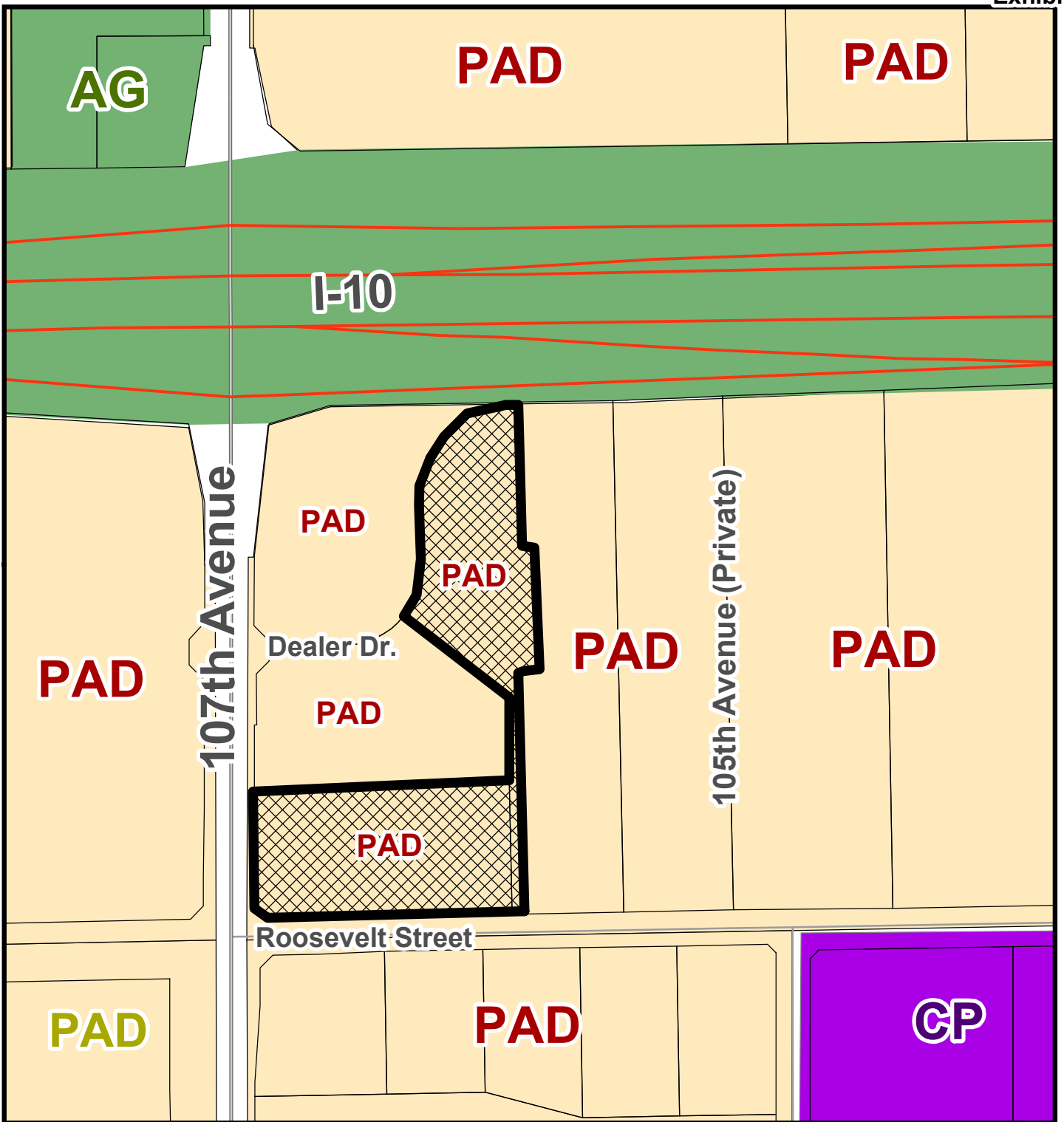


Aerial Photograph



Subject Property



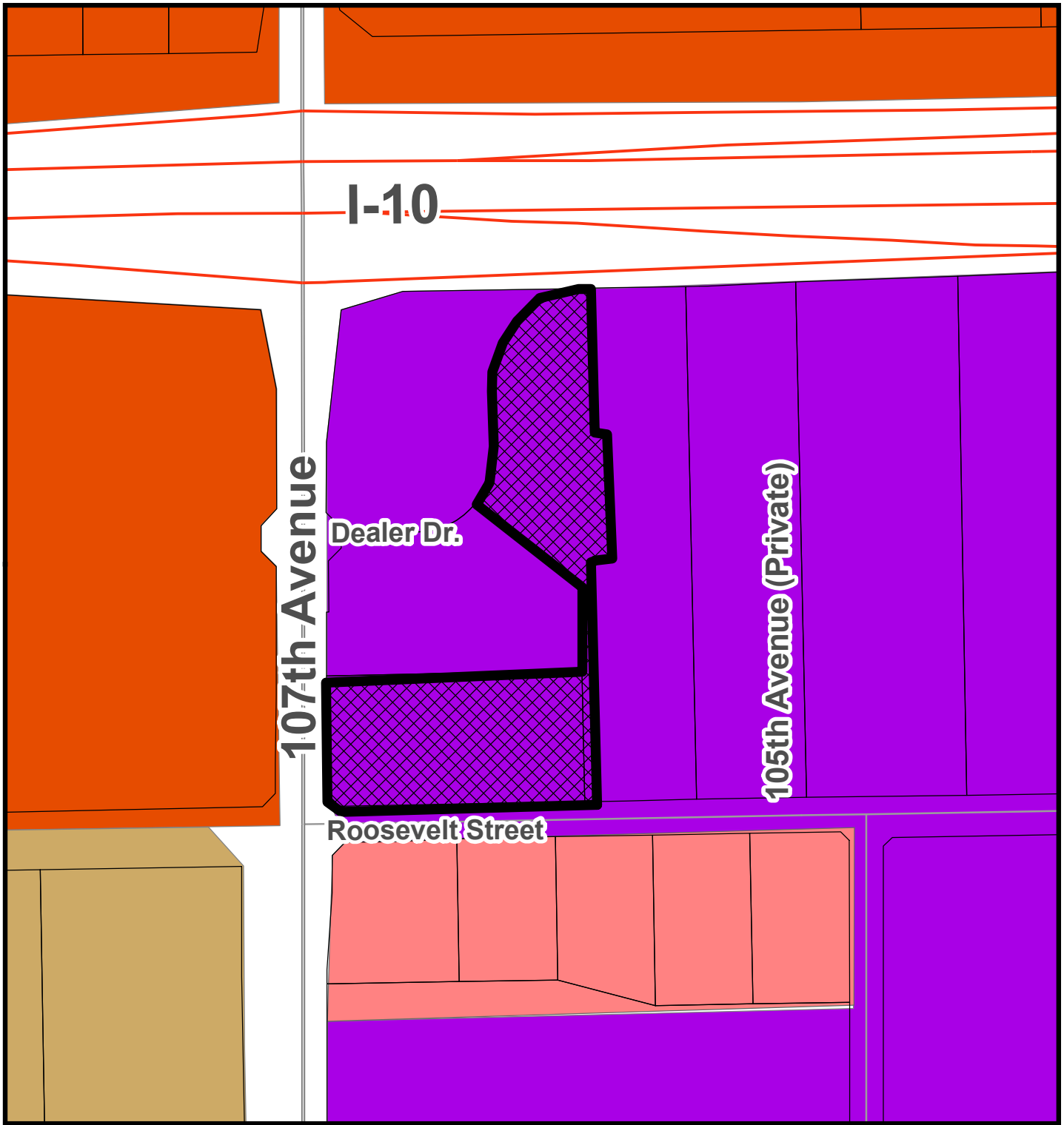


Zoning Vicinity Map



Subject Property





General Plan Land Use

-  Local Commercial
-  Medium/High Density Residential
-  Freeway Commercial
-  Business Park



Subject Property



*SUMMARY OF RELATED FACTS
APPLICATION PL-21-0047 AND PL-21-0049*

<i>THE PROPERTY</i>	
PARCEL SIZE	Approximately 9.11 gross acres
LOCATION	Northeast corner of 107 th Avenue and Roosevelt Street
EXISTING LAND USE	The subject property consists of two contiguous parcels. The easternmost parcel was developed in 2004 with an automotive dealership facility consisting of a showroom building, a service building, and vehicle inventory storage and display areas. The property has remained vacant since the closure of an Alfa Romeo/Fiat dealership on the site in 2017. The westernmost parcel has not previously been developed but has, on occasion, been used as a site for temporary storage of overflow vehicle inventory for dealerships in the Avondale Automall. The parcel is not currently in use.
EXISTING ZONING	Avondale Automall Planned Area Development (PAD)
ZONING HISTORY	The subject property was annexed in May 1986 and assigned Agricultural (AG) zoning. The property was rezoned to Avondale Automall Planned Area Development (PAD) in December 1999. The 1999 PAD allowed for 50 acres at the western end of the Automall, inclusive of the subject property, to be developed with a retail shopping center in accordance with the Community Commercial (C-2) zoning district. A Major Amendment to the Avondale Automall PAD was approved in April 2003. The approved amendment eliminated the requirement that the Automall's westernmost 50 acres would be developed as a retail shopping center, instead allowing for development of additional automotive dealerships on that land (inclusive of the subject property). Dealerships selling both new and used vehicles are currently permitted; dealerships selling only used vehicles are not permitted. A second Major Amendment to the Avondale Automall PAD was approved in August 2020. The 2020 Amendment revised the permitted uses for a single lot directly east of the subject site (Lot 11B), allowing an automotive dealership selling used vehicles only subject to City Council approval of a Conditional Use Permit. The 2020 Amendment also established performance criteria for used automotive dealerships to ensure that only high quality used automotive dealership will be allowed to operate within the Automall. Subsequently, Echo Park Automotive, a used vehicle dealership, has commenced operations on Lot 11B.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH OF DEALER DRIVE	I-10 Freeway. Adjacent to the Automall, I-10 is a 12-lane highway with additional eastbound and westbound frontage roads located within a 600-foot-wide corridor.

Exhibit D

EAST	Echo Park Automotive, a used automotive dealership in operation on the property since late 2020. The Echo Park site is zoned Automall Planned Area Development (PAD); a Major PAD Amendment and Conditional Use Permit to allow use of the site as a used automotive dealership subject to several performance criteria was approved in August 2020.
SOUTH OF ROOSEVELT STREET	Griffith Planned Area Development (PAD), with existing uses including a used automotive dealership (Wii Auto Sales) and an Enterprise car rental facility. Several undeveloped parcels within the Griffith PAD are also located along the south side of Roosevelt Street.
WEST	Horne Mazda and Rodeo Kia, automotive dealerships that sell both new and used vehicles, zoned Automall PAD. Both dealerships were developed in the mid-2000s. West of 107th Avenue is undeveloped property currently in agricultural production, zoned Avondale Gateway Center PAD. The Avondale Gateway Center PAD allows for development of the 107th Avenue frontage with retail uses.

<i>GENERAL PLAN</i>

The Automall is designated by the General Plan 2030 Land Use Map as Business Park. The Business Park land use category is intended to allow for large scale campus development that provides abundant employment opportunities and offers amenities such as: attractive streetscapes with excess landscaped setbacks, appropriate screening from the I-10 freeway, pedestrian connections, efficient circulation, and refuge areas for active and passive activities to keep a healthy lifestyle for all employees. The category accommodates enclosed light manufacturing, corporate commerce, hotel, multi-story offices, research and development industries, solar and renewable energy manufacturers, motor sports related industry manufacturers, and limited warehouse and support services that support these primary employment uses.

<i>PUBLIC SCHOOLS</i>

SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOL	Student's Choice (No defined school). The closest district school is Collier Elementary School, located at the southwest corner of Coldwater Springs Boulevard and 118 th Avenue within the Coldwater Springs community.
HIGH SCHOOL	Tolleson Union High School, located at the southwest corner of Van Buren Street and 94 th Avenue within the City of Tolleson.

<i>ADJACENT STREETS</i>

107th Avenue

Classification	Minor Arterial
Existing half street right-of-way	60 feet
Standard half street right-of-way	55 feet
Existing half street improvements	Two (2) travel lanes, deceleration or right turn lanes as needed, half center turn lane, bike lane, curb, gutter, attached sidewalk, and streetlights.
Standard half street improvements	Two (2) travel lanes, deceleration or right turn lanes as needed, half center turn lane, bike lane,

Exhibit D

	curb, gutter, detached sidewalk, streetlights, and landscaping.
Roosevelt Street	
Classification	Major Collector
Existing half street right-of-way	45 feet
Standard half street right-of-way	40 feet
Existing half street improvements	One (1) travel lane, half center turn lane, curb, gutter, detached sidewalk, streetlights, and landscaping
Standard half street improvements	One (1) travel lane, half center turn lane, bike lane, curb, gutter, detached sidewalk, streetlights, and landscaping
Dealer Drive	
Classification	Private Street
Existing half street right-of-way	None
Standard half street right-of-way	None
Existing half street improvements	One (1) travel lane, curb, gutter, streetlights, and landscaping
Standard half street improvements	One (1) travel lane, curb, gutter, streetlights, and landscaping

<i>UTILITIES</i>
Water service to the property is available via an existing 8-inch water line within Dealer Drive, an existing 12-inch water line within Roosevelt Street, and an existing 16-inch water line in 107th Avenue. Sewer service to the property is available via an existing 15-inch sewer line within Roosevelt Street and an existing 8-inch sewer line within 107th Avenue. SRP provides electrical service in this portion of Avondale.

Exhibit E

Conditional Use Permit Narrative

AutoNation

AutoNation - Avondale

Used Vehicle Dealership

Received
Electronically April
19, 2021

Conditional Use Permit Narrative

March 24, 2021

AutoNation is proposing a commercial remodel for an existing facility previously occupied by another automotive dealer within Avondale Automall (Exhibit A). AutoNation is one of the nation's top automotive retailers and the proposed dealership will specialize in sales of nearly new, pre-owned vehicles.

The proposed remodel scope will consist of exterior paint refresh with new signage along with an interior remodel to guest sales floor. Overall site surface parking to be provided for customers, employees, service vehicles and inventory generally commensurate with the prior dealership use. The existing service building will be utilized for minor vehicle conditioning and will also become part of a car wash and detail facility along with the detail bays in the showroom building.

AutoNation plans on developing the southern portion of the property which has frontage on both 107th Avenue and Roosevelt Street and is currently vacant. This property will be developed with a combination of landscaped display lot for saleable vehicles and a screened lot for storage vehicles not ready for display. The two parcels that currently make up this property are contiguous and as part of the development of the southern display/storage lot, a direct vehicular connection will be provided to allow for vehicles to be moved from one lot to the other without use of the surrounding public and private roadways.

New signage will be added to the intersection of 107th and Roosevelt.

Retail hours of operation of AutoNation will be 8:30 am to 9 pm, 7 days per week.

Exterior site lighting in the front "showroom" lot are existing and will remain. With development of the back "display and storage" lot, new lighting will be installed. Lighting levels vary between rear lot security lighting and the display lighting level but will be consistent with the surrounding auto dealerships.

A conceptual site plan is included as Exhibit B, conceptual elevation modifications are included as Exhibit C and a floor plan is included as Exhibit D. All elevations, site features, landscaping and lighting to be further analyzed for compliance with City of Avondale Zoning Ordinance as part of the Site Plan/Design Review process.

Request

This requested Conditional Use Permit is running concurrent with a request to amend the Avondale Automall Planned Area Development (PAD). If approved, the PAD would then allow Automotive Dealerships Selling Used Vehicles Only with a Conditional Use Permit on the subject property, provided that the dealer has (1) a minimum consolidated annual revenue of \$500 million and (2) shall maintain a minimum of 140 vehicles on display at all times on the Avondale Automall property.

AutoNation has a consolidated annual revenue in excess of \$500 million and will house in excess of 140 vehicles on the property at all times. The proposed dealership is within the allowed area

described within the Avondale Automall PAD, as amended; therefore, the requested Conditional Use Permit is in compliance with the applicable zoning.

Pursuant to the Avondale Zoning Ordinance, for a Conditional Use Permit to be approved, it must satisfy certain findings. Below are those findings with our justification as to how or why they are satisfied.

- A. That the proposed use is (i) consistent with the land use designation set forth in the General Plan, (ii) will further the City's general guidelines and objectives for development of the area, as set forth in the General Plan, and (iii) will be consistent with the desired character for the surrounding area.

The Avondale Automall has a designation of Business Park on the General Plan Land Use Map as well as within the Freeway Corridor Specific Area Plan. This designation implies it is for campus-like employment opportunities not a regional automall as has been the land use for the last two decades. A Conditional Use Permit to allow a used vehicle dealership may not be an exact fit with Business Park; however, as described by the City in the Freeway Corridor Specific Plan, "The Avondale Auto mall (sic), established in the early 2000's, is a vital economic engine for the City and an equally strong employment center." Continuing to cultivate and allow the Avondale Automall to remain viable as the economic engine and employment center by supporting new dealerships, including one that only sells used vehicles, is clearly supported by the General Plan and the Freeway Corridor Specific Plan and is consistent with the character of the surrounding area.

- B. That the use will be (i) compatible with other adjacent and nearby land uses and (ii) will not be detrimental to (1) persons residing or working in the area, (2) adjacent property, (3) the neighborhood, or (4) the public welfare in general.

The surrounding area is made of up the Avondale Automall along with other commercial and commerce park uses. A new dealership within the Automall, including one that only sells used vehicles, is not only compatible with the adjacent uses, to the casual observer it will be nearly indistinguishable from the other dealerships that sell both new and used vehicles.

The subject property is already built-out as a dealership facility. The proposed modifications and additions to the site for AutoNation, such as additional vehicle display and storage areas, will not negatively impact the surrounding properties as those uses are also occurring on those adjacent dealership properties.

- C. That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation, and meet all required development standards, including, but not limited to, setbacks, parking, screening, and landscaping.

The subject parcel has been developed with an automobile dealership since 2004. Continued use as a dealership selling only used automobiles instead of new and used,

does not alter the site. It is still sized appropriately and will continue to meet all applicable City of Avondale development standards.

- D. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

The subject property continues to have main access from “Dealer Drive” serving the Automall between 99th Avenue and 107th Avenue. AutoNation plans on developing the vacant parcel along 107th Avenue and Roosevelt will also allow for additional access to those roadways.

- E. That adequate conditions have been incorporated into the project to ensure that any potential adverse effects will be mitigated.

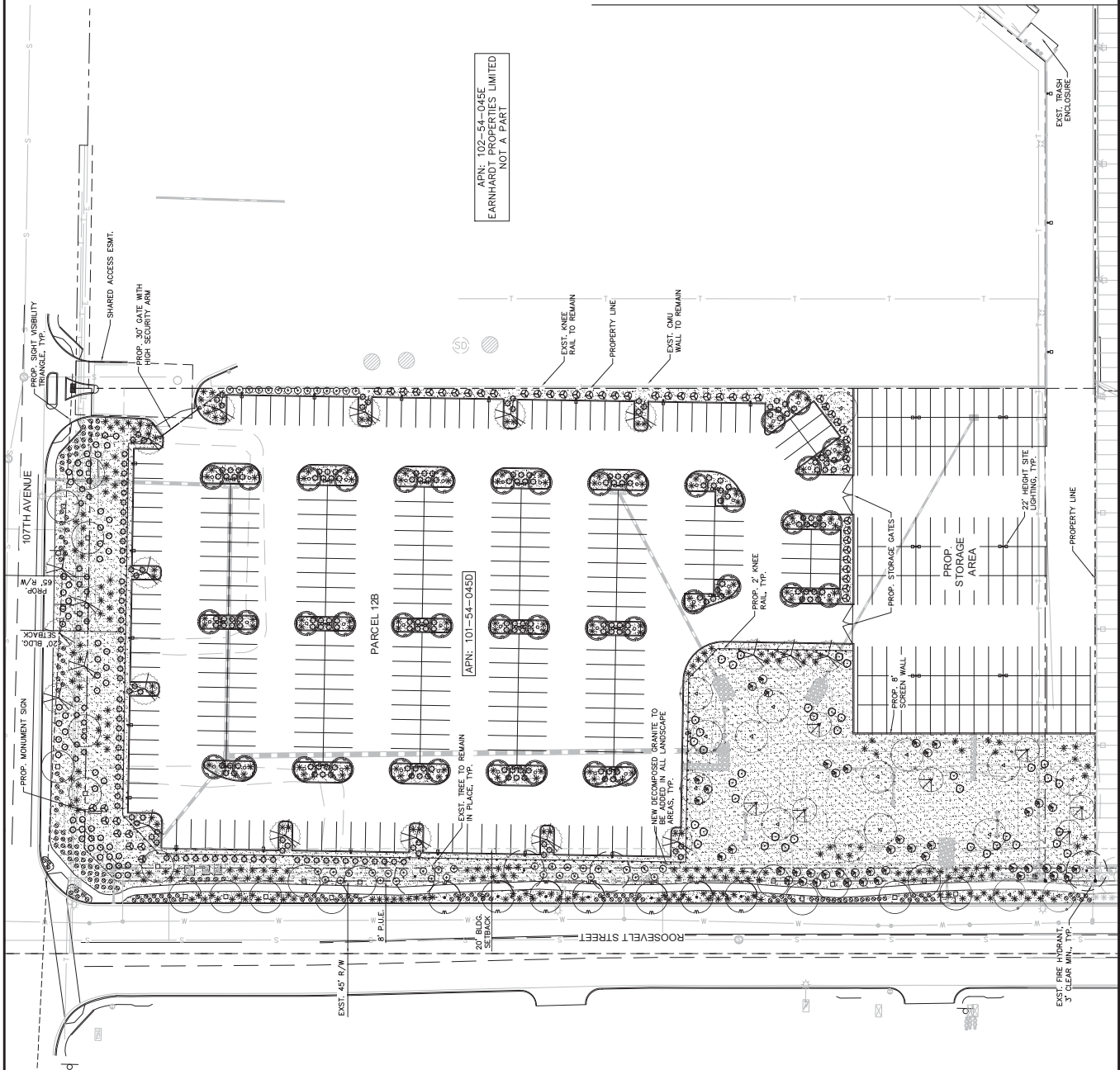
We look forward to discussing any potential adverse effects needing mitigation that the City of Avondale considers.



 = Conditional Use Permit Boundary

Exhibit B
Conceptual Site Plan

-Following Page-

[illegible]

MATCHLINE: SEE SHEET LS1

LANDSCAPE LEGEND	SHRUBS & ACQUENTS		TREES		DISCUSSION / SPECIFICATIONS
	BOTANICAL NAME / COMMON NAME	DESCRIPTION	BOTANICAL NAME / COMMON NAME	DESCRIPTION	
	<i>Botanical Name</i> Common Name	Existing tree to remain		<i>Botanical Name</i> Common Name	Plant in place
	<i>Botanical Name</i> Common Name	Existing palm to remain		<i>Botanical Name</i> Common Name	Existing palm to remain
	<i>Botanical Name</i> Common Name	Existing shrub to remain		<i>Botanical Name</i> Common Name	Existing shrub to remain
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1. PLANTINGS WITHIN THE SIGHT VISIBILITY TRIANGLE SHALL BE MAINTAINED SO THAT NO LIMBS HAVE LOWER THAN 10 FEET CLEARANCE. PLANTINGS WITHIN THE SIGHT VISIBILITY TRIANGLE SHALL BE NO TALLER THAN TWO (2) FEET AT FULL GROWTH.
2. IRRIGATION SERVICE LINE FROM THE POINT OF CONNECTION AT THE CITY SYSTEM, THROUGH THE METER AND PUE TO THE PRIVATE BACKFLOW PREVENTED DEVICE SHALL BE 1/2" MINIMUM. THE SERVICE LINE SHALL BE SUPPLEMENTED PER M.A.G. SMALL DIAMETER VALVES SHALL BE BRASS BODY, BACKFLOW DEVICES SHALL BE CONSTRUCTED USING COPPER PIPE AND BRASS FITTINGS. ALL PVC SLEEVES WITHIN THE PUBLIC RIGHT-OF-WAY SHALL BE 1/2" MINIMUM.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE MOST RECENT EDITION OF THE CITY OF ANIMALES' SUPPLEMENT TO THE M.A.G. SPECIFICATIONS AND STANDARD DETAILS CURRENTLY ON FILE AND AVAILABLE AT ONE OF THE CITY OF ANIMALES' WEBSITE.



LS2
2 OF 2 SHEETS

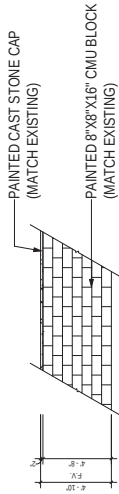
Exhibit C
Conceptual Elevation Modifications

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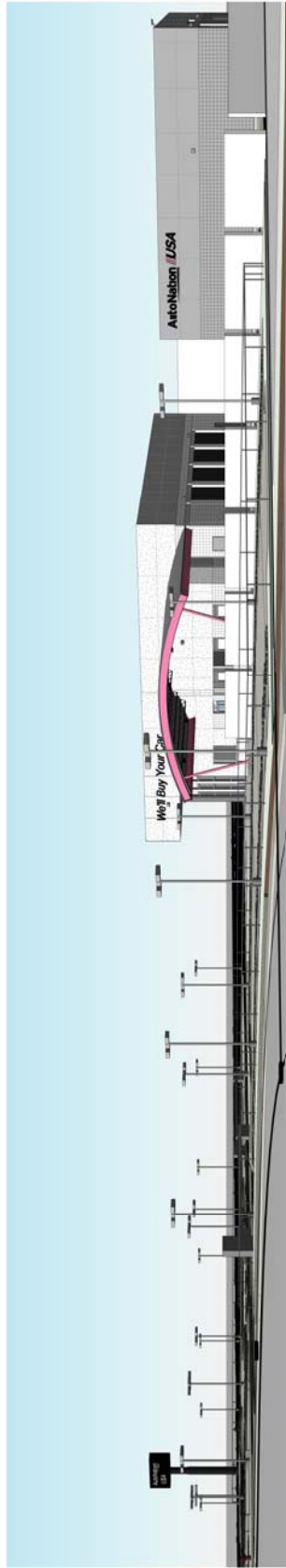
10601 W Papago Freeway
Avondale, AZ 85323



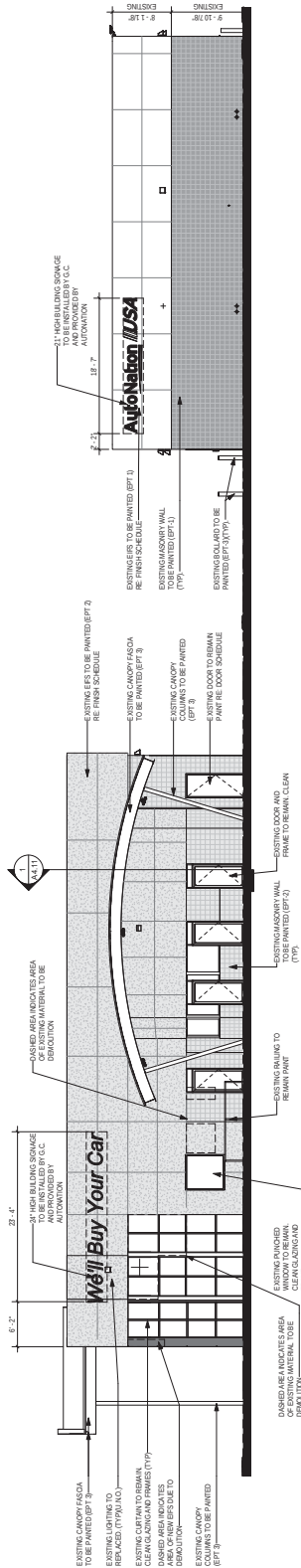
④ NORTHWEST PERSPECTIVE



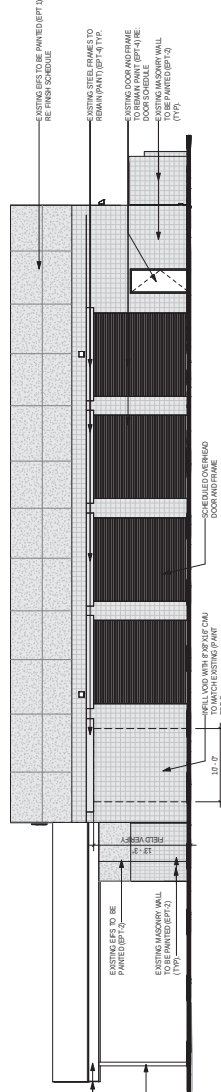
③ Typical Screen Wall Elevation
1/8" = 1'-0"



③ NORTHEAST PERSPECTIVE



② WEST ELEVATION
1/8" = 1'-0"



① SOUTH ELEVATION - SALES BUILDING
1/8" = 1'-0"

AutoNation //USA
10601 W Papago Freeway
Avondale, AZ 85323



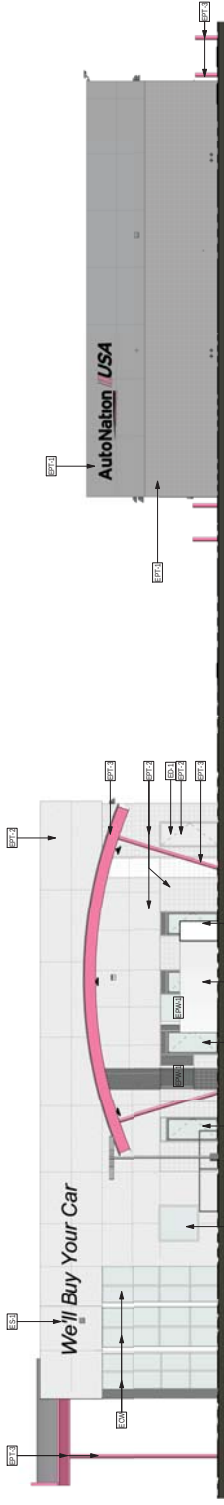
**Castles
Design
Group**

A Professional Architectural
Firm
10601 W Papago Freeway
Avondale, AZ 85323
Tel: (602) 444-7991
Fax: (602) 444-7992

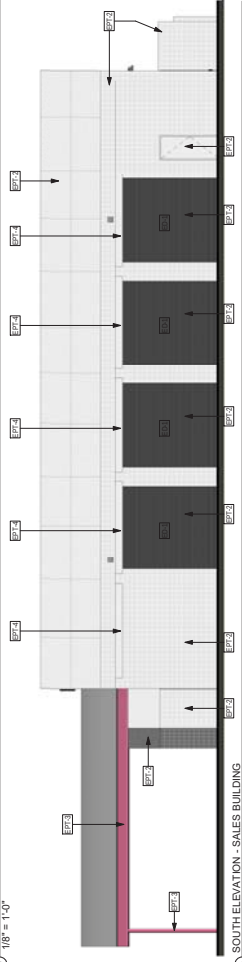
**BUILDING
ELEVATIONS**

EX-2

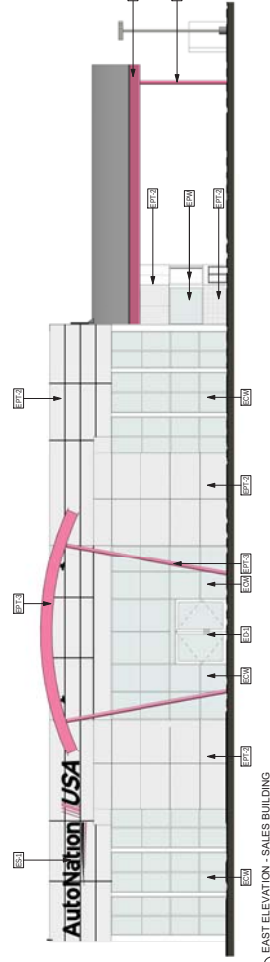
Date: 03/09/2011



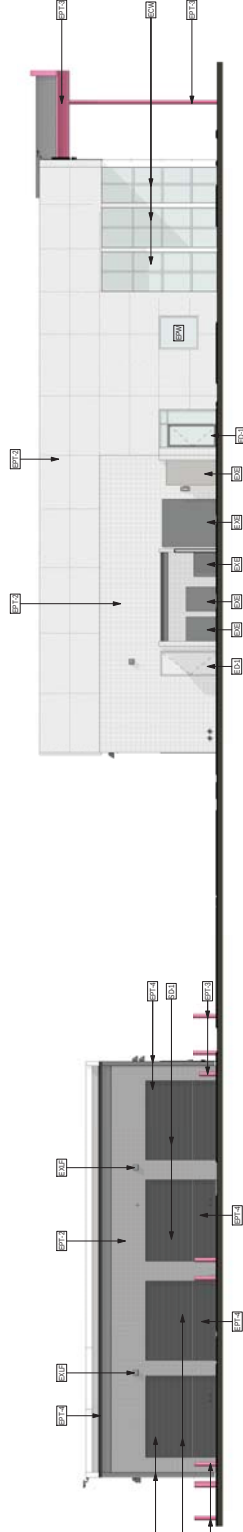
⑥ WEST ELEVATION
1/8" = 1'-0"



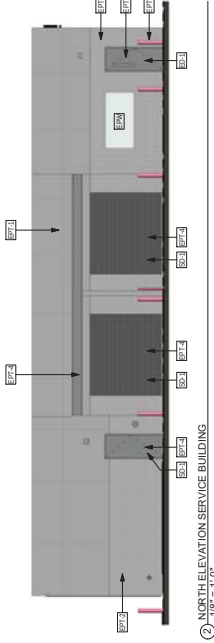
⑦ SOUTH ELEVATION - SALES BUILDING
1/8" = 1'-0"



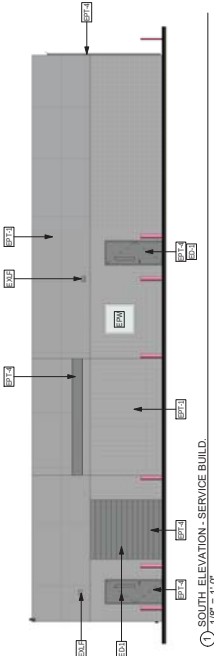
⑧ EAST ELEVATION - SALES BUILDING
1/8" = 1'-0"



⑨ EAST ELEVATION
1/8" = 1'-0"



⑩ NORTH ELEVATION SERVICE BUILDING
1/8" = 1'-0"



⑪ SOUTH ELEVATION - SERVICE BUILD
1/8" = 1'-0"



- EPT-1 - AUTONATION MEDIUM GREY
PAINTED EPS
- EPT-2 - AUTONATION WHITE
PAINTED MASONRY / EPS / INTERIOR PANEL
PAINTED METAL
PAINTED METAL DOORS
- EPT-3 - AUTONATION PINK
MATCH PAINTS 230C OF 124U
PAINTED METAL SURFACE
- EPT-4 - AUTONATION DARK GREY
PAINTED METAL SURFACE
- ES-1 - EXISTING DOOR TO BRANN
- ES-2 - EXISTING CAPTAIN HALL TO REMAIN
CLEAR ANGLER'S FRAMES
THERMAL GLAZING
- ES-3 - EXISTING WINDOW
CLEAR ANGLER'S FRAMES
THERMAL GLAZING
- ES-4 - EXISTING BUILDING STORAGE
- ES-5 - EXISTING EQUIPMENT TO REMAIN
- DUF - EXISTING LIGHT FIXTURE
COLOR TO MATCH RAL 9002
- ES-1 - SCHEDULED DOOR AND FRAME
PAINTED EPT-4

Material Board Legend
1/2" = 1'-0"



Castles
Design
Group

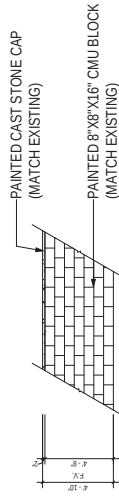
A Professional Architectural
Firm
3801 S. Loop West, Suite 400
Houston, Texas 77066
Tel: (713) 464-7979
Fax: (713) 464-7978

Presentation
Elevations

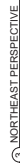
EX-3

Date: 03/09/2021

AutoNation USA
10601 W Papago Freeway
Avondale, AZ 85323



NORTHWEST PERSPECTIVE



10601 W Papago Freeway
Avondale, AZ 85323

Exhibit D
Conceptual Floor Plan

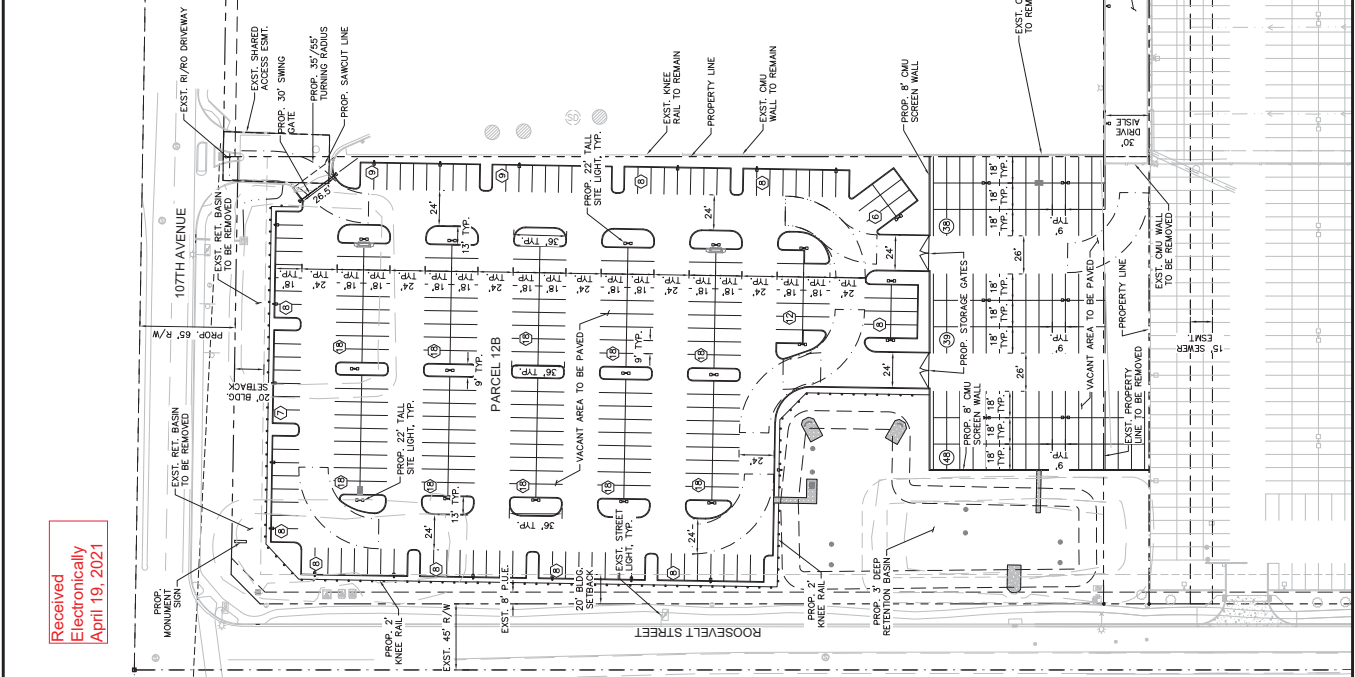
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Exhibit F

Conceptual Site Plan

AutoNation at Avondale Automall

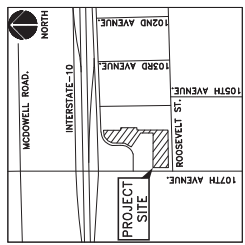
Received
Electronically
April 19, 2021



SITE DATA
A.P.N. 102-54-046
ZONING PAD
EXISTING PARCEL:
NET AREA(11A): 165,297.4 SF (3,798.4 AC)
GROSS AREA(11A): 165,297.4 SF (3,798.4 AC)
GROSS AREA(12B): 183,353.3 SF (4,209.4 AC)
EXISTING BUILDING AREA:
DEALERSHIP(11A): 6,516 SF
TOTAL BUILDING FLOOR AREA: 10,895 SF
PERCENT OF SITE UNDER ROOF(11A): 10.89%
PERCENT OF SITE UNDER ROOF(12B): 0.57%
MINIMUM YARD SETBACKS:
FRONT: 20'
REAR: 10'
INTERIOR: NONE
MAXIMUM BUILDING HEIGHT:
EXISTING BUILDING HEIGHT: 25.5'
REQUIRED PARKING:
INDOOR SHOWROOM: 4,500 SF / 500 SF = 13 SPACES
TOTAL REQUIRED PARKING: 135 SPACES
PROVIDED PARKING:
① DISPLAY PARKING: 386 SPACES
② INVENTORY PARKING: 123 SPACES
③ CUSTOMER PARKING: 49 SPACES
④ MAINTENANCE PARKING: 22 SPACES
TOTAL: 580 SPACES

SITE PLAN NOTES:

- 1) ALL UTILITY LINES LESS THAN 60" IN DIAMETER SHALL BE UNDERGROUND WITH THE FIRST PHASE OF DEVELOPMENT.
- 2) ALL GROUND-MOUNTED EQUIPMENT SHALL BE UNDERGROUND WITH THE FIRST PHASE OF DEVELOPMENT.
- 3) PLANTS LOCATED WITHIN REQUIRED ASHTO SIGHT VISIBILITY TRIANGLES SHALL BE PRUNED REGULARLY TO MAINTAIN CLEARANCE OF 14' MINIMUM. PLANTS SHALL BE MAINTAINED TO BE LOWER THAN 2' (SHRUBS) OR TALLER THAN 7' (BOTTOM OF TREE CANOPY).
- 4) ALL DEVELOPMENTS SHALL BE COVERED WITH A MINIMUM OF 2" OF FINE GRADE GRANITE FOR DUST CONTROL AT TIME OF CONSTRUCTION.
- 5) ALL DEVELOPMENTS SHALL BE MAINTAINED IN ACCORDANCE WITH THE CITY OF AVONDALE LANDSCAPE PLAN. ANY CHANGES THEREOF SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
- 6) THE PROJECT SHALL BE DESIGNED TO COMPLY WITH ALL GENERAL ENGINEERING REQUIREMENTS (AND MAG SUPPLEMENTAL REGULATIONS), PLANNING DESIGN MANUAL, COMMUNITY DESIGN MANUAL, AVONDALE STREET ZONING ORDINANCE, GENERAL PLAN, AVONDALE STREET TREE MASTER PLAN, AND ANY APPLICABLE SPECIFIC TREE, MASTER PLAN, AND ANY APPLICABLE SPECIFIC TREE.
- 7) OUTDOOR STORAGE OF GOODS AND MATERIALS IS PROHIBITED.



APN: 102-54-046
MORELAND PROPERTY SERVICES LLC
DEED 12080075
NOT A PART

APN: 102-54-046
EARN: 102-54-046
DEED 12080075
NOT A PART

APN: 102-54-102
EP REALTY AZ, LLC
DEED 1208204
NOT A PART

PROJECT NO.: 201541000
SCALE (H): 1"=40'
SCALE (V): NONE
DRAWN BY: DBB
DESIGN BY: BEQ
CHECK BY: TMJ
DATE: 04/09/21

NOT FOR CONSTRUCTION
FOR REVIEW ONLY
KIMLEY-HORN & ASSOCIATES, INC.
REGISTERED PROFESSIONAL ENGINEER
PE NO.: 100000000
EXPIRATION DATE: 12/31/2022

Exhibit G

Conceptual Landscape Plan

AutoNation at Avondale Automall

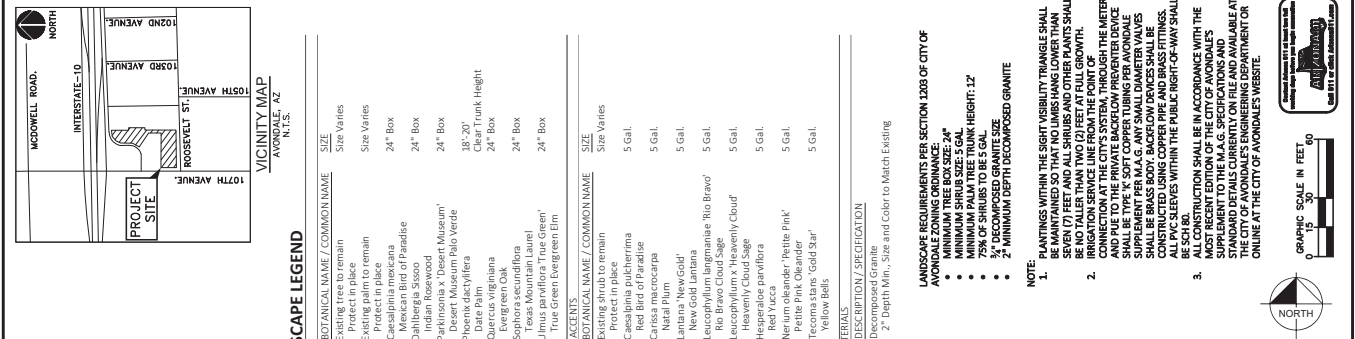
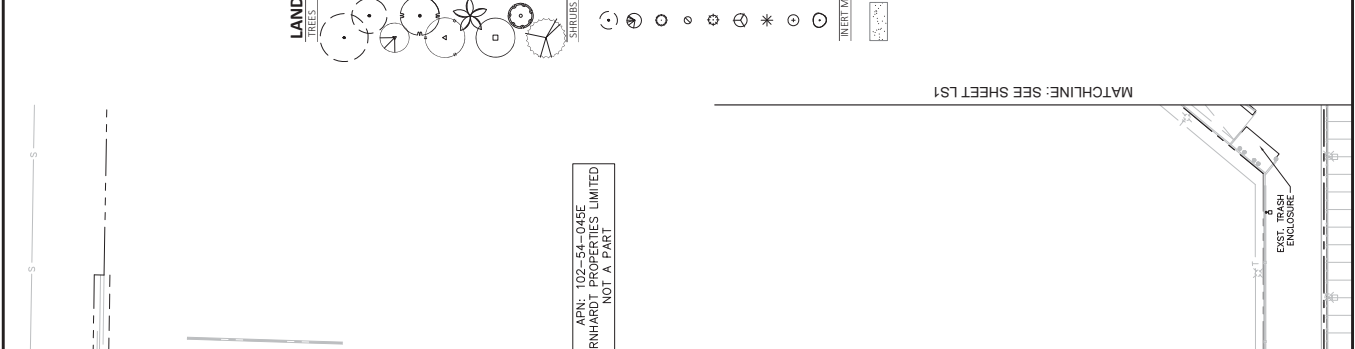
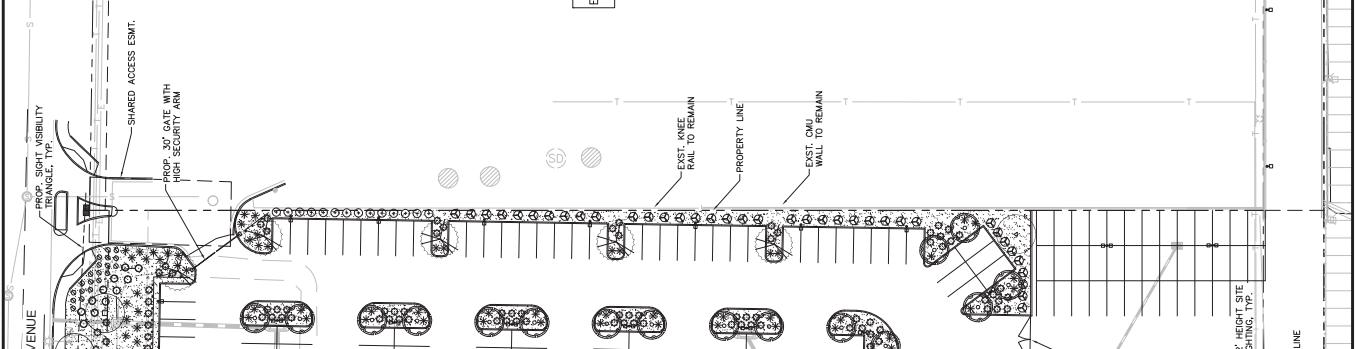
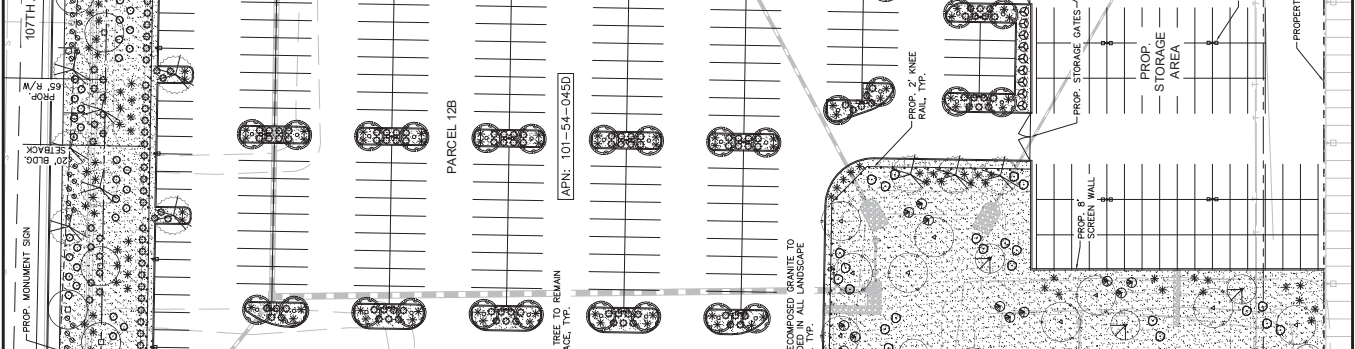
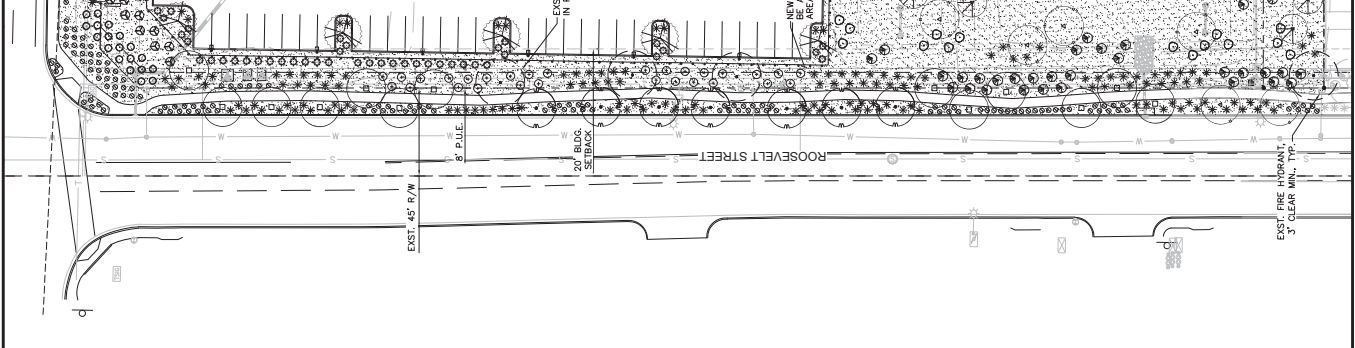
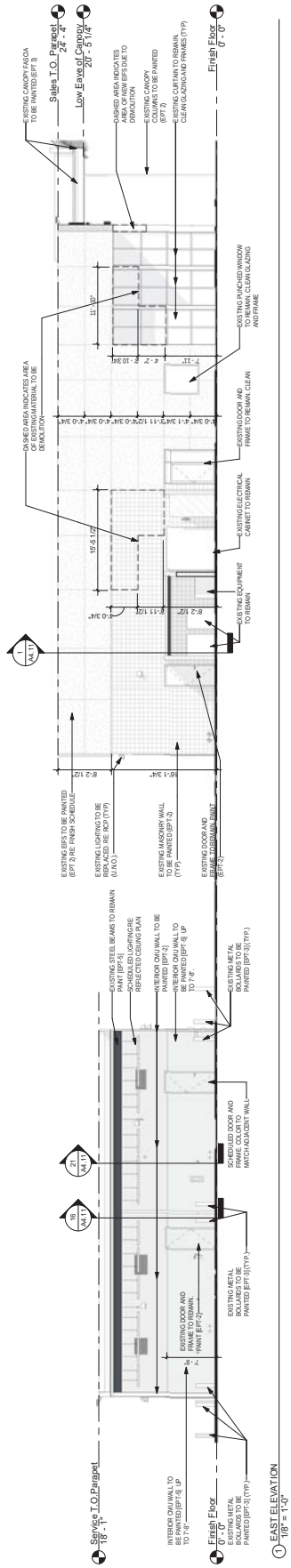


Exhibit H

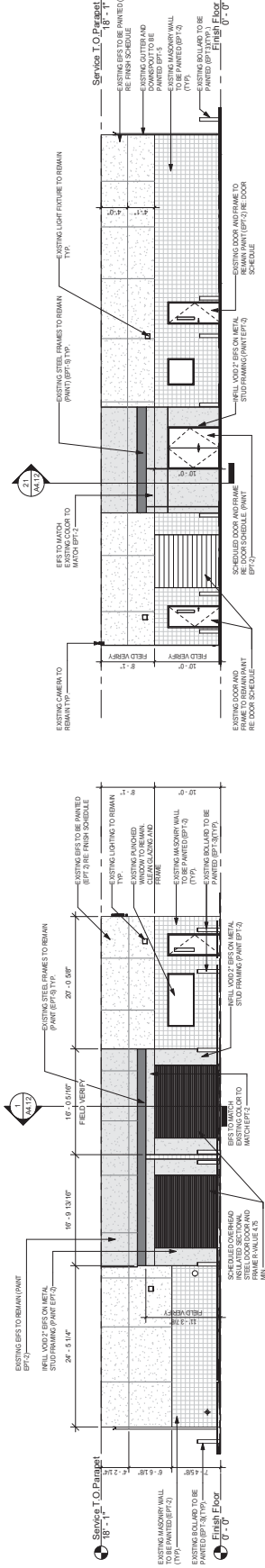
Conceptual Exterior Building Elevations

AutoNation at Avondale Automall

Received
June 1, 2021

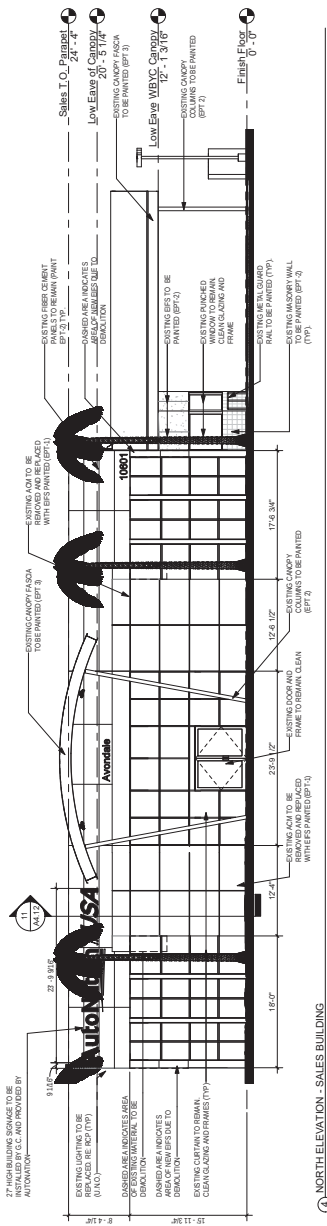


1 EAST ELEVATION
18' = 1'-0"



2 NORTH ELEVATION - SERVICE BUILDING
18' = 1'-0"

3 SOUTH ELEVATION - SERVICE SHOP
18' = 1'-0"



4 NORTH ELEVATION - SALES BUILDING
18' = 1'-0"

AutoNation **USA**

10601 W Papago Freeway
Avondale, AZ 85323



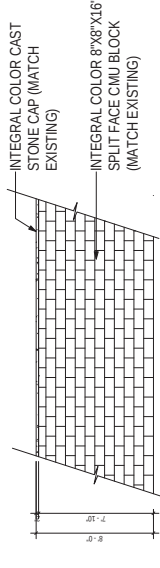
**Castles
Design
Group**

A Professional Architectural
Firm
10601 W Papago Freeway
Avondale, AZ 85323
Tel: (602) 841-7991
Fax: (602) 841-7992

**BUILDING
ELEVATIONS**

EX-1

Date: 09/20/2021



④ NORTHWEST PERSPECTIVE

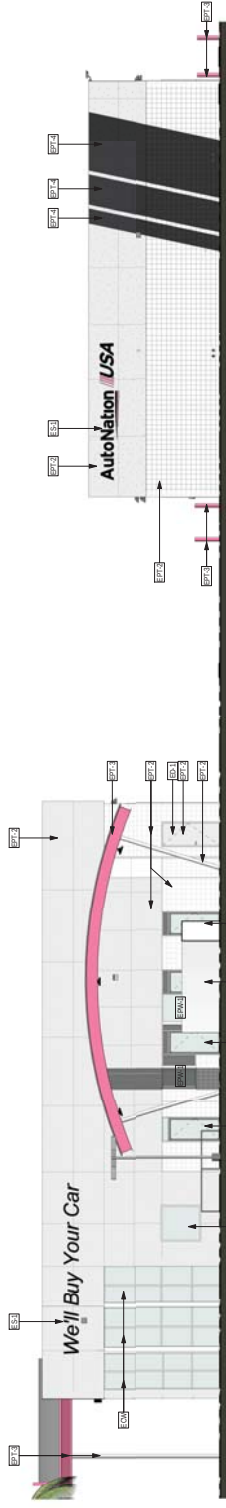


② WEST ELEVATION
 $1/8" = 1'-0"$

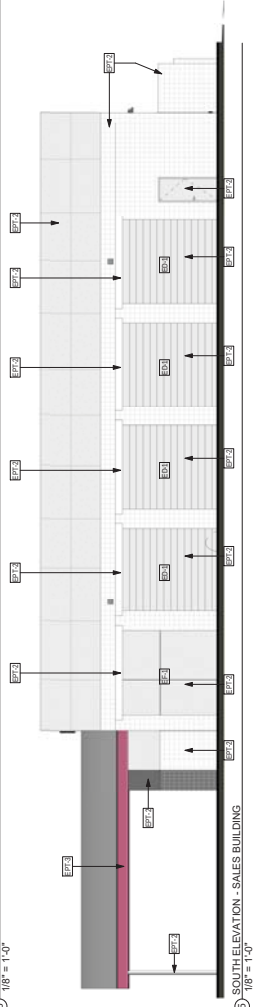


① SOUTH ELEVATION - SALES BUILDING
1/8" = 1'-0"

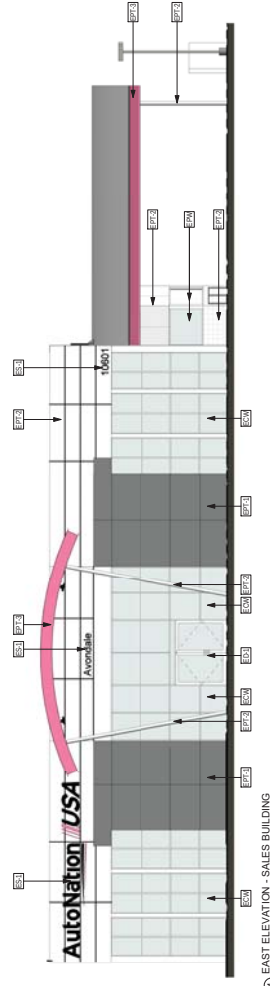
10601 W Papago Freeway
Avondale, AZ 85323



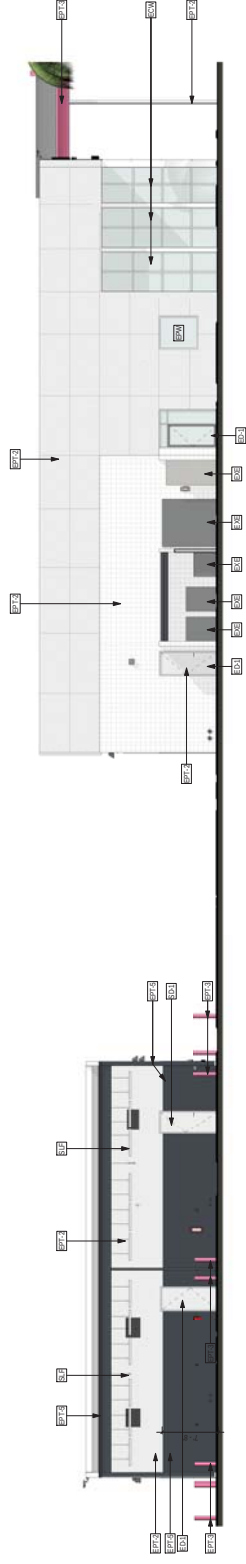
⑥ WEST ELEVATION
1/8" = 1'-0"



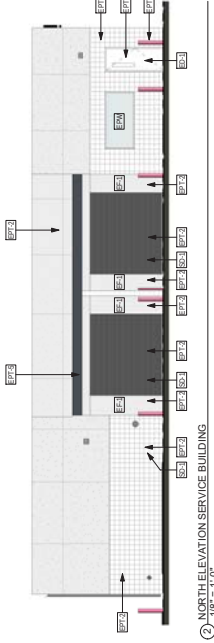
⑤ SOUTH ELEVATION - SALES BUILDING
1/8" = 1'-0"



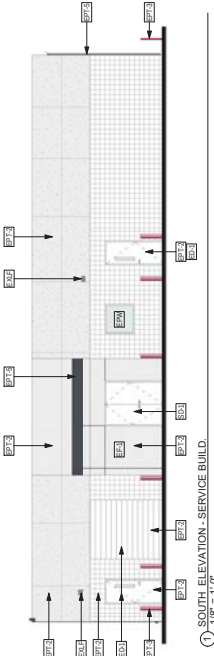
④ EAST ELEVATION - SALES BUILDING
1/8" = 1'-0"



③ EAST ELEVATION
1/8" = 1'-0"



② NORTH ELEVATION SERVICE BUILDING
1/8" = 1'-0"



① SOUTH ELEVATION - SERVICE BUILD
1/8" = 1'-0"

EPF1 - AUTONATION GREY
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE
PAINTED METAL DOORS

EPF2 - AUTONATION WHITE
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE
PAINTED METAL DOORS

EPF3 - AUTONATION PINK
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF4 - AUTONATION BLACK
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF5 - AUTONATION DARK GREY
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF6 - AUTONATION PINK
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF7 - AUTONATION GREY
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF8 - AUTONATION WHITE
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF9 - AUTONATION GREY
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

EPF10 - AUTONATION GREY
MATCH PAINT/WE 2302 OF 18AU
PAINTED METAL SURFACE

Material Board Legend

1/2" = 1'-0"

AutoNation USA
10601 W Papago Freeway
Avondale, AZ 85323



**Castles
Design
Group**

A Professional Architectural
Firm
10601 W Papago Freeway, Suite 100
Avondale, Arizona 85323
Tel: (602) 841-7979
Fax: (602) 841-7978

Presentation
Elevations

EX-3

Date: 02/02/2021

Exhibit I

Neighborhood Meeting Summary

AutoNation Conditional Use Permit

AUTONATION OUTREACH MEETING
May 11, 2021

Attendees:

Pat Dennis, Councilmember
Patricia Perkins, Automall POA

Charles Montoya, Avondale City Manager
Lindsey Duncan, Avondale Deputy City Manager
Kevin Murphy, Development and Engineering Services Director
Brian Craig, Planning Manager
Ken Galica, Division Lead Planner

Chris Wenk, AutoNation
Alexander Shporer, AutoNation
Paul Gilbert, Beus Gilbert McGroder
Andy Jochums, Beus Gilbert McGroder

Questions and Discussions:

Patti Perkins –

Will there be a traffic light at 107th Avenue and Dealer Drive?

- Paul Gilbert – Not specifically proposed as part of these applications.
- Ken Galica – Dealer Drive could be too close to the freeway intersection for a signal, but the City will look into it

What about Roosevelt as an alternative?

- Ken Galica – The City has a future signal planned there.

Councilmember Pat Dennis –

Her concern is that that left turns are unsafe from Dealer Drive.

- Supports signal at Roosevelt as long as there is access
 - aerials and site plans were discussed

How often are the sales of used vehicles checked for compliance with the age and value restrictions?

- Paul Gilbert – The stipulation for Echo Park, which is to be replicated here requires the report be provided to the City whenever it is requested.

When did Echo Park open?

- Paul Gilbert – Only a few months ago.
 - With assistance from City staff, it was discussed that a status report from Echo Park has already been made to provided sales data through the end of the fiscal year, June 30th.

Concern with impact to other dealerships and this may “Diminish them to sell used vehicles.”

- Paul Gilbert shared that “rising tide raises all ships” and Alexander Shporer discussed existing locations and operations of other AutoNation USA stores in other automalls and even located next to AutoNation franchise dealerships.

Councilmember Dennis indicated she will want to see data before the hearings.

Ken Galica – Provided hearing schedule and will be sharing links with Patti Perkins

-- Paul Gilbert and Patti Perkins exchanged contact information --

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Resolution 1069-0621 - Cerro Vista - Minor General Plan Amendment - Application PL-18-0079

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction.
-

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Resolution 1069-0621, approving a request by Virtua Avondale Eleven Owner, LLC, for a Minor Amendment to the Avondale General Plan 2030 Land Use Map for Cerro Vista, a proposed high-density multi-family residential development with 249 units on 11.51 gross acres located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street. The request is to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre). City Council will consider a concurrent request to rezone the property from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). The Council will take appropriate action.

BACKGROUND:

The 11.51-acre subject site (Exhibits A, B, and C) was annexed into the City in June 1978 as part of a larger annexation. Records indicate the westernmost 10.27 acres of the subject site were initially given an equivalent zoning of Agricultural (AG) while the easternmost 1.24 acres were given an equivalent zoning of Community Commercial (C-2). The zoning on the site has not changed since annexation in 1978. The subject site is vacant and is currently used for farming purposes.

The property is presently designated by the General Plan 2030 Land Use Map as Urban Residential (UR). The UR designation accommodates residential development exceeding 30 units per acre, served by underground or structured parking. The applicant is requesting a Minor General Plan Amendment to change the land use designation of the property to High Density Residential (HDR), allowing the property to be developed at a lower density than currently allowed. The requested HDR designation allows for development of multi-family

residential including patio homes, apartments, condominiums, and townhomes with a density of 12 to 30 dwelling units per acre with a target density of 12 units per acre. There is no structured or underground parking requirement in the HDR designation.

Cerro Vista lies within the boundaries of the Freeway Corridor Specific Plan (FCSP). The primary goal of the FCSP is to ensure new development is pedestrian/bicycle-friendly, enhances the City's appearance from the freeway, provides a seamless transition between The BLVD and the Freeway Corridor area, establishes specifications for planned improvements projects, and minimizes visible warehouse uses that compromise the aesthetic character of the area.

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

NORTH: Approximately 25.46 acres of vacant and undeveloped property zoned Agricultural (AG) and in agricultural production. An application for a Minor General Plan Amendment and Rezoning of the property to accommodate light industrial development of the site has been submitted and is in review by the City.

EAST: An approximately 7.9-acre property zoned Community Commercial (C-2) and developed with River Crossing mini-storage/RV storage. Conditional Use Permit and Site Plan and Design Review applications permitting the expansion of the facility with additional indoor storage space on the currently undeveloped portion of the site was approved in 2020. Construction of the expansion has not yet started.

SOUTH OF VAN BUREN STREET: Multiple uses are occurring south of the site across Van Buren Street. From east to west, these include:

- Coldwater Springs Apartments, a 301-unit garden-style multi-family residential community on 16.47 acres zoned Coldwater Springs Planned Area Development (PAD). The Coldwater Springs PAD identifies the property for multi-family residential use.
- An approximate 12-acre parcel which is undeveloped and not presently in agricultural production. The undeveloped parcel is zoned Coldwater Springs Planned Area Development (PAD) which allows for development of the property in accordance with the Community Commercial (C-2) district.

WEST: A 4.59-acre property, zoned Agricultural (AG), developed with a single-family residence. The undeveloped portion of the property is in active agricultural production.

SUMMARY OF REQUEST:

The applicant is requesting a Minor General Plan Amendment (Exhibit E) to change the Land Use designation of the 11.51-acre subject property from Urban Residential (UR) to High Density Residential (HDR). As noted above, the property's existing UR designation requires development of the site with a minimum of 30 units per acre, served by structured or underground parking. The proposed amendment to HDR, a land use category that allows between 12 and 30 units per acre consisting of apartments, townhomes, and the like, will allow the property to be developed with Cerro Vista, a planned 249-unit multi-family residential apartment community with a density of 23.94 units per acre, a lower density than what is required under the existing UR designation.

This proposed GPA is the first step in the development process for the site. As indicated in the preceding section, a separate application to rezone the site from Agricultural (AG) and Commercial (C-2) to Multi-Family Residential (R-4) is being considered on the same schedule. The staff report for the rezoning application of this project includes additional details on the project's proposed design, including site planning, open space, and architecture.

CERTIFICATE OF ADEQUATE SCHOOL FACILITIES:

The property is located in the service areas of the Littleton Elementary School District (LESD) and the Tolleson Union High School District (TUHSD).

LESD does not assign students to elementary schools based upon geographical location. As such, elementary age students living in Cerro Vista will have an opportunity to choose which school they will attend within the LESD system. Collier Elementary School, located internal to the Coldwater Springs community at 350 S.

118th Avenue, is the nearest LESD school to the project site. High school students will attend La Joya Community High School located at 11650 W. Whyman Avenue.

TUHSD has provided the City with a Certificate of Adequate School Facilities confirming that the district has adequate facilities to support enrollment generated by the proposed development, whereas LESD has indicated there is not adequate capacity, but the district and developer of Cerro Vista executed an impact agreement, dated March 12, 2019, that will provide the district with needed funds to offset the impact of the development (Exhibit G).

There is an existing public charter school east of this proposed development and another public charter school is planned southwest of this project.

PUBLIC PARTICIPATION:

A Neighborhood Meeting to discuss the proposal with neighboring property owners and other interested parties was held at 6:00 P.M. on Thursday, April 22, 2021. Due to the ongoing Covid-19 pandemic, the meeting was held virtually via Zoom. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic, were completed at least fifteen (15) days prior to the meeting as required. In addition to City Staff and the applicant's team, two Councilmembers and a Planning Commissioner attended the virtual meeting (Exhibit F). Discussion was primarily related to the following topics:

- ***How much of the project is currently zoned for commercial:*** The applicant responded it is about 1-acre of the overall project, the remainder is zoned Agricultural (AG).
- ***What is the current ratio of multi-family to single-family in Avondale:*** The applicant responded that the information is not currently available. Staff responded the information would be researched and prepared for future discussion at Planning Commission and City Council. The City's existing/planned/under construction multi-family residential is approximately 18.8% of total residential uses.
- ***Who will be the builder of this project:*** The applicant responded that they are both the developer and builder of the project and will likely contract with Morgan Construction to construct the project.
- ***What is the reasoning behind the buildings stepping down from 3-stories to 2-stories from Van Buren Street to the north:*** The applicant indicated the goal is an urban-feel fronting Van Buren Street to give brownstone look and feel at the street. It was also noted that commercial property is located across Van Buren Street to the south.
- ***Will there be garages and covered parking:*** The applicant responded garage and covered parking is being provided and will be in compliance with the Avondale requirements.
- ***When is Corporate Drive on the north side of this project being developed:*** Staff responded that Corporate Drive is a Minor Collector and will be partially constructed by the Fairway 10 project to the north (formerly called Avondale 50); Fairway 10 will be responsible for construct two (2) of the three (3) lanes planned. Cerro Vista will be responsible for half-street improvements adjacent to their site, which includes one (1) lane of paving and associated landscaping and other improvements from the project's eastern boundary to the site's western edge.
- ***Will there be a deceleration lane on Van Buren into the project:*** Staff responded that a deceleration turn lane is included in the traffic report and will be required.
- ***How can the City improve safety of trail users on the multi-use trail that fronts this project on Van Buren Street:*** Staff responded that signage for trail users and for vehicles entering and exiting the project site may be appropriate and can be evaluated.

Three (3) comments related to the proposal have been posted on the City's aVOICE digital forum. One

comment was in favor of the project, the other two (2) comments were expressions of concern for the impact on the school capacity, traffic impacts, and availability of affordable housing in the area. The comments are listed below:

- “Build it”
- “I sure hope that the developer is paying enough impact taxes to build all the schools that will be needed for all these housing units!!! Everywhere I look in Avondale we are putting up multi-family units and huge apartment complexes that will have a detrimental effect on our school costs and traffic. Just make sure they are paying enough to cover the costs of the extra schools or classrooms that will be needed to support this growth!!”
- “There should be some units for lower income families. Units should be less than a \$1000 per month. Several families in Goodyear are trying to survive on minimum wage salaries and cannot afford a home in Goodyear. We also need to build units for homeless vets.”

All required notification for the Planning Commission and City Council public hearings were completed at least fifteen (15) days prior to the meetings as required including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic. No additional public comments beyond what is noted above have been received to date.

PLANNING COMMISSION ACTION:

On May 19, 2021, Planning Commission conducted a public hearing and voted 5-0 to recommend approval of the proposed Minor General Plan Amendment. Commission had the following question:

- Vice Chair Thompson asked for clarification on the Littleton Elementary School District (LESD) impact agreement. The applicant responded that the developer will pay a large stipend to help facilitate future school construction.

ANALYSIS:

City Council must determine that the proposed amendment meets four (4) findings prior to approving the proposed General Plan Amendment. Staff's analysis of each of the required findings is presented below.

1. The development pattern contained on the Land Use Plan inadequately provides sufficient sites for the use or change proposed in the amendment.

- The property's Urban Residential land use designation is a part of the transit-oriented development land uses intended for higher density residential of 30+ dwelling units per acre that supports business park, high intensity office, and The BLVD developments. The proposed multi-family residential development meets the intent of the Urban Residential land use; however, the density is lower at 23.94 du/ac, requiring a minor General Plan amendment to a High Density Residential land use. The development is designed as an urban residential style development and provides higher density for the surrounding employment area meeting the vision of the General Plan.

2. The amendment constitutes an overall improvement in the 2030 Plan and is not solely for the good or benefit of a particular landowner or owners.

- Amending the General Plan to allow for High Density Residential, a reduction of 6.06 dwelling units per acre from the minimum required in Urban Residential, makes the subject site marketable and compatible with the surrounding employment area. The development standards of the R-4 (Multi-Family Residential) zoning district and design standards within the City's Multi-Family Design Manual will ensure that the development maintains an urban residential feel given the site's proximity to The BLVD.

3. The amendment will not adversely impact the community as a whole and/or a portion of the community by: (1) significantly altering acceptable land use patterns; (2) requiring large and more expensive public infrastructure improvements including, but not limited to roads, water, wastewater,

and public safety facilities than would otherwise be needed without the proposed change, or (3) adversely impacting the existing land use.

- At 11.51 acres, the re-designation of the property from Urban Residential to High Density Residential, both of which call for development of high-density residential uses, will not significantly alter acceptable land use patterns or adversely impact existing land uses.
- The property is currently served by existing infrastructure and surrounded by properties receiving various levels of City services. Amending the land use map to High Density Residential, lowering density of development, will reduce water and sewer demand from the property. Furthermore, any infrastructure improvements required to serve the proposed development will be constructed by the developer at their cost.
- The reduction of allowed density from Urban Residential to a High Density Residential land use designation will not adversely impact surrounding land uses.

4. The amendment is consistent with the overall intent of General Plan 2030 and other adopted plans, codes, and ordinances.

The proposed amendment is consistent with several goals of the General Plan 2030 and the FCSP, such as:

General Plan

- Land Use Element, Goal 1, “Establish an Avondale identity based on a healthy lifestyle that promotes land uses which foster an economically sustainable and socially dynamic community”. Cerro Vista will provide a high density, quality community that will be compatible with and support the surrounding employment, commercial, and residential uses.
- Housing Element Goal #2, “Champion the development of housing types not currently available in the City to allow for a variety of socio-economic levels”. Cerro Vista proposes an urban living community that is unique to the City of Avondale. The project’s urban design concept will create a sense of place through site and building design, open space, and amenities. Cerro Vista residents are intended to be new professionals, small families, and empty-nesters looking for a vibrant community to live in.
- Housing Element Goal #4, Policy’s A, B, C, and D “Require excellence and innovation in residential design and construction”. The Cerro Vista PAD incorporates a number of the City’s Design Review Manual standards to create a layout with ample open space and recreation areas containing amenities and trails throughout. Buildings are oriented on the perimeter to front public rights-of-way reducing views of surface parking and creating an urban feel. This building orientation allows the core of the site to be developed with a clubhouse and other amenities, while maintaining an urban residential streetscape along Van Buren Street and the future Corporate Drive alignment.
- Recreational Amenities Element, Goal 4 “Create shared use linkages throughout the community in order to support a healthy lifestyle”. With the development of the Van Buren Street Trail, Cerro Vista will provide the necessary access for shared connections to the City and other transit modes along Van Buren Street.

Freeway Corridor Specific Plan (FCSP)

- Growth Area Element, Goal #4 “Ensure new development in the Plan area is pedestrian/bicyclist friendly and contributes to a walkable community”. The Cerro Vista development ensures residents will have full access to pedestrian and bike paths for work, recreation, or access to services with the development of the Van Buren Trail.

DISCUSSION:

Staff finds this request meets the four (4) required findings and recommends approval of the proposed Minor General Plan Amendment.

BUDGET IMPACT:

No budget impacts.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** Resolution , approving Application PL-18-0079 Cerro Vista, a request for a Minor Amendment to the General Plan 2030 Land Use Map Designation from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre).

PROPOSED MOTION:

I move that City Council **ADOPT** Resolution 1053-0621, approving Application PL-18-0079 Cerro Vista, a request for a Minor Amendment to the General Plan 2030 Land Use Map Designation from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre).

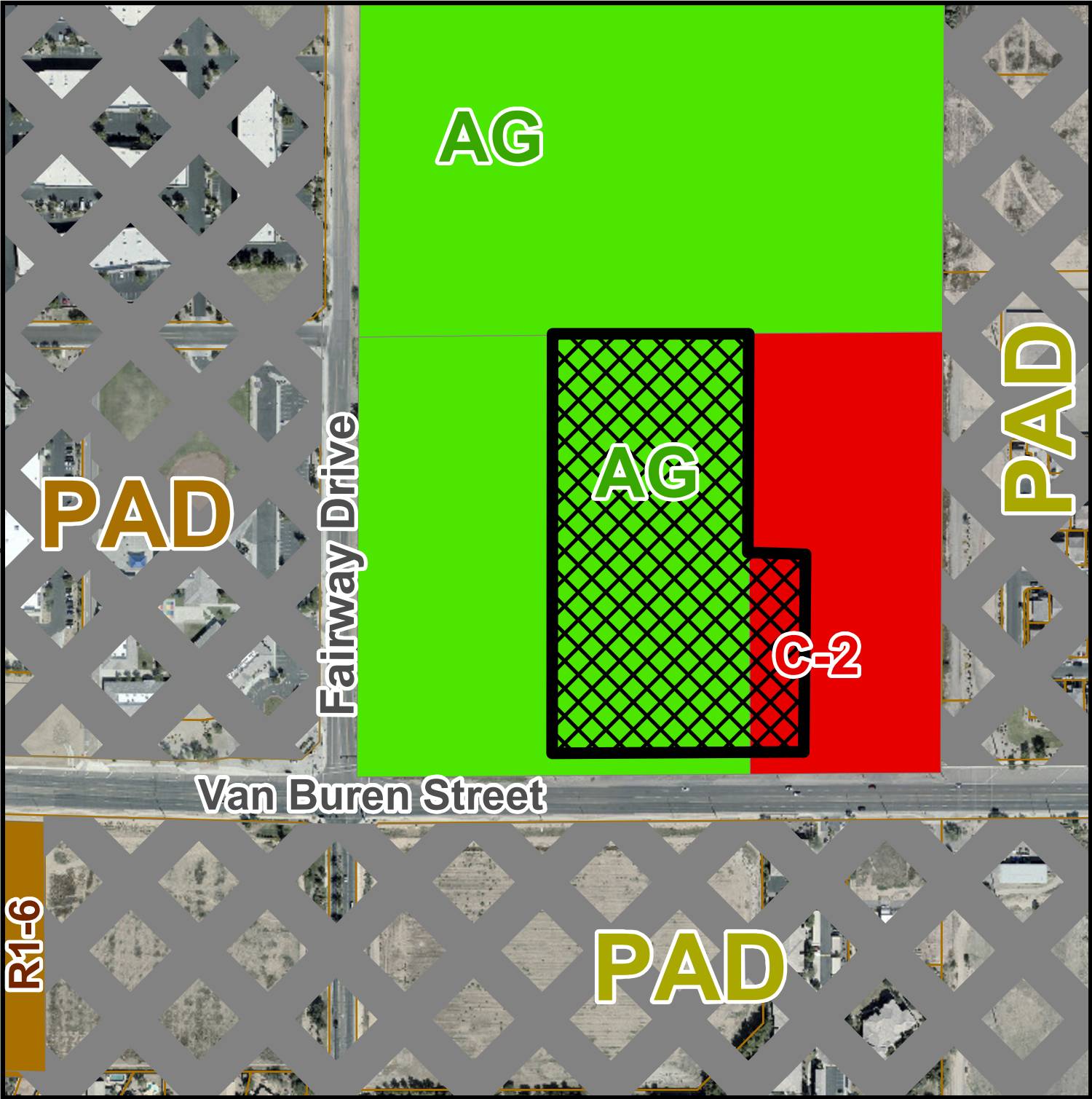


Aerial Photograph

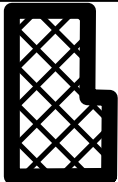


Project Location



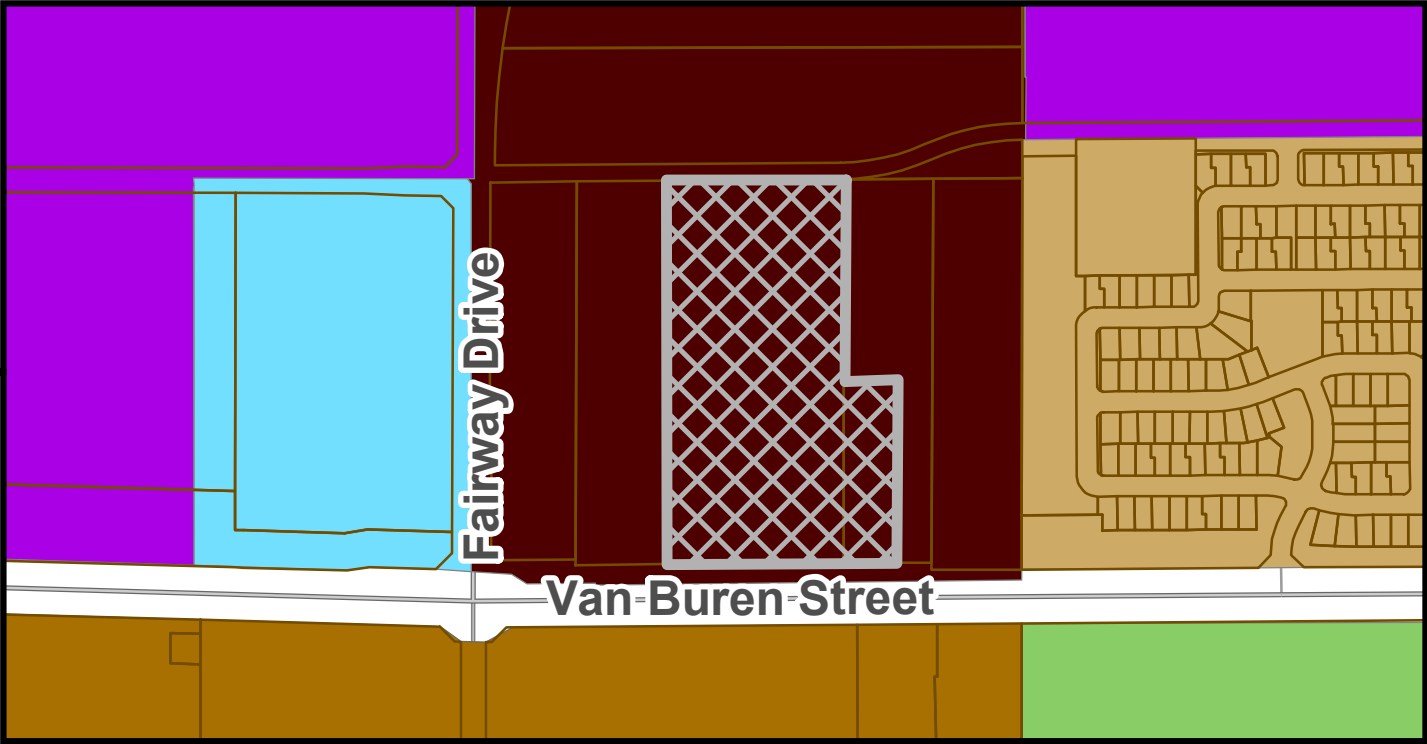


Zoning Vicinity Map

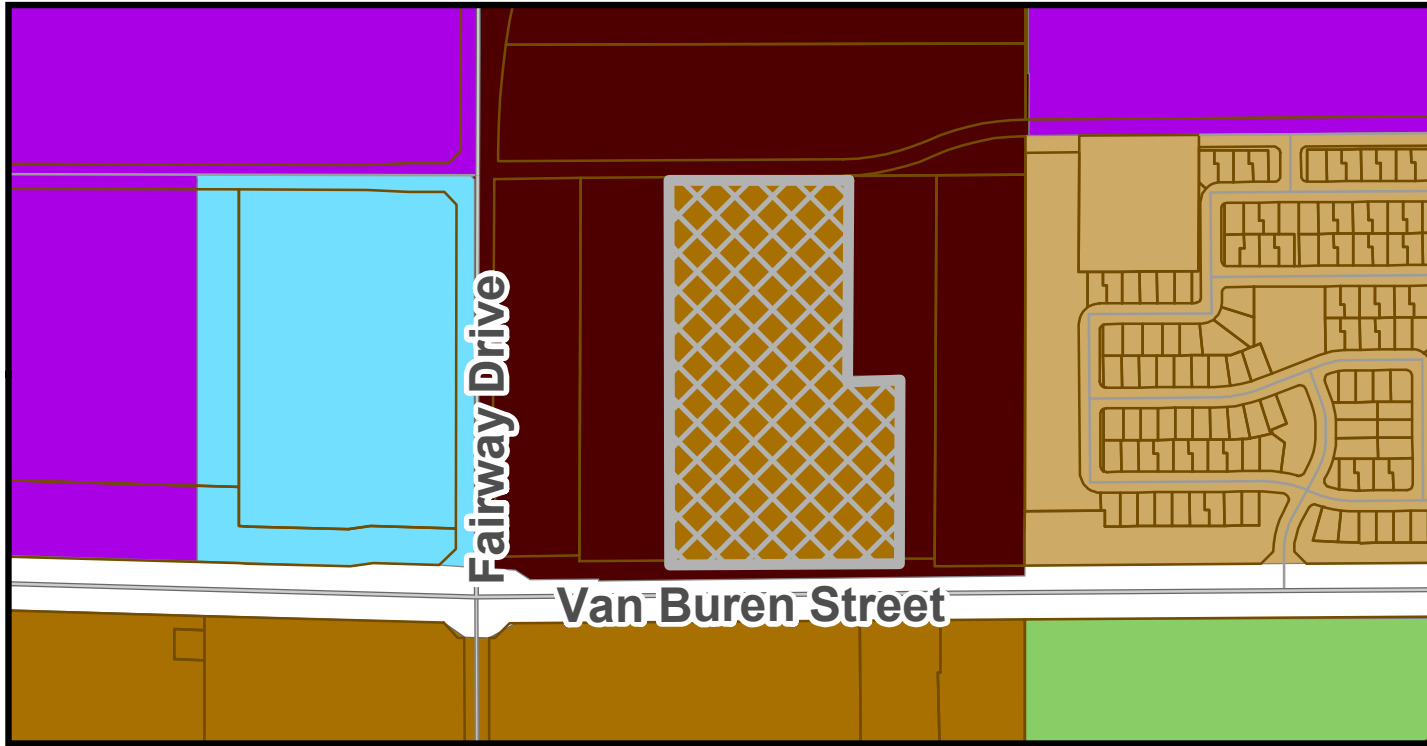


Project Location





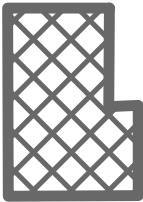
CURRENT LAND USE MAP



PROPOSED LAND USE MAP

General Plan Land Use Map

- | | |
|---|--|
|  Medium/High Density Residential |  Business Park |
|  High Density Residential |  Open Space and Parks |
|  Urban Residential |  Education |



Subject Property

*SUMMARY OF RELATED FACTS
APPLICATIONS PL-18-0079 & PL-18-0080*

<i>THE PROPERTY</i>	
PROPERTY SIZE	Approximately 11.51 gross acres
LOCATION	Approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street
PHYSICAL CHARACTERISTICS	The subject property is vacant, undeveloped and in agricultural production.
GENERAL PLAN LAND USE DESIGNATION	The property is presently designated by the General Plan 2030 Land Use Map as Urban Residential (UR). The UR designation accommodates residential development exceeding 30 units per acre, served by underground or structured parking. The applicant is requesting a Minor General Plan Amendment to change the Land Use designation of the property to High Density Residential (HDR), allowing the property to be developed at a lower density than currently supported. The requested HDR designation allows for development of multi-family residential including patio homes, apartments, condominiums, and townhomes with a density of 12 to 30 dwelling units per acre with a target density of 12 units per acre. There is no structured or underground parking requirement in the HDR designation.
EXISTING ZONING	The majority of the site, approximately 10.27 acres, is zoned Agricultural (AG). The easternmost 1.24 acres of the site is zoned Community Commercial (C-2).
ZONING HISTORY	The 11.51-acre subject site was annexed into the City by Ordinance No. 238 on June 28, 1978 as part of a larger annexation. Records indicate the westernmost 10.27 acres of the subject site were initially given an equivalent zoning of Agricultural (AG) while the easternmost 1.2 acres were given an equivalent zoning of Community Commercial (C-2). The zoning on the site has not changed since annexation in 1978.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	Approximately 25.46 acres of vacant and undeveloped property zoned Agricultural (AG) and in agricultural production. An application for a Minor General Plan Amendment and Rezoning of the property to accommodate light industrial development of the site has been submitted and is in review by the City.
EAST	An approximately 7.9-acre property zoned Community Commercial (C-2) and developed with River Crossing mini-storage/RV storage facility. Conditional Use Permit and Site Plan and Design Review applications permitting the expansion of the facility with additional indoor storage space on the currently undeveloped portion of the site was approved in 2020. Construction of the expansion has not yet started.
SOUTH OF VAN BUREN STREET	Multiple uses are occurring south of the site across Van Buren Street. From east to west, these include:

	• Coldwater Springs Apartments, a 301-unit garden-style multi-family residential community on 16.47 acres zoned Coldwater Springs Planned Area Development (PAD). The Coldwater Springs PAD identifies the property for multi-family residential use. • An approximate 12-acre parcel which is undeveloped and not presently in agricultural production. The undeveloped parcel is zoned Coldwater Springs Planned Area Development (PAD) which allows for development of the property in accordance with the Community Commercial (C-2) district.
WEST	A 4.59-acre property, zoned Agricultural (AG), developed with a single-family residence. The undeveloped portion of the property is in active agricultural production.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District (LESD) Tolleson Union High School District (TUHSD)
ELEMENTARY SCHOOL	Student's choice (No defined school). The closest LESD school to the subject property is Collier Elementary, located at the southwest corner of Coldwater Springs Boulevard and 118 th Avenue.
HIGH SCHOOL	La Joya Community High School, located at the southwest corner of Durango Street and Avondale Boulevard.

<i>STREETS</i>	
Van Buren Street	
Classification	Custom Minor Arterial
Existing half street right-of-way	85 feet
Standard half street right-of-way	Varies (50 feet to 85 feet)
Existing half street improvements	Two (2) travel lanes, half center turn lane, and the landscaped/lighted Van Buren Multi-Use Trail (in right-of-way).
Standard half street improvements	Two (2) travel lanes, half center turn lane, bike lane, curb, gutter, detached sidewalk, streetlights, landscaping, and accommodation of the Van Buren Multi-Use Trail (in easement or right-of-way).
Corporate Drive	
Classification	Minor Collector
Existing half-street right-of-way	None
Standard half-street right-of-way	40 feet
Existing half-street improvements	None
Standard half-street improvements	One through lane, half center turn lane, bike lane, detached sidewalk, curb, gutter, landscaping, and street lights.

UTILITIES

Future development of the site will access the City's water system via a connection to an existing 16-inch water line in Van Buren Street and a secondary connection to an 12-inch water being installed in Corporate Drive by the developer of Fairway 10 (formerly Avondale 50). Sewer service to the site will be accommodated by an existing 30-inch main line in Van Buren Street. Salt River Project (SRP) provides electrical service to this portion of the City.

Exhibit E

Cerro Vista Minor GPA Narrative

CERRO VISTA

An Urban Living Experience



Minor General Plan Amendment Application Narrative Application Case #: PL-18-0079

City of Avondale

March 2019

August 2020

February 2021

March 2021

April 2021

Electronically submitted April 29, 2021

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Table of Exhibits

Exhibit A – Regional Aerial Context Exhibit
Exhibit B – Aerial Context Exhibit
Exhibit C – Existing Avondale General Plan Map
Exhibit D – Proposed Avondale General Plan Map
Exhibit E – Existing Avondale Zoning Map

I. PROJECT PROFILE

Project Name	Cerro Vista
Property Owner	Virtua Avondale Eleven Owner, LLC
Assessor Parcel Numbers	500-01-001W 500-01-001X
Project Location	12116 W. Van Buren Street, Avondale, AZ 85323 Generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street
Project Area	Amended Area (inclusive of ROW) 11.5 acres (Gross) Developable Area 10.4 acres (Net)
Current Zoning	Agricultural (AG) & Commercial (C-2)
Proposed Zoning	Multi-Family Residential-4 (R-4) (PL-18-0080)
General Plan Land Use	High Density Residential (12-30 du/ac, Target 12 du/ac)

Development Team



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Mesa, Arizona 85209

II. EXECUTIVE SUMMARY

This proposed Minor General Plan Map Amendment includes approximately 11.51 gross acres to the center line, inclusive of the public right-of-way. The net area of the developable site is 10.4 acres located at 12116 W. Van Buren Street, Avondale, AZ 85323, generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street and identified by Maricopa County Assessors as parcel numbers 500-01-001W and 500-01-001X (the "Property"). The request is to amend the General Plan Map from Urban Residential (30+ du/ac) to High Density Residential (12-30 du/ac, Target Density 12 du/ac).

There is also a concurrent request to rezone the Property from Agricultural (AG) & Commercial (C-2) to Multi-Family Residential-4 (R-4) to allow the development of a high density urban living residential development with a proposed density of approximately 23.94 dwelling units per acre (249 units).

This amendment to the General Plan Map and the accompanying Cerro Vista rezoning will allow a luxury, high-density residential community that will bring an urban living experience in the Van Buren corridor. It is designed to be complementary to other high density developments along Van Buren and the employment areas adjacent to the north and east along the I-10 freeway. The addition of the major interchange at El Mirage Road and the Interstate 10 Freeway in the near future will also bring regional access within close proximity to the Property. It is anticipated that this development will be a catalyst for other urban, high energy uses that are planned in the area.

The development will provide one (1) to three (3) bedroom housing that will be oriented towards enhanced pedestrian amenity and open space experiences within the development. Additionally, complementary walk-up carriage units will be part of the development to provide a varied urban housing type to the urban loft apartments. With its modern design, Cerro Vista will provide loft apartments that create a unique urban experience not currently available within the City of Avondale, but demanded by millennials, professionals, and empty nesters throughout the Valley.

With its close proximity to Avondale's The BLVD, previously known as City Center, will be a mixed-use project to include Class A Office, Multifamily Residential, Public Space, Signature Retail, Dining and Entertainment. Cerro Vista will also complement this future vibrant area by providing supportive housing that will draw residents to the area. This is supported by the Avondale General Plan, which states that housing should *"Entice the development of condominiums, townhomes, and high-rise loft apartments by marketing The BLVD as an exciting urban enclave geared towards professionals."* (See Avondale General Plan, Implementation Strategies-Housing Element, pg. 150.)

At a City Council Work Session in November 2018, the City discussed the market shifts related to providing an urban living experience for the changing demographics in the City and region. Traditionally, Avondale is exporting 90% of its employment to surrounding municipalities. This development is in a prime location with adjacent employment uses

and the nearby BLVD development area, which will attract those who want to live, work, and play in the City of Avondale. Cerro Vista is poised to become a destination that Avondale citizens can call home.

The proposed site plan, land use and development standards, and architectural standards create the framework for a marketable parcel to future developers. The unique location of the Property provides the opportunity to develop a site located along the Van Buren corridor that is compatible with existing development, supports housing opportunities for The BLVD area, and synergizes with the adjacent employment areas.

III. PROPERTY DESCRIPTION

Site Description

The Cerro Vista property is approximately 10.4 acres located at 12116 W. Van Buren Street, Avondale, AZ 85323, generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street and identified by Maricopa County Assessors as parcel numbers 500-01-001W and 500-01-001X (the "Property") (See *EXHIBIT A–Regional Aerial Context Map*) The Property is currently vacant. The topography of the site is relatively flat.

As illustrated in *EXHIBIT B – Aerial Context Map*, the Property is comprised of two (2) parcels adjacent to the Van Buren Street corridor. A City regional trail also runs along the south end of the Property along Van Buren Street providing opportunities for the development to connect to this public amenity. The trail will be developed with the project, as required.

The Property currently contains an Avondale General Plan land use designation of Urban Residential (30+ du/ac) (See *EXHIBIT C – Existing Avondale General Plan Map and EXHIBIT D – Proposed Avondale General Plan Map*). The Property is currently zoned primarily with Agricultural (AG) zoning with approximately 1.4 acres having Commercial (C-2) zoning. The Property is currently vacant and has historically been used for agricultural purposes. (See *EXHIBIT E – Existing Avondale Zoning Map*)

The rezoning proposes 249 residential units with a density of approximately 23.94 dwelling units to the acre. This is consistent with the Avondale General Plan proposed designation of High Density Residential (12-30 du/ac) and is above the target density of 12 du/ac.

Property Owner

The Property is currently owned by Virtua Avondale Eleven Owner, LLC and it intends to plan and prepare the Property for future development. The Virtua group offers, manages, and develops the highest quality real estate investments across the country. This includes properties in Arizona, California, Nevada, Texas, Georgia, Connecticut, and Pennsylvania.

Additionally, the Virtua group members are very active in land development in the greater Phoenix area and its management has decades of development experience in Phoenix, particularly in the West Valley. The development team is primarily focused on adding meaningful value to the Property and bringing a variety of housing types to the City of Avondale.

Relationship to Surrounding Properties

The Property is surrounded by a mixture of developed and vacant land uses.

- NORTH:** Directly to the north of the Property there is a vacant agricultural property with AG zoning and General Plan land use designations of Urban Residential. Additionally, to the northeast there is approximately 145 acres of active employment uses between the I-10 freeway and Van Buren Street. There is also a major interchange planned for El Mirage Road and the Interstate 10 Freeway, which will provide additional regional access to the Property.
- SOUTH:** To the south of the Property across Van Buren Street is a mixture of vacant property, the Coldwater Springs Apartments, and the Coldwater Springs single-family development. These properties are zoned as PAD allowing medium density and high density residential.
- EAST:** Directly to the east of the Property are properties owned by River Crossing Storage. The property is being used for RV and boat storage uses. There is also an approximately 3 acre vacant parcel and we have received information that it will be used for the expansion of the storage uses in the future. These properties have Commercial (C-2) zoning and a General Plan land use designation of Urban Residential.
- WEST:** Directly to the west of the Property are properties being used for a mixture of agricultural and residential uses. These properties have AG zoning and a General Plan land use designation of Urban Residential.

IV. INFRASTRUCTURE

Road improvements, right-of-way, easements.

Surrounding Street Improvements

The Project will construct the adjacent half-street improvements for Van Buren Street, which the City classifies as a collector roadway. All existing power lines that are less than 69kv will be converted underground and the poles will be removed at Corporate Drive. Additional right-of-way and improvements may be required for turn and deceleration lanes.

Utilities

Water

The City is the water service provider for the Property. The proposed water for Cerro Vista will consist of taps into the 16" water main currently in Van Buren Street, which will consist of two (2) separate taps for a domestic water meter and a landscape water meter. A 16" in-line valve will be installed between the two (2) 8" fire line taps for safety purposes. This will accommodate fire flow and residential demand requirements as demonstrated within the Preliminary Master Water Report. All connections will follow the City of Avondale's supplement to MAG Specifications and Details, and American Water Works Association Standards. Since there is an existing water main fronting the property there is no need to construct a new waterline adjacent to the project.

Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to water services will be completed as they relate to the specific phase that will be developed and will be explicitly determined during the Site Plan phase.

Sanitary Sewer

The City is the wastewater service provider for the Property. The proposed sewer for Cerro Vista will consist of approximately 1,648 LF of 8-inch sewer line and 7 manholes as shown within the Preliminary Master Sewer Report for the project. There will be a single connection within Van Buren Street into the 30-inch existing sewer main.

Since there is no existing sewer stub for the project from the existing 30-inch sewer main within Van Buren Street, a new manhole will be constructed within the proposed Van Buren Street right-of-way as part of this project. Since there is an existing sewer main fronting the property there is no need to construct a new sewer line adjacent to the project.

Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to sewer services will be completed as they relate to the specific phase that will be developed and will be explicitly determined during the Site Plan phase.

Grading and Drainage

A Master Drainage Report is provided with the rezoning submittal. The on-site retention requirements shall be per City of Avondale standards and will meet 100-year retention for on-site and adjacent off-site flows. Historic flows may safely pass through or be routed around the site.

Cerro Vista proposes two (2) surface retention basins along the north boundary and two surface basins within open space areas within the property as shown on the Preliminary Master Drainage Report. The remainder of the onsite drainage will be directed to eight (8) feet diameter CMP pipe (approximately 915 LF) under parking stalls so as not to conflict with other onsite utilities. Seven (7) drywells will be required to drain the onsite retention volume within all surface retention basins and underground pipe within the required 36-hour drain time. The actual number of drywells are dependent upon further testing at time of construction.

It is proposed to provide three surface retention basins along the south boundary of the project to capture design flows within the adjacent proposed half-street improvements of Van Buren Street.

Schools

The Applicant has provided the City the executed copies of the Certificate of Adequate Schools Facilities from the Littleton Elementary School District #65 (*Collier Elementary School*) and the Tolleson Union High School District (*La Joya Community High School*).

Tolleson Union High School District has adequate school facilities, so no further action is required. However, Littleton Elementary School District #65 does not have adequate school facilities for the proposed project. Therefore, the current property owner has entered into a Donation Agreement with the Littleton Elementary School District #65 to help mitigate any potential impacts that the Cerro Vista development could have on the school district.

V. PROJECT DESCRIPTION

As noted above, there is a concurrent request to rezone the Property from Agricultural (AG) & Commercial (C-2) to Multi-Family Residential-4 (R-4) to allow the development of a high density urban living residential development with a proposed density of approximately 23.94 dwelling units per acre (249 units). Exhibits are contained in the Cerro Vista rezoning to further demonstrate the quality and configurations described herein.

This increase in density of the target density of 12 du/Ac can be supported by a multitude of factors that contribute to the unique urban living experience that will be provided by this development.

Cerro Vista is designed to be a high quality, luxury urban living development providing a vibrant community that provides on-site amenities and open space for both the modern professional and those interested in a “lock and leave” lifestyle. While adding to the existing housing in the area, Cerro Vista provides a unique housing development that caters to those looking for something different than the typical traditional housing offered in Avondale. The development will be arranged in building masses with a

prominent frontage presence on Van Buren Street and Corporate Drive (future) with enhanced entry features from Van Buren Street.

With Avondale's The BLVD being approximately ½ mile to the east, Cerro Vista will provide a great opportunity to create higher density housing that will provide further residents and synergy needed to bring the future retail and mixed-use to The BLVD area. While Cerro Vista is proposing a shift in the General Plan land use from Urban Residential to High Density Residential, the Applicant's intent is to still maintain the urban feel that is desired in this area and for the Property. By allowing the land use change to accommodate the 22.71 du/ac on the site, but still maintaining urban loft apartment housing, the developer will be allowed to provide greater open space opportunities on the site.

The current General Plan land use designation of Urban Residential allows 30+ du/acre. In a May 2018 City Council Work Session meeting, City staff presented that this area, including the Property, is envisioned to include the High Density Residential land use category near and along Van Buren Street. In further discussions with City staff, it was discussed that it would be appropriate to have high density residential that was in the mid-range of the 12-30 du/acre allowed under the High Density Residential land use designation. This would allow the Property to develop in a manner that would maintain some of the urbanity envisioned for this area and would be compatible with the intent of the General Plan and Freeway Corridor Specific Plan for development in this area. As such, the Applicant has provided development standards in the accompanying Cerro Vista rezoning that will further allow this vision to be realized.

As the Cerro Vista development demonstrates, the development will provide two (2) different types of high-density housing on the site. The residential buildings on the north and south of the Property are three (3) story and two (2) story buildings consisting of one (1) to three (3) bedroom urban loft apartments. These buildings will be arranged as groupings surrounded by landscaping and vegetation. Greater detail will be placed on those fronting onto Van Buren Street to create a massing frontage that interacts with the adjacent roadway. The other high-density housing will consist of two (2) story carriage units with one car garage parking underneath. These are arranged primarily along the western boundary, with some massing in the center, and on the east boundary of the Property. The rezoning proposes a total of 249 residential units with a density of 23.94 dwelling units to the acre. The Cerro Vista development will be developed in one (1) phase.

The massing of the lots will be complemented by usable open spaces including community gathering areas and vegetated refuge areas. The open spaces are designed to cater to community gatherings and the promotion of interaction among neighbors. Most of the buildings on the site are arranged around open spaces where residents may gather, these courtyards will contain spacious and aesthetically pleasing environments

with various high-quality amenities.

A centrally located open space area will connect the Property from north to south centering on a main core of open space areas with amenities including a clubhouse, BBQ ramada and other shade ramadas, a pool/spa, fire pits, a dog park, and other open spaces areas as shown in the Cerro Vista rezoning. These amenity areas will be easily accessible to all residents with each of these areas being connected throughout the development with connective pathways. The clubhouse will be strategically located at the south end of the development and will provide an entry focal point at the end of the main entry drive aisle to create a sense of arrival for residents and visitors.

The overall character and quality that will be provided by this development is greatly justified by this enhanced feature focusing on community, connectivity, neighborhood interaction, walkability, design, and a healthy and livable community.

VI. CONFORMANCE WITH AVONDALE PLANS

The Property is designated as Urban Residential on the City's General Plan Map. The Property is also within the Freeway Corridor Specific Plan (*See EXHIBIT C – Existing Avondale General Plan Map*).

The Applicant is requesting to amend the map to the High Density Residential land use category that is intended to accommodate residential densities that range from 12 to 30 dwelling units per acre. This land use category states that units should include apartments, condominiums, or patio homes and should provide a level of intensity to promote a village environment with easy access to services, business and recreation.

The rezoning is consistent with this vision providing 23.94 dwelling units to the acre with connections to surrounding commercial and employment use. Cerro Vista is also consistent with a number of elements within the City's General Plan 2030 as follows.

The following is the review and analysis required by the City for a General Plan Amendment Application:

Minor General Plan Amendment Review and Analysis

1) Availability of current and future watersupplies

The City is the water service provider for the Property. The proposed water for Cerro Vista will consist of approximately 2,215 LF of 8-inch water line with all associated appurtenances to create an onsite loop as required by reviewing agencies. This will accommodate fire flow and residential demand requirements as demonstrated within the Preliminary Master Water Report. There will be two connections within Van Buren Street into the 16-inch existing water main to create an onsite looped water line for safety purposes. The two connections will follow the City of Avondale's supplement to MAG Specifications and Details, and American Water Works Association Standards. Since there

is an existing water main fronting the property there is no need to construct a new waterline adjacent to the project.

Cerro Vista provides additional water supply information that demonstrates that the surrounding water infrastructure is able to support the Project in average day, max day, peak day, and max day plus fire flow demand scenarios.

2) Impact on and potential support of the City's transportation system

Access to the site will be from Van Buren Street to the south. Since the proposal is to decrease the density from 30+ du/acre down to 23.94 du/Acre, there will be no increase in traffic congestion by changing the Land Use designation from Urban Residential to High Density.

The approval of a high density housing land use designation in this area would also be appropriate given that it is located along a major arterial, its proximity to employment areas and Avondale's The BLVD, and proximity to the future El Mirage Road and I-10 freeway interchange. This intensity of land use would support the vision of the General Plan to have convenient regional transportation access to new employment, services, and activity centers. (Avondale General Plan, page 105)

There is currently a bus route along Van Buren Street with a bus station on the southeast corner of Van Buren Street and Fairway Road.

The Applicant will also comply with the City's current engineering policies and standards and work to provide solutions that will enhance the City's transportation networks.

3) Impact on the natural environment, including, but not limited to, hillsides, riparian areas, and floodways

There are no hillsides, riparian areas, or floodways adjacent to the Property. The increase in dwelling units per acre will not have any effect on the surrounding natural environment. The concurrent rezoning is providing adequate open space on its conceptual site plan for trails connecting through the Property.

Additionally, the Applicant is working with the City of Avondale in providing property to establish a multi-use trail along Van Buren Street. Residential units have been designed to connect onto this multi-use trail to enhance the pedestrian-oriented design of the development. This trail will provide regional connectivity with connections throughout the City of Avondale and along the Agua Fria River. This regional trail promotes pedestrian and bicycle connectivity of the residents to the adjacent employment and recreational uses such as bicycling, jogging and walking that will enhance the quality of Cerro Vista. This trail will be acquired and maintained by City of Avondale.

4) Extent to which the proposal contributes to achieving the (i) job to population ratio, (ii) square foot per capita ratio, and (iii) multi-family housing ratio identified within this GP2030

The proposed General Plan Amendment will not have an overall negative impact on the total City's current job-to-population ratio of 0.20 as it is not taking away any employment related uses. The Cerro Vista project will provide employees for the surrounding employment areas.

The inclusion of any residential land use on this property will be in accordance with the City's goals and policies and will be aimed at furthering additional residential housing opportunities that do not exist in Avondale. It is anticipated that this Amendment will have no negative affects to the residential base compared to what is allowed on the Property today.

5) Impact on City services and facilities including, but not limited to, police, fire, water, and wastewater

The proposed General Plan Amendment will not have a negative impact on the City's services. The proposal reduces the density units per acre on the site and will not contribute to increasing services needed for the proposed Urban Residential land use on the Property. Additionally, the proposed amendment will not burden the City with regards to needing additional extensions of utility infrastructure since there are existing water lines and sewer lines available in Van Buren Street to service the Property. Both of these utility lines have adequate capacity for the proposed development. Adequate connections to serve the project will be built at the developer's cost. These exact locations and the size of the infrastructure for the property will be determined during the Site Plan phase.

6) Extent to which the goals of this GP2030 are accomplished

The proposed Cerro Vista Minor General Plan Amendment complements most, if not all, of the goals and policies of the 2030 General Plan. The following summary provides information from the proposed development that demonstrates that it meets important goals of the Avondale 2030 General Plan:

AVONDALE GENERAL PLAN 2030

Land Use Element, Goal 1: Establish an Avondale identity based on a healthy lifestyle that promotes land uses which foster an economically sustainable and socially dynamic community.

Land Use Element, Goal 3: Promote a strong balance of high quality residential, employment, recreation, and educational land.

These goals can be obtained by providing an alternative residential development to the typical homogenous single-family residential that exists in Avondale. Cerro Vista will provide a high density, quality community that will be compatible the existing surrounding employment, commercial, and residential uses and will also provide an added catalyst to creating urbanity adjacent to the Avondale's The BLVD. The type of residents and lifestyle that the Cerro Vista development will attract will be centered on

professionals, millennials, and those wanting to live an urban “lock and leave” lifestyle. Thus, it will provide a well-balanced land use encouraging social interaction and creating a larger sense of community amongst residents.

Housing Element, Goal 2: Champion the development of housing types not currently available in the City to allow for a variety of socio-economic levels.

Cerro Vista will be an urban living community that is unique within the City of Avondale. The luxury urban loft apartments will be designed in a way that creates a cohesive, connected community. Residents to the Cerro Vista can be in the range from new professionals, small families, and empty nesters and are looking for a vibrant community to live in Avondale. The Property design will create more of a sense of place within the area and will encourage more social and community interaction.

Housing Element, Goal 4: Require excellence and innovation in residential design and construction.

Policy B: Support creatively designed subdivision layouts, particularly layouts in which open space and recreation areas containing amenities are thoughtfully integrated throughout.

Policy C: Utilize the City’s Design Manuals to promote quality development and attractive residential communities, updating these documents when necessary to reflect changing preferences and styles.

Policy D: Encourage subdivision design that promotes non-vehicular access to trails and transit routes/centers as a component of a healthy lifestyle.

Policy E: Endorse the use of Crime Prevention through Environmental design (CPTED) principles when designing residential communities.

Cerro Vista incorporates these policies with Goal 4 by focusing on the City’s Design Manuals to create a layout with high-quality open space and recreation areas centrally located on the Property to provide easy access to all residents. Buildings are oriented to face each other, the internal private streets, and open space areas to “eyes” on the community and making it safer. Some of the residential units have also been designed to be connected to the future development of the public access trail along Van Buren Street. Thus, providing the great opportunity for connectivity to this trail, which will promote pedestrian and bicycle access to all surrounding areas of the City.

Open Space Element, Goal 2: Create linkages to parks, trails, rivers, and mountains.

Recreational Amenities Element, Goal 4: Create shared use linkages throughout the community in order to support a healthy lifestyle.

These goals will be met with the development of the public access trail along Van Buren Street. Cerro Vista will provide the necessary access for shared connections to the City and other transit nodes along Van Buren. This will encourage the linking of City area and

promoting physical activity for the well-being of Avondale residents.

Recreational Amenities Element, Goal 1: Ensure every person has convenient access to safe public parks and affordable recreation opportunities.

Policy A: Continue to ensure that private development provides local, accessible neighborhood parks and tot lots under the management of a Home Owners Association.

Cerro Vista will meet this goal by providing high quality open space areas with a centrally located open space corridor that ensures residents have full access to the amenities that will encourage social and community interaction.

Bicycling Element, Goal 1: Develop a safe bicycle transportation system that provides connectivity throughout the City, including major public and private facilities, and to transit.

Bicycling Element, Goal 3: Increase recreational opportunities for bicyclists throughout Avondale.

Cerro Vista is within close proximity to employment, commercial, and the Avondale's The BLVD area. With the connective trails along Van Buren and the creation of this dense, urban core of housing, there will be a great opportunity for residents to utilize bicycles for access to the services and employment that they need access to. This will greatly add to Avondale's opportunities for bicycle/pathway networks in the surrounding areas.

Urban Design Element, Goal 5: Maximize housing opportunities in locations within a half-mile of transit, with good access to employment areas, neighborhood services, and public facilities in order to promote a healthy community both sustainably and economically.

Policy A. Distribute higher residential densities throughout our City in identified urban growth areas and facilitate the development of residences in mixed-use development within these growth areas.

Policy B. Develop residentially-designated and mixed use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

Policy C. Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street types of development.

Policy D. Facilitate the development of housing close to jobs to provide residents with the opportunity to live and work in the same community.

Policy E. Encourage consolidation of parcels to promote mixed-use and high density development at locations identified in the TOD Element and on the Land Use Map.

Cerro Vista meets this goal and all policies by providing a high density urban community that has strong pedestrian access to surrounding employment and commercial uses, and is readily accessible to the Avondale's The BLVD area within a ½ mile to the east. Additionally, a bus transit stop currently exists across the street from Cerro Vista on the southeast corner of Van Buren Street and Fairway Drive creating additional access to transit opportunities the residents. With the combination of these transit and pedestrian opportunities for the Property, Cerro Vista is well poised to create a dynamic, high density community within this growth area that will create vitality for future mixed-uses, retail, and employment uses that will come into the area.

THE AVONDALE FREEWAY CORRIDOR SPECIFIC PLAN

The Avondale Freeway Corridor Specific Plan covers the majority of land within a ½ mile each way of the freeway located within the Avondale city limits. The major focus of the visibility of the freeway with the City and steering uses that enhance that visibility and encouraging employment, commercial, and mixed uses. The Plan also focus on higher density residential districts that will support these uses.

Objective #3: The Freeway Corridor will be the southwest valley's premier job center.

GP Growth Area Element, Goal #1: "Create destination employment centers in targeted areas of the City that will help to improve balance between jobs and population."

With the creation of a high amount of jobs that this objective envisions, there will be a great need for populations that can fulfill those jobs. Cerro Vista provides a high density development that provides not only additional population near employment areas but will likely attract residents that will need all ranges of employment from the professional to the staff worker.

Objective #4: Ensure new development in the Plan area is pedestrian/bicyclist friendly and contributes to a walkable community.

The location of Cerro Vista creates a development that ensure residents have full access to opportunities to walk or bike to destinations for work, recreation, or access to services within the City. The development of the trail along Van Buren Street in front of the development will contribute to the Van Buren Street Drainage and Recreational Corridor that provides east/west connectivity for the Freeway Corridor. This allows pedestrians to travel from 99th Avenue to the Agua Fria River in a beautiful, spacious, and landscaped environment for full access throughout the City.

VII. GENERAL PLAN FINDINGS ANALYSIS

Per the Avondale General Plan 2030 Findings analysis provided on page 16 of the General Plan, the following information is provided.

As provided throughout the Cerro Vista General Plan Amendment narrative, the proposed development meets or exceeds all of the required findings of the Avondale General Plan as follows:

- *The development pattern contained on the Land Use Plan inadequately provides sufficient sites for the use or change proposed in the amendment.*

The General Plan notes that as of 2010, there was only 1.47% of land uses in Avondale developed for high density residential. It also notes that available acreage is at approximately 63 acres. This does not provide sufficient amount of acreage for the type of housing proposed for Cerro Vista.

Additionally, the current General Plan land use designation of Urban Residential allows 30+ du/acre, which City staff has noted is too dense for this area. In a May 2018 City Council Work Session meeting, City staff presented that this area, including the Property, is envisioned to include the High Density Residential land use category near and along Van Buren Street. In further discussions with City staff, it was discussed that it would be appropriate to have high density residential that was in the mid-range of the 12-30 du/acre allowed under the High Density Residential land use designation. This would allow the Property to develop in a manner that would maintain some of the urbanity envisioned for this area and would be compatible with the intent of the General Plan and Freeway Corridor Specific Plan for development in this area. As such, the Applicant has provided development standards in the accompanying Cerro Vista rezoning that will further allow this vision to be realized.

- *The amendment constitutes an overall improvement to the 2012 Plan and is not solely for the good or benefit of a particular landowner or owners.*

The General Plan notes that as of 2010, there was only 1.47% of land uses in Avondale. As stated above and in the narrative, there is a scarcity of the proposed housing for Cerro Vista in the immediate surrounding area. Market conditions and evolving visions for the Freeway Corridor areas have shown that the Urban Residential is not conducive for current development on the Property. The proposed minor general plan amendment will lower the density to something more marketable and the Cerro Vista standards will still promote a development that maintains an urban feel that is appropriate for the Van Buren corridor and the nearby The BLVD area.

- *The amendment will not adversely impact the community as a whole or a portion of the community by:*
 - o *Significantly altering the acceptable land use patterns;*
 - o *Requiring larger and more expensive public infrastructure improvements including, but not limited to, roads, water and wastewater, and public safety facilities than would otherwise be needed without the proposed*

change;

- o *Adversely impacting the existing land uses; or*

The amendment will have no negative impacts on these findings points. With 10.4 acres of property, it is a perfect dose of the housing density in this area and will be compatible with the surrounding existing development and with future land uses that are envisioned for the area. The public infrastructure exists for this development and it will not be a significant burden on the existing systems that are in place. Lastly, the development is designed with landscaped buffering around the perimeter to provide adequate transitioning to the adjacent properties and to connect to the regional trail aspect that provides greater opportunities for an active lifestyle conducive to the housing development provided.

- *That the amendment is consistent with the overall intent of the 2012 Plan and other adopted plans, codes and ordinances.*

As demonstrated in the “Conformance to Avondale Plans” section, the Cerro Vista general plan amendment is consistent with the overall intent of all Avondale plans, codes, and ordinances. Additionally, the amendment consists of an improvement to the General Plan with the overall enhancements as outlined below:

- o Providing usable open space in a central, accessible corridor that includes enhanced amenities that are not typically provided or required, including a clubhouse, BBQ ramada and other shade ramadas, a pool/spa, fire pits, and other open spaces areas as shown on the provided plans.
- o Greater connectivity with the central amenity areas and all housing units being easily accessible to all residents throughout the development with connective pathways.
- o Focusing all housing units on communal open spaces that are focused on providing an enhanced pedestrian and community experience.
- o Enhanced vegetation at entries ways and strategically placed open space areas to provide a sense of arrival to the development.
- o A unique housing product that focuses more on providing a holistic urban experience.

VIII. CONCLUSION AND SUMMARY

Cerro Vista is in a unique location adjacent to existing employment areas, the active Van Buren Street corridor, and the Avondale’s The BLVD area to the east. This location provides the perfect site for an urban multi-family community that will synergize with the surrounding area. The proposed general plan amendment allows for the creation and design of development standards that complement the surrounding employment,

commercial, and residential uses while providing a luxury, urban housing development not currently found in Avondale.

The concurrent rezoning and this General Plan Amendment is consistent with many of the policies of the City of Avondale's General Plan 2030 and the Freeway Corridor Specific Plan. The proposed plan intends to develop a vacant site that will provide a vibrant urban feel, reflecting the aspirations and character of Avondale's The BLVD as an up and coming metropolitan hub. Cerro Vista will draw residents such as professionals, millennials, and empty nesters, which will attract a variety of residents to the downtown area of Avondale.

The sense of place and strong design strategies will help Cerro Vista seamlessly integrate into the urban core of Avondale, while also setting itself apart in a distinctive way. The Avondale General states that the City should entice these types of developments, which are geared towards the exciting, urban enclave of the Avondale's The BLVD. Additionally, with the City's focus on the importance of high-quality amenities and interactive social spaces within developments, Cerro Vista provides the framework to realize that vision on the Property. We look forward to Cerro Vista being a unique multi-family development that bring a high quality urban experience to its residents.

Exhibit ‘A’



Exhibit A - Regional Aerial Context Exhibit
Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘B’



APN: 500-01-001C & -001L
Acres: 11.05 Acres

Exhibit B - Aerial Context Exhibit
Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘C’

GENERAL PLAN

Legend

- Planning Boundary
- Growth Area
- Land Use
 - Rural Low Density Residential
 - Estate/Low Density Residential
 - Medium Density Residential
 - Medium/High Density Residential
 - High Density Residential
 - Local Commercial
 - Freeway Commercial
 - Historic Avondale District
 - Sports and Entertainment
 - Office/Professional
 - Industrial
 - Business Park
 - Corporate Park
 - Gila River Scenic District
 - Open Space and Parks
 - Public/Civic
 - Education

- Gateway Employment
- Employment Mixed Use
- Residential Mixed Use
- Neighborhood Commercial
- Townhouse Residential

- Urban Residential
- Urban Commercial
- High Intensity Office
- Mixed Use

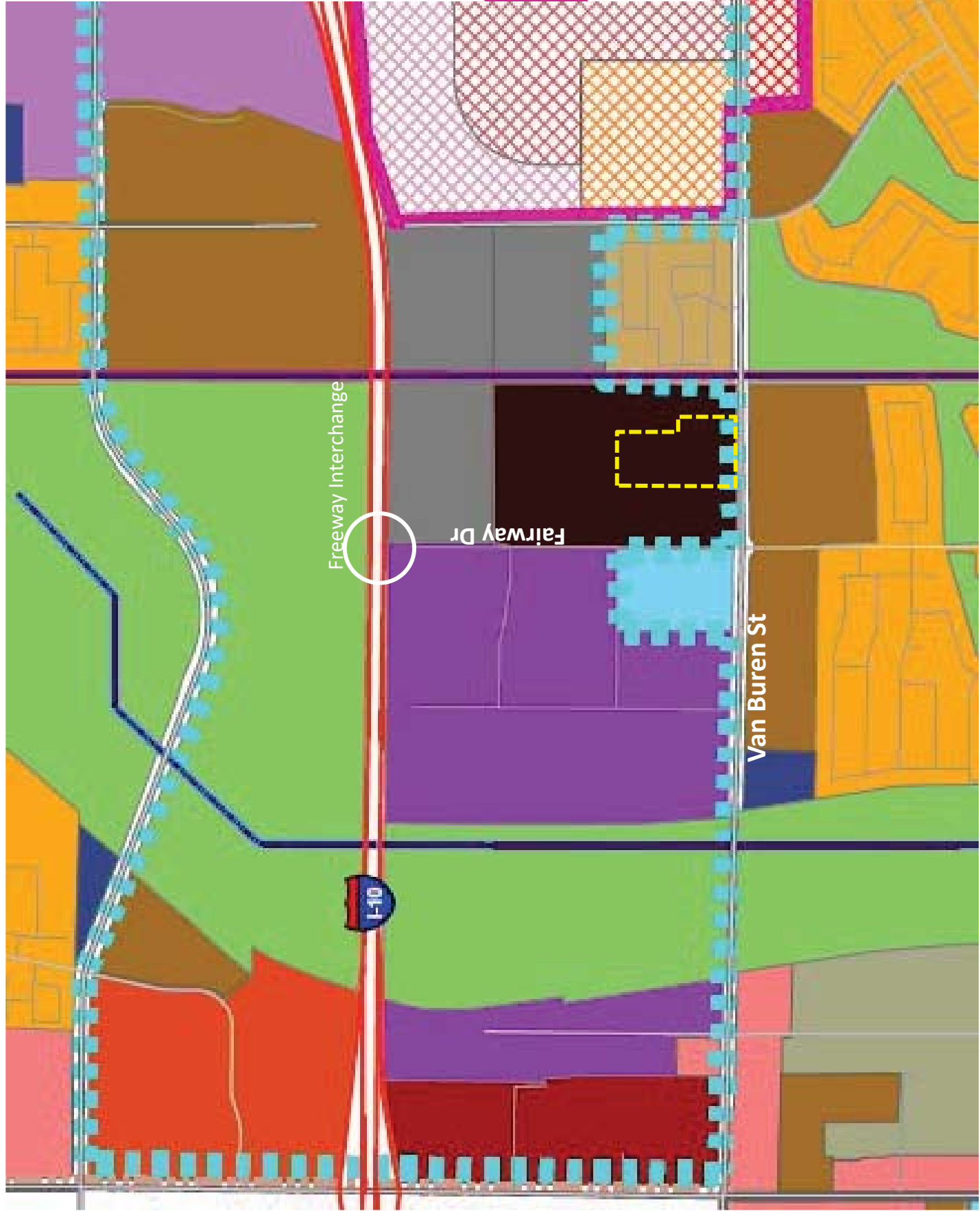


Exhibit C – Existing Avondale General Plan Map
 Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘D’

GENERAL PLAN

Legend

- Planning Boundary
- Growth Area
- Land Use
 - Rural Low Density Residential
 - Estate/Low Density Residential
 - Medium Density Residential
 - Medium/High Density Residential
 - High Density Residential
 - Local Commercial
 - Freeway Commercial
 - Historic Avondale District
 - Sports and Entertainment
 - Office/Professional
 - Industrial
 - Business Park
 - Corporate Park
 - Gila River Scenic District
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 - Public/Civic
 - Education

- Gateway Employment
- Employment Mixed Use
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- Neighborhood Commercial
- Townhouse Residential

TOD

- Urban Residential
- Urban Commercial
- High Intensity Office
- Mixed Use

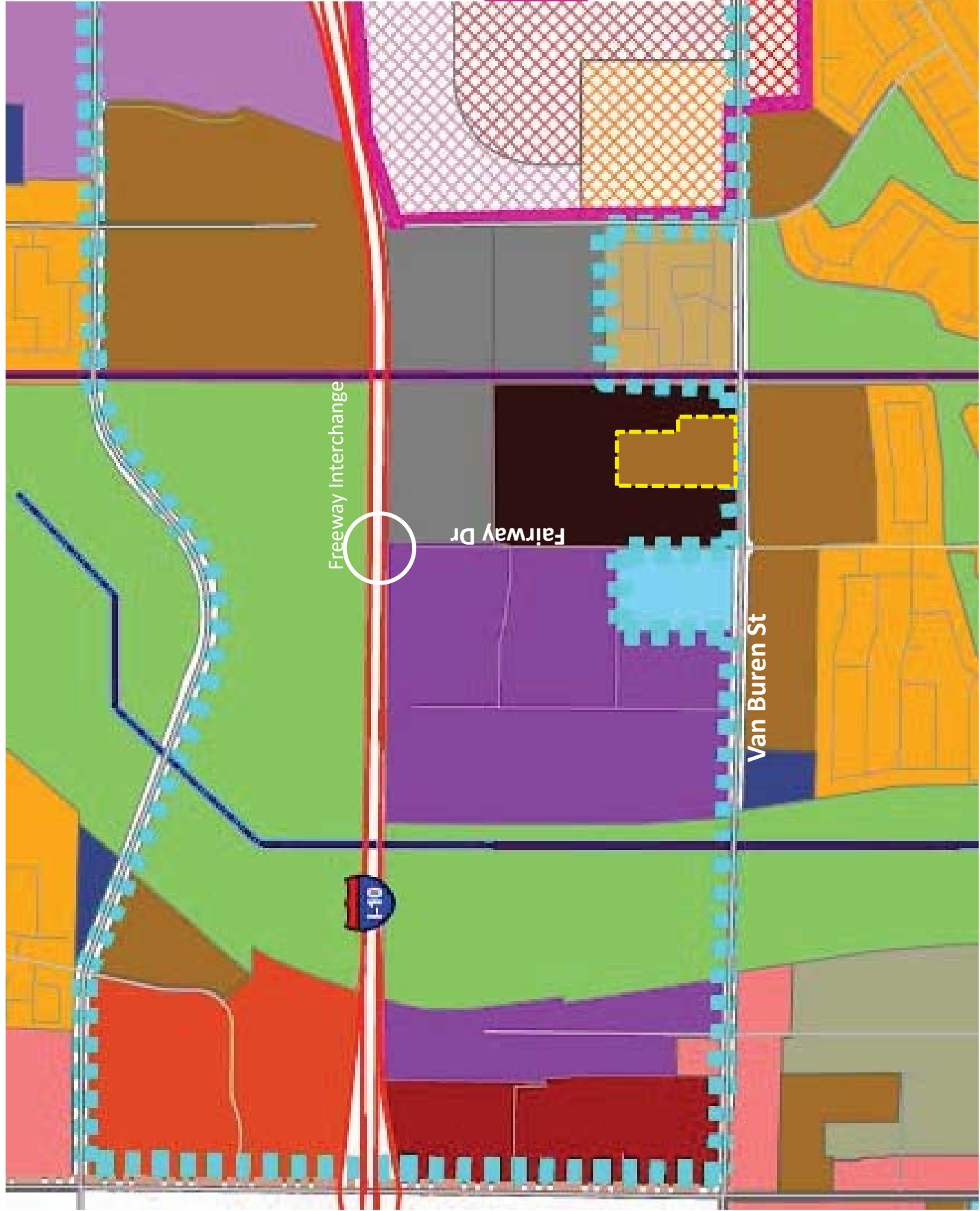


Exhibit D – Proposed Avondale General Plan Map
 Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘E’

Exhibit F

Neighborhood Meeting Summary Cerro Vista

Summary of Neighborhood Meeting

Thursday, April 22, 2021

Cerro Vista Residential Community

Start: 6:00 PM (approx.); End: 7:00 PM (approx.)

Zoom Virtual Conference

Proposal: High-density, luxury residential community

Location: East of the northeast corner of Van Buren Road and Fairway Drive

Case #: Minor General Plan Amendment and Rezoning; PL-18-0079 and PL-18-0080

Results/Summary of Neighborhood Meeting:

A total of seven (7) people attended the neighborhood meeting, which included:

- the applicant (Jeremy Hall – Virtua)
- two (2) representatives of the applicant (Paul Gilbert, Felipe Zubia – Beus Gilbert McGroder)
- four (4) representatives of the City (Vice Mayor Malone-Council; Councilmember Dennis-Council; Commissioner White-Planning Commission; and Brian Craig-Planning Manager).

The meeting began with a brief, but comprehensive presentation by Mr. Gilbert. This presentation was followed by discussion with the participants. Below is a summary of the discussion/questions that were raised.

Questions:

1. How much commercial acreage is being converted to multi-family? Answer: Less than 1 acre, the remaining vacant commercial zoning/acreage has now been built out by the expanded storage to the east.
2. What the current ratio of multifamily is to single-family in Avondale? Answer: The applicant does not have this citywide info, but staff indicated they would research the issue and report back in time for Council meeting. It was also noted that the site is already zoning for multifamily
3. Who is the builder? Answer: the builder will be the Applicant, Virtua and the contractor to build will be Morgan Construction. It was noted by a participant that they were happy to hear that construction will start in the near future.
4. Why are the 3-story buildings located adjacent to Van Buren and 2-stories in back (north property line (Corporate Drive), why not reverse? Answer: It was noted that the property directly across the street from the proposed Cerro Vista is zoned Commercial and Multifamily. The multifamily to the south is developed and the commercial to the south has been acquired by a Charter School. Additionally, staff added that they are supporting the 3-stories along Van Buren to give an urban brownstone feel/look to the Van Buren corridor which is appropriate given the proximity of the BLVD District.
5. Are there garages and covered parking? Answer: yes, garages and covered parking are provided consistent with Avondale requirements.

6. What is the street on the north side that will be constructed? Answer: staff indicated that a minor collector, Corporate Drive, will be constructed by the Fairway 10 project. Cerro Vista will be responsible for their half-street (1 lane and improvements) along their frontage. Full buildout of Corporate Drive will be 3-lane, (one lane in each direction, plus a center lane).
7. Will there be a deceleration lane on Van Buren into the project? Answer: Staff answered yes, one is called out in the traffic report.
8. One participant suggested that city staff should examine ways to sign the multi-use path so that users of the multi-use path are alerted as they approach driveways that cross the path. Another participant agreed with the request.

Exhibit D

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CERTIFICATE OF ADEQUATE SCHOOL FACILITIES

An application for Minor General Plan Amendment/Rezone has been submitted to the City of Avondale, Development & Engineering Services Department, for review.

Project: Cerro Vista Project Manager: Jeremy Hall
Request: Minor GPA & PAD Rezone Acreage/Parcel Size: 11.40 Acres
Current Density Allowed: 30+ DU/AC Density Proposed: 23.26 DU/AC
Total number of residential units proposed: 255

As an authorized representative of the District, please complete the questionnaire below.

Does the District have adequate capacity to accommodate the estimated enrollment from the proposed development?

Yes ☐ No ☒

If answered no, please summarize the needs of the district as they relate to serving the students generated by the proposed development.

The estimated need anticipated is 3.5 classrooms with an estimated impact of \$ 913,869 or \$ 3,500 per unit.

Is a school site within the proposed development needed?

Yes ☐ No ☒

If answered yes, how many acres is needed for the school site?

Is the district currently working with the developer to provide or help meet the needs identified above through a developer assistance or impact agreement? Yes ☒ No ☐

If answered yes, please explain below:

Developer had entered into an impact agreement signed/dated 3-12-2019, which Littleton Elementary School District expects will remain in effect given there are no changes to the project parcel/density.

****If additional writing space is needed, please attach pages to this form****

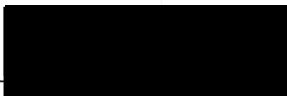
Date Reviewed: 1-26-2021

School District: Littleton Elementary School District #65

District Superintendent: Dr. Roger Freeman

Phone #: 623-478-5611

E-mail: freeman.roger@littetonaz.org

Signature: 

It is the developer's responsibility to ensure that this form is completed by an authorized representative of the District noted above and returned to the Development & Engineering Services Department prior to the scheduling of any City Council meetings

Development & Engineering Services Department

11465 W. Civic Center Drive, #110, Avondale, AZ 85323 • Phone (623) 333-4000 • Fax (623) 333-0400 • TDD (623) 333-0010

www.avondale.org/developmentservices



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Yes ☒ No ☐

If answered no, please summarize the needs of the district as they relate to serving the students generated by the proposed development.

Is a school site within the proposed development needed?

Yes ☐ No ☐

If answered yes, how many acres is needed for the school site?

Is the district currently working with the developer to provide or help meet the needs identified above through a developer assistance or impact agreement? Yes ☐ No ☐

If answered yes, please explain below:

If additional writing space is needed, please attach pages to this form

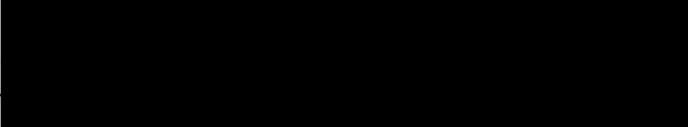
Date Reviewed: January 25, 2021

School District: Tolleson Union High School District #214

District Superintendent: Nora Gutierrez

Phone #: 623-478-4001

E-mail: nora.gutierrez@tuhsd.org

Signature: 

It is the developer's responsibility to ensure that this form is completed by an authorized representative of the District noted above and returned to the Development & Engineering Services Department prior to the scheduling of any City Council meetings

Development & Engineering Services Department

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www.avondale.org/developmentservices

RESOLUTION NO. 1069-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE GENERAL PLAN REGARDING THE LAND-USE DESIGNATION OF APPROXIMATELY 11.51 ACRES GENERALLY LOCATED 500 FEET EAST OF THE NORTHEAST CORNER OF FAIRWAY DRIVE AND VAN BUREN STREET, AS SHOWN IN APPLICATION PL-18-0079 FROM URBAN RESIDENTIAL TO HIGH DENSITY RESIDENTIAL.

WHEREAS, the City of Avondale General Plan (the “General Plan”) was adopted by the Mayor and Council of the City of Avondale (the “City Council”) on April 2, 2012, and ratified by the qualified electors of the City of Avondale on August 28, 2012; and

WHEREAS, the City Council desires to amend the General Plan to change the land-use designation for approximately 11.51 acres generally located 500 feet east of northeast corner of Fairway Drive and Van Buren Street, from Urban Residential to High Density Residential, as shown in Application PL-18-0079 (the “General Plan Amendment”); and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City of Avondale (the “City”) has consulted with, advised and provided the opportunity for public comment on the General Plan Amendment; and

WHEREAS, all due and proper notices of the public hearings on the General Plan Amendment held before the City of Avondale Planning Commission (the “Commission”) and the City Council was given in the time, form and substance provided by ARIZ. REV. STAT. § 9-461.06; and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the Commission held a public hearing on the proposed General Plan Amendment on May 19, 2021, after which the Commission recommended approval; and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-461.06 and the General Plan, the City Council held a public hearing on the proposed General Plan Amendment on August 23, 2021.

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 General Plan is hereby amended to change the land-use designation for approximately 11.51 acres generally located 500 feet east of northeast corner of Fairway Drive

and Van Buren Street, as shown in Application PL-18-0079, as depicted on Exhibit A, attached hereto and incorporated herein by reference, from Urban Residential to High Density Residential.

SECTION 3. 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 Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

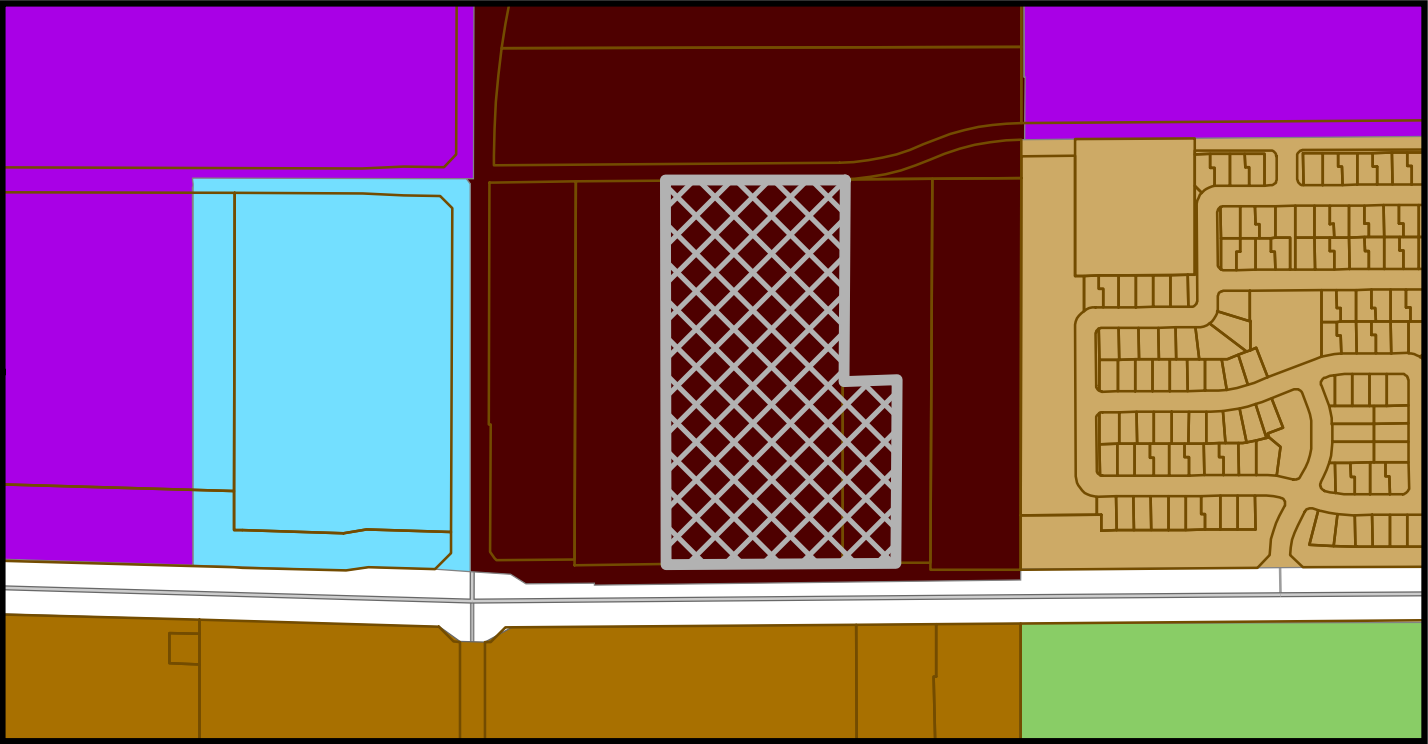
APPROVED AS TO FORM:

Nicholle Harris, City Attorney

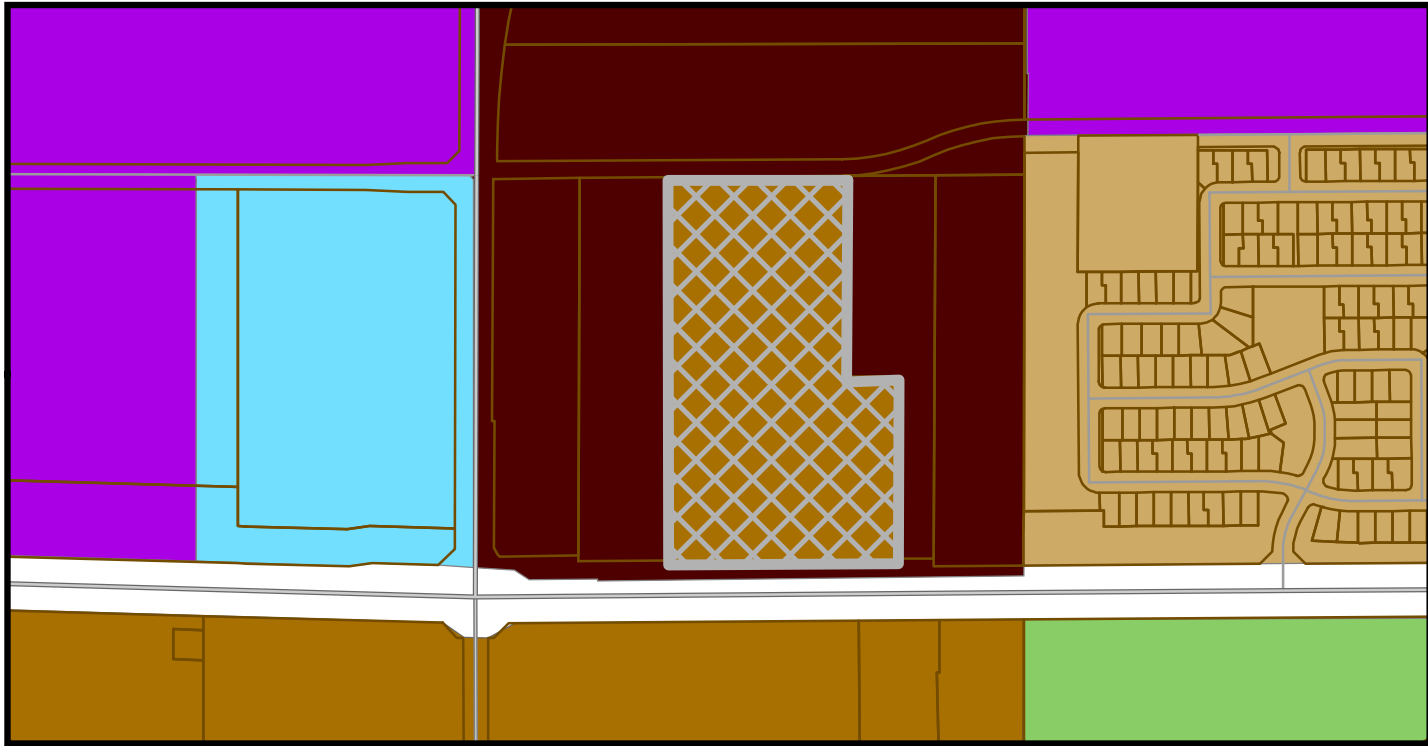
EXHIBIT A
TO
RESOLUTION NO. 1069-0821

[General Plan Amendment Map]

See following pages.



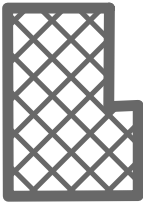
CURRENT LAND USE MAP



PROPOSED LAND USE MAP

General Plan Land Use Map

- | | |
|---|--|
|  Medium/High Density Residential |  Business Park |
|  High Density Residential |  Open Space and Parks |
|  Urban Residential |  Education |



Subject Property

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Ordinance 2041-0821 - Cerro Vista Rezoning from Agricultural (AG) & Community Commercial (C-2) to Multi-Family (R-4) - Application PL-18-0080

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

STRATEGIC OUTCOME AREA: Creative and Sustainable Community Development

- STRATEGY: Increase sustainability initiatives such as renewable clean energy or sustainable design and construction.
-

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Ordinance 2041-0821 approving a request by Virtua Avondale Eleven Owner, LLC, to rezone 11.51 acres of land located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4). City Council will consider a concurrent request to amend the General Plan Land Use Map from Urban Residential (30+ dwelling units per acre) to High Density Residential (12 to 30 dwelling units per acre). The requests will allow for the development of a 249-unit multi-family residential development at a density of approximately 23.94 dwelling units per acre. The Council will take appropriate action.

BACKGROUND:

The 11.51-acre subject site (Exhibits A, B, and C) was annexed into the City in June 1978 as part of a larger annexation. Records indicate the westernmost 10.27 acres of the subject site were initially given an equivalent zoning of Agricultural (AG) while the easternmost 1.24 acres were given an equivalent zoning of Community Commercial (C-2). The zoning on the site has not changed since annexation in 1978. The subject site is vacant and is currently used for farming purposes.

The property is presently designated by the General Plan 2030 Land Use Map as Urban Residential (UR). The UR designation accommodates residential development exceeding 30 units per acre, served by underground or structured parking. In addition to the proposed rezoning, the applicant is concurrently requesting a Minor General Plan Amendment to change the land use designation of the property to High Density Residential

(HDR), allowing the property to be developed at a lower density than currently allowed. The requested HDR designation allows for development of multi-family residential including patio homes, apartments, condominiums, and townhomes with a density of 12 to 30 dwelling units per acre with a target density of 12 units per acre. There is no structured or underground parking requirement in the HDR designation.

Cerro Vista lies within the boundaries of the Freeway Corridor Specific Plan (FCSP). The primary goal of the FCSP is to ensure new development is pedestrian/bicycle-friendly, enhances the City's appearance from the freeway, provides a seamless transition between The BLVD and the Freeway Corridor area, establishes specifications for planned improvements projects, and minimizes visible warehouse uses that compromise the aesthetic character of the area.

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

NORTH: Approximately 25.46 acres of vacant and undeveloped property zoned Agricultural (AG) and in agricultural production. An application for a Minor General Plan Amendment and Rezoning of the property to accommodate light industrial development of the site has been submitted and is in review by the City.

EAST: An approximately 7.9-acre property zoned Community Commercial (C-2) and developed with River Crossing mini-storage/RV storage. Conditional Use Permit and Site Plan and Design Review applications permitting the expansion of the facility with additional indoor storage space on the currently undeveloped portion of the site was approved in 2020. Construction of the expansion has not yet started.

SOUTH OF VAN BUREN STREET: Multiple uses are occurring south of the site across Van Buren Street. From east to west, these include:

- Coldwater Springs Apartments, a 301-unit garden-style multi-family residential community on 16.47 acres zoned Coldwater Springs Planned Area Development (PAD). The Coldwater Springs PAD identifies the property for multi-family residential use.
- An approximate 12-acre parcel which is undeveloped and not presently in agricultural production. The undeveloped parcel is zoned Coldwater Springs Planned Area Development (PAD) which allows for development of the property in accordance with the Community Commercial (C-2) district.

WEST: A 4.59-acre property, zoned Agricultural (AG), developed with a single-family residence. The undeveloped portion of the property is in active agricultural production.

SUMMARY OF REQUEST:

The applicant is requesting (Exhibit E) to rezone the 11.51-acre subject property from Agricultural (AG) and Commercial (C-2) to Multi-Family Residential (R-4). The requested R-4 zoning allows for development of apartments, townhomes, condominiums, and similar with a maximum density of 30 units per acre. Approval of the proposed rezoning to R-4 will facilitate development of the property with Cerro Vista, a proposed luxury, 249-unit, high-density residential community featuring two (2) to three (3) story buildings with a density of 23.94 dwelling units per acre (Exhibit F). The proposed development will provide pedestrian-oriented one (1) to three (3) bedroom apartment units with a range of open spaces and amenities designed to encourage resident use. With a modern design, Cerro Vista will create a unique, urban-styled residential experience not currently available within the City (Exhibit G). The proposed Cerro Vista Rezoning Narrative provides additional detail on development standards, landscaping and design standards, and other requirements that will guide future development of the site.

Approval of the companion General Plan Amendment request (Application PL-18-0079), reducing the minimum density allowed on the subject property below 30 units per acre, is required for the City Council to consider approval of this proposed rezoning.

CERTIFICATE OF ADEQUATE SCHOOL FACILITIES:

The property is located in the service areas of the Littleton Elementary School District (LESD) and the Tolleson Union High School District (TUHSD).

LESD does not assign students to elementary schools based upon geographical location. As such, elementary age students living in Cerro Vista will have an opportunity to choose which school they will attend within the LESD system. Collier Elementary School, located internal to the Coldwater Springs community at 350 S. 118th Avenue, is the nearest LESD school to the project site. High school students will attend La Joya Community High School located at 11650 W. Whyman Avenue.

TUHSD has provided the City with a Certificate of Adequate School Facilities confirming that the district has adequate facilities to support enrollment generated by the proposed development, whereas LESD has indicated there is not adequate capacity, but the district and developer of Cerro Vista executed an impact agreement, dated March 12, 2019, that will provide the district with needed funds to offset the impact of the development (Exhibit I).

There is an existing public charter school west of this proposed development and another public charter school is planned southwest of this project.

PUBLIC PARTICIPATION:

A Neighborhood Meeting to discuss the proposal with neighboring property owners and other interested parties was held at 6:00 P.M. on Thursday, April 22, 2021. Due to the ongoing Covid-19 pandemic, the meeting was held virtually via Zoom. All notices of the meeting, including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic, were completed at least fifteen (15) days prior to the meeting as required. In addition to City Staff and the applicant's team, two (2) Councilmembers and a Planning Commissioner attended the virtual meeting (Exhibit H). Discussion was primarily related to the following topics:

- ***How much of the project is currently zoned for commercial:*** The applicant responded it is about 1-acre of the overall project, the remainder is zoned Agricultural (AG).
- ***What is the current ratio of multi-family to single-family in Avondale:*** The applicant responded that the information is not currently available. Staff responded the information would be researched and prepared for future discussion at Planning Commission and City Council. The City's existing/planned/under construction multi-family residential is approximately 18.8% of total residential uses.
- ***Who will be the builder of this project:*** The applicant responded that they are both the developer and builder of the project and will likely contract with Morgan Construction to construct the project.
- ***What is the reasoning behind the buildings stepping down from 3-stories to 2-stories from Van Buren Street to the north:*** The applicant indicated the goal is an urban-feel fronting Van Buren Street to give brownstone look and feel at the street. It was also noted that commercial property is located across Van Buren Street to the south.
- ***Will there be garages and covered parking:*** The applicant responded garage and covered parking is being provided and will be in compliance with the Avondale requirements.
- ***When is Corporate Drive on the north side of this project being developed:*** Staff responded that Corporate Drive is a Minor Collector and will be partially constructed by the Fairway 10 project to the north (formerly called Avondale 50); Fairway 10 will be responsible for construct two (2) of the three (3) lanes planned. Cerro Vista will be responsible for half-street improvements adjacent to their site, which includes one (1) lane of paving and associated landscaping and other improvements from the project's eastern boundary to the site's western edge.
- ***Will there be a deceleration lane on Van Buren into the project:*** Staff responded that a deceleration turn lane is included in the traffic report and will be required.
- ***How can the City improve safety of trail users on the multi-use trail that fronts this project on Van Buren Street:*** Staff responded that signage for trail users and for vehicles entering and exiting the

project site may be appropriate and can be evaluated.

Three (3) comments related to the proposal have been posted on the City's aVOICE digital forum. One comment was in favor of the project, the other two (2) comments were expressions of concern for the impact on the school capacity, traffic impacts, and availability of affordable housing in the area. The comments are listed below:

- "Build it"
- "I sure hope that the developer is paying enough impact taxes to build all the schools that will be needed for all these housing units!!! Everywhere I look in Avondale we are putting up multi-family units and huge apartment complexes that will have a detrimental effect on our school costs and traffic. Just make sure they are paying enough to cover the costs of the extra schools or classrooms that will be needed to support this growth!!"
- "There should be some units for lower income families. Units should be less than a \$1000 per month. Several families in Goodyear are trying to survive on minimum wage salaries and cannot afford a home in Goodyear. We also need to build units for homeless vets."

All required notifications for the Planning Commission and City Council public hearings were completed at least fifteen (15) days prior to the meetings as required including mailings to owners within 1,000 feet of the site, public hearing notice signs on the property, and display ads in the Southwest Valley Arizona Republic. No additional public comments beyond what is noted above have been received to date.

PLANNING COMMISSION ACTION:

On May 19, 2021, Planning Commission conducted a public hearing and voted 5-0 to recommend approval of the proposed rezoning. There were no questions or comments from the Commission or public.

ANALYSIS:

The proposed rezoning to Multi-Family Residential (R-4) will allow for development of a multi-family development project by-right. The subject property has remained vacant since being annexed into the City in 1978. Development of an urban form multi-family apartment project is appropriate in this location and provides a transition from nearby single-family residential to employment uses along I-10 and the commercial and entertainment uses planned in The BLVD. Future development of the subject property under the design and development standards of the R-4 zoning district, Multi-Family Residential Design Manual and Freeway Corridor Specific Plan (FCSP) will enhance the vitality and aesthetic quality of the Van Buren Street corridor while bringing vital new households needed to support future commercial, office, and institutional uses to the periphery of The BLVD area.

This site is served by regional transit, adjacent to bicycle and pedestrian trail amenities, and is near employment centers. In regard to impact on City streets, additional traffic generated by multi-family development of the site will be safely accommodated by Van Buren Street to the south and Corporate Drive to the north, with both streets (after Corporate Drive is completed) connecting residents to I-10 via Fairway Drive to the west and Avondale Boulevard to the east. Any necessary upgrades to City infrastructure (e.g. water, sewer) to serve future redevelopment of the subject property will be completed by the developer of Cerro Vista at the developer's cost. The City will not incur any infrastructure cost associated with future redevelopment of the subject property.

DISCUSSION:

1. The proposed rezoning to Multi-Family Residential (R-4) is in conformance with the concurrent Minor General Plan Amendment changing the designation of the property to High Density Residential.
2. The proposed rezoning is in conformance with the Freeway Corridor Specific Plan.

3. The proposed rezoning is compatible and complementary to adjacent land uses.
4. The recommended conditions of approval are reasonable to ensure conformance with the provisions of the Zoning Ordinance and all other applicable City codes, ordinances, and policies.

BUDGET IMPACT:

No budget impacts.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** Ordinance 2029-0621 approving Application PL-18-0080 Cerro Vista, a request to rezone approximately 11.51 acres of land located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4), subject to the following six (6) conditions of approval:

1. Approval and recordation of a Final Plat, consolidating the parcels, dedicating 30 feet of right-of-way for Corporate Drive along the property's north property line, and dedicating an 8-foot-wide public utility easement (PUE) parallel to the Corporate Drive right-of-way, shall be required prior to issuance of any permits for the project. Abandonment of the existing 20-foot fire access easement in Corporate Drive must occur before the Final Plat can be recorded.
2. The developer shall construct the north half of Van Buren Street, the south half of Corporate Drive, and any other off-site improvements required adjacent to the project frontage (including fiber conduit installation in accordance with the City's Transportation Plan and development codes) in the first phase of development.
3. Development shall be completed in accordance with the City of Avondale General Engineering Requirements Manual and City of Avondale Supplement to the MAG Uniform Standard Specifications and Details.
4. Development shall adhere to all applicable provisions of the Avondale Zoning Ordinance and the City of Avondale Multi-Family Residential Design Manual.
5. Extinguishment of Groundwater Rights and pledging of those rights to the City's assured water supply account will be required prior to issuance of any permits for this project.
6. If the developer constructs the project, it will generally conform to the site plan elevations and narrative submitted in connection with the application and will further abide by all of the other stipulations proposed by the Planning Staff and City Council ("Zoning Documents"). In the event the developer sells or otherwise conveys the property or project to a third party, it will require the purchaser, and all subsequent purchasers, to also abide by the terms and conditions of this stipulation and construct to the same standard. Minor changes to building footprint, window/balcony placement, and an additional third story on the two rear buildings may be reviewed and approved by the City administratively, provided the additional third story does not exceed the approved permitted height. This provision will be placed in the purchase contract, and any subsequent purchase contracts, and both the seller and the buyer will be specifically required to acknowledge this obligation. Any purchase contract, or other conveyance document involving the property or project will also contain a provision that designates the City as a third-party beneficiary of the purchase contract or conveyance document. However, nothing herein shall prevent the developer or any subsequent purchaser from petitioning the City Council to modify or change the site plan, narrative, elevations, or other stipulations. The City Council will be under no obligation to make any changes proposed to the Zoning Documents.

PROPOSED MOTION:

I move that City Council **ADOPT** Ordinance 2029-0621 approving Application PL-18-0080 Cerro Vista, a request to rezone approximately 11.51 acres of land located approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street from Agricultural (AG) and Community Commercial (C-2) to Multi-Family Residential (R-4), subject to the six (6) recommended conditions of approval as listed in the staff report.

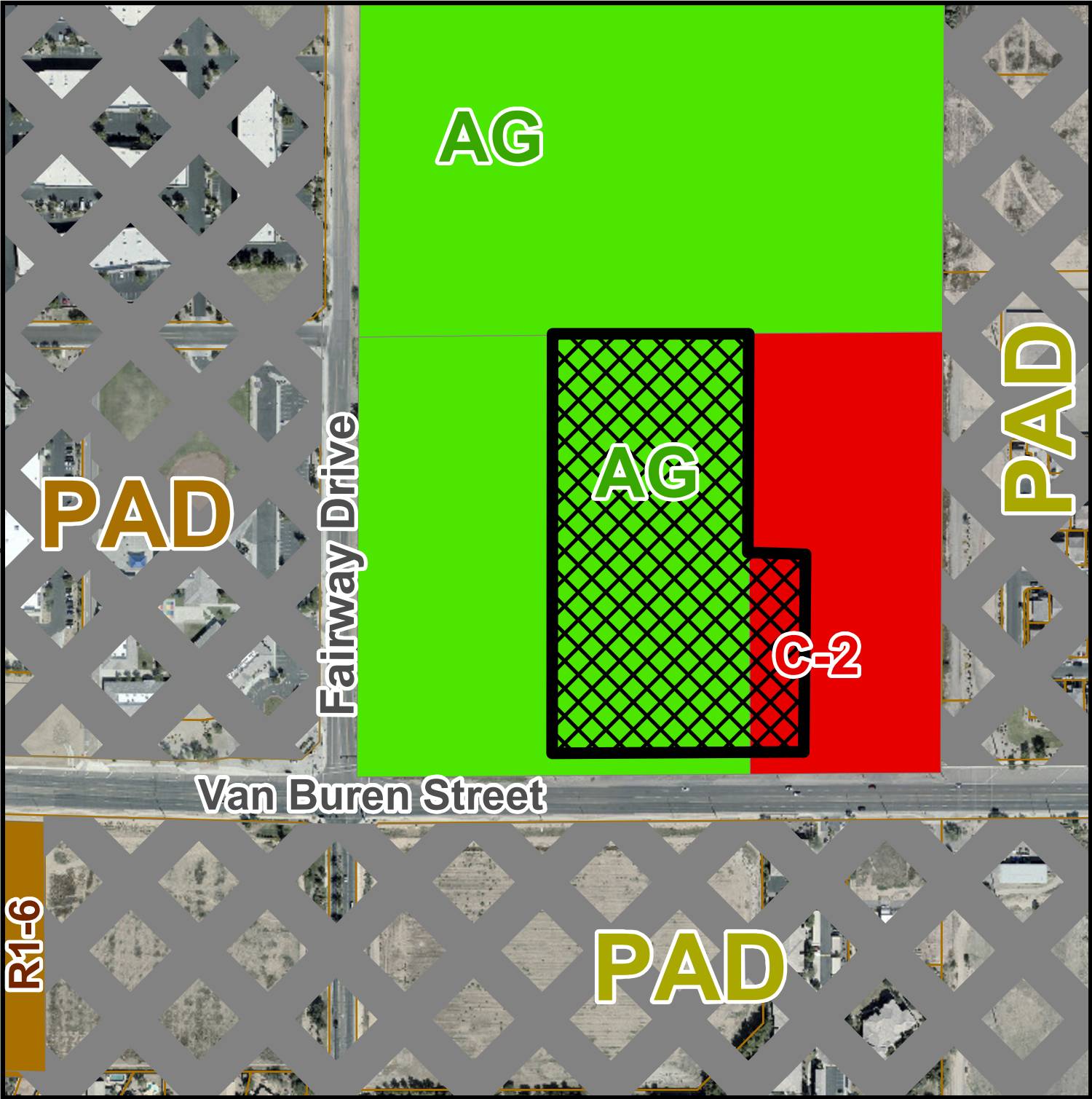


Aerial Photograph

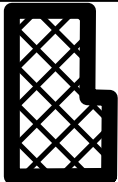


Project Location



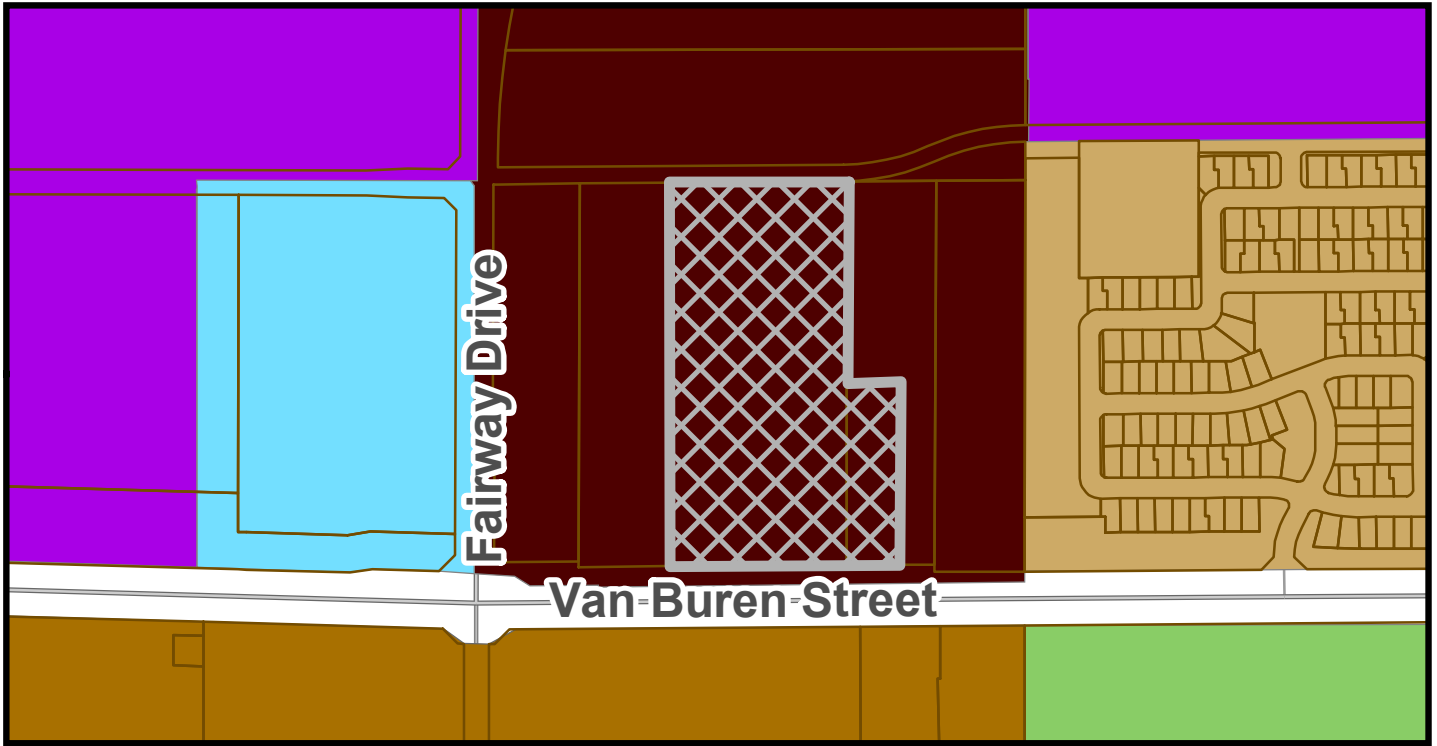


Zoning Vicinity Map

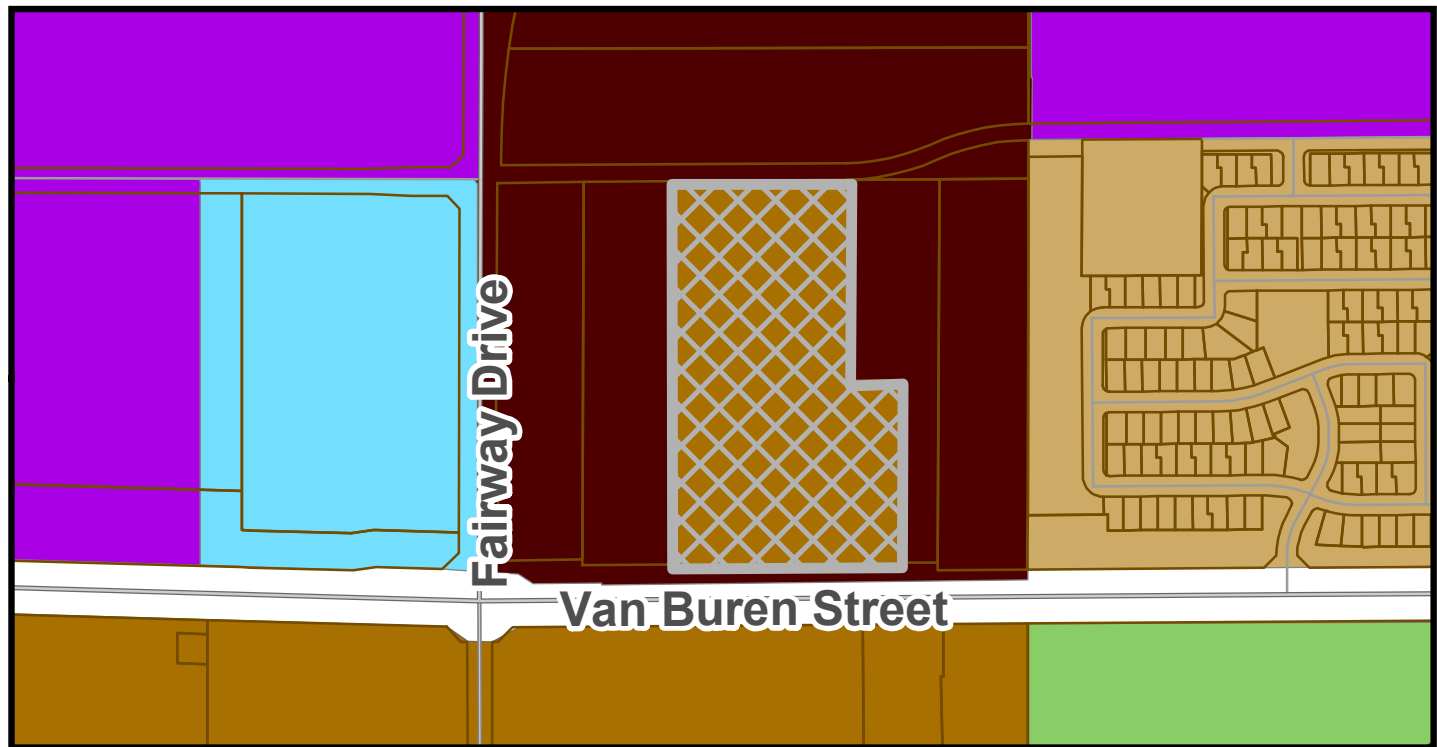


Project Location





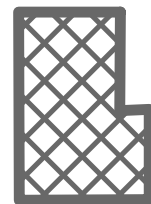
CURRENT LAND USE MAP



PROPOSED LAND USE MAP

General Plan Land Use Map

- | | |
|---|--|
|  Medium/High Density Residential |  Business Park |
|  High Density Residential |  Open Space and Parks |
|  Urban Residential |  Education |



Subject Property

*SUMMARY OF RELATED FACTS
APPLICATIONS PL-18-0079 & PL-18-0080*

<i>THE PROPERTY</i>	
PROPERTY SIZE	Approximately 11.51 gross acres
LOCATION	Approximately 500 feet east of the northeast corner of Fairway Drive and Van Buren Street
PHYSICAL CHARACTERISTICS	The subject property is vacant, undeveloped and in agricultural production.
GENERAL PLAN LAND USE DESIGNATION	The property is presently designated by the General Plan 2030 Land Use Map as Urban Residential (UR). The UR designation accommodates residential development exceeding 30 units per acre, served by underground or structured parking. The applicant is requesting a Minor General Plan Amendment to change the Land Use designation of the property to High Density Residential (HDR), allowing the property to be developed at a lower density than currently supported. The requested HDR designation allows for development of multi-family residential including patio homes, apartments, condominiums, and townhomes with a density of 12 to 30 dwelling units per acre with a target density of 12 units per acre. There is no structured or underground parking requirement in the HDR designation.
EXISTING ZONING	The majority of the site, approximately 10.27 acres, is zoned Agricultural (AG). The easternmost 1.24 acres of the site is zoned Community Commercial (C-2).
ZONING HISTORY	The 11.51-acre subject site was annexed into the City by Ordinance No. 238 on June 28, 1978 as part of a larger annexation. Records indicate the westernmost 10.27 acres of the subject site were initially given an equivalent zoning of Agricultural (AG) while the easternmost 1.2 acres were given an equivalent zoning of Community Commercial (C-2). The zoning on the site has not changed since annexation in 1978.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	Approximately 25.46 acres of vacant and undeveloped property zoned Agricultural (AG) and in agricultural production. An application for a Minor General Plan Amendment and Rezoning of the property to accommodate light industrial development of the site has been submitted and is in review by the City.
EAST	An approximately 7.9-acre property zoned Community Commercial (C-2) and developed with River Crossing mini-storage/RV storage facility. Conditional Use Permit and Site Plan and Design Review applications permitting the expansion of the facility with additional indoor storage space on the currently undeveloped portion of the site was approved in 2020. Construction of the expansion has not yet started.
SOUTH OF VAN BUREN STREET	Multiple uses are occurring south of the site across Van Buren Street. From east to west, these include:

	• Coldwater Springs Apartments, a 301-unit garden-style multi-family residential community on 16.47 acres zoned Coldwater Springs Planned Area Development (PAD). The Coldwater Springs PAD identifies the property for multi-family residential use. • An approximate 12-acre parcel which is undeveloped and not presently in agricultural production. The undeveloped parcel is zoned Coldwater Springs Planned Area Development (PAD) which allows for development of the property in accordance with the Community Commercial (C-2) district.
WEST	A 4.59-acre property, zoned Agricultural (AG), developed with a single-family residence. The undeveloped portion of the property is in active agricultural production.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District (LESD) Tolleson Union High School District (TUHSD)
ELEMENTARY SCHOOL	Student's choice (No defined school). The closest LESD school to the subject property is Collier Elementary, located at the southwest corner of Coldwater Springs Boulevard and 118 th Avenue.
HIGH SCHOOL	La Joya Community High School, located at the southwest corner of Durango Street and Avondale Boulevard.

<i>STREETS</i>	
Van Buren Street	
Classification	Custom Minor Arterial
Existing half street right-of-way	85 feet
Standard half street right-of-way	Varies (50 feet to 85 feet)
Existing half street improvements	Two (2) travel lanes, half center turn lane, and the landscaped/lighted Van Buren Multi-Use Trail (in right-of-way).
Standard half street improvements	Two (2) travel lanes, half center turn lane, bike lane, curb, gutter, detached sidewalk, streetlights, landscaping, and accommodation of the Van Buren Multi-Use Trail (in easement or right-of-way).
Corporate Drive	
Classification	Minor Collector
Existing half-street right-of-way	None
Standard half-street right-of-way	40 feet
Existing half-street improvements	None
Standard half-street improvements	One through lane, half center turn lane, bike lane, detached sidewalk, curb, gutter, landscaping, and street lights.

<i>UTILITIES</i>
Future development of the site will access the City's water system via a connection to an existing 16-inch water line in Van Buren Street and a secondary connection to an 12-inch water being installed in Corporate Drive by the developer of Fairway 10 (formerly Avondale 50). Sewer service to the site will be accommodated by an existing 30-inch main line in Van Buren Street. Salt River Project (SRP) provides electrical service to this portion of the City.

Exhibit E

Cerro Vista Rezone Narrative

CERRO VISTA

An Urban Living Experience



Multi-Family Residential-4 (R-4) Rezoning Application Narrative Application Case #: PL-18-0080

City of Avondale

March 2019

August 2020

February 2021

March 2021

April 2021

Electronically submitted April 29, 2021

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Exhibit B –	Aerial Context Map
Exhibit C –	Existing Avondale General Plan Map
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Exhibit E –	Proposed Avondale General Plan Map
Exhibit F –	Proposed Avondale Zoning Map
Exhibit G –	Preliminary Site Plan
Exhibit H –	Preliminary Landscape/Vegetation Plan
Exhibit I –	Preliminary Building Elevations
Exhibit J –	Conceptual Perspective Illustrations (1, 2, and 3)
Exhibit K –	Certificate of Adequate Schools Facilities

I. PROJECT PROFILE

Project Name	Cerro Vista
Property Owner	Virtua Avondale Eleven Owner, LLC
Assessor Parcel Numbers	500-01-001W 500-01-001X
Project Location	Generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street
Project Area	Rezoning Area (inclusive of ROW) 11.51 acres Developable Area 10.4 acres (Net)
Current Zoning	Agricultural (AG) & Commercial (C-2)
Proposed Zoning	Multi-Family Residential-4 (R-4)
General Plan Land Use	Proposed High Density Residential 12-30 du/ac Application Case #: PL-18-0079

Development Team



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II. EXECUTIVE SUMMARY

This proposed rezoning request is to rezone approximately 11.51 gross acres to the center line, inclusive of the public right-of-way. The net area of the developable site is approximately 10.4 acres generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street and identified by Maricopa County Assessors as parcel numbers 500-01-001W and 500-01-001X (the "Property"). (See *EXHIBIT A–Regional Aerial Context Map*) The request is to rezone from Agricultural (AG) & Commercial (C-2) **to** Multi-Family Residential-4 ("R-4") to allow the development of a unique high density urban living residential development with a proposed density of approximately 23.94 dwelling units per acre (249 total units).

A Minor General Plan Amendment is also being requested concurrently with this Application to amend the General Plan Map from Urban Residential (30+ du/ac) to High Density Residential (12-30 du/ac, Target Density 12 du/ac). (Application Case #: PL-18-0079)

The proposed Cerro Vista development will allow for a luxury, high density residential community that will bring an urban living experience along the Van Buren corridor of Avondale. It is designed to be complementary to other high density developments along Van Buren and the employment areas adjacent to the north and east along the I-10 freeway. The addition of the major interchange at El Mirage Road and the Interstate 10 Freeway in the near future will also bring regional access within close proximity to the Property. It is anticipated that this development will be a catalyst for other urban, high energy uses that are planned within the area.

The development will provide one (1) to three (3) bedroom units that will be oriented towards an enhanced pedestrian amenity with open space experiences located throughout the development. In addition, complementary "walk-up carriage units" will be part of the development to provide a varied urban housing experience to the urban loft apartments. With its modern design, Cerro Vista will provide loft apartments that create a unique urban experience not currently available within the City of Avondale, but sought-after by millennials, professionals, and empty nesters.

With its proximity to The BLVD, previously known as City Center will be a mixed use project to include Class A Office, Multifamily Residential, Public Space, Signature Retail, Dining and Entertainment. Cerro Vista will also complement this future vibrant area by providing supportive housing that will draw residents to the area. This is supported by the Avondale General Plan, which states that housing should *"Entice the development of condominiums, townhomes, and high-rise loft apartments by marketing The BLVD as an exciting urban enclave geared towards professionals."* (See Avondale General Plan, Implementation Strategies-Housing Element, pg. 150)

It is worth noting that at a City Council Work Session (November 2018), the Council discussed the market shifts related to providing an urban living experience for the changing demographics in the City and region. Traditionally, Avondale is exporting 90% of its employment to surrounding municipalities. This development is in a prime location with adjacent employment uses and nearby The BLVD development area, which will attract those who want to live, work, and play in the City of Avondale. Cerro Vista is poised to become a destination that Avondale citizens can call home.

The proposed site plan, land use and development standards, and architectural standards create the framework for a marketable parcel to future developers. The unique location of the Property provides the opportunity to develop a site located along the Van Buren corridor that is compatible with existing development, supports housing opportunities for The BLVD area, and synergizes with the adjacent employment areas.

III. PROPERTY DESCRIPTION

Site Description

The Cerro Vista property is approximately 10.4 acres generally located 500' east of N. Fairway Drive on the north side of W. Van Buren Street and identified by Maricopa County Assessors as parcel numbers 500-01-001W and 500-01-001X (See *EXHIBIT A–Regional Aerial Context Map*) The Property is currently vacant. The topography of the site is relatively flat.

As illustrated in *EXHIBIT B – Aerial Context Map*, the Property is comprised of two (2) parcels adjacent to the Van Buren Street corridor. A City regional trail also runs along the south end of the Property along Van Buren Street providing opportunities for the development to connect to this public amenity. The Applicant is working with the City to provide the adequate trail easement area for future development, as required.

The Property's current General Plan's land use designation is Urban Residential (30+ du/ac) (See *EXHIBIT C – Existing Avondale General Plan Map*) and is currently zoned primarily with Agricultural (AG) zoning and approximately 1.4 acres of Commercial (C-2) zoning. The Property has historically been used for agricultural purposes. (See *EXHIBIT D – Existing Avondale Zoning Map*)

The request proposes a maximum of 249 units with a density of approximately 23.94 dwelling units per acre. This is consistent with the Avondale General Plan proposed designation of High Density Residential (12-30 du/ac) and is above the target density of 12 du/ac (See *EXHIBIT E – Proposed Avondale General Plan Map* and *EXHIBIT F – Proposed Avondale Zoning Map*).

Property Owner

The Property is currently owned by Virtua Avondale Eleven Owner, LLC and they are wanting to plan and prepare the Property for the proposed future development. The Virtua group offers, manages, and develops the highest quality real estate investments

across the country. This includes properties in Arizona, California, Nevada, Texas, Georgia, Connecticut, and Pennsylvania. Additionally, the Virtua group members are very active in land development in the greater Phoenix area and its management has decades of development experience in Phoenix, particularly in the West Valley. The development team is focused on adding meaningful value to the Property and, more importantly, bringing a high-quality, new, and a variety of housing types to the City of Avondale.

Relationship to Surrounding Properties

The Property is surrounded by a mixture of developed and vacant land uses.

- NORTH:** Directly to the north of the Property there is a vacant agricultural property with AG zoning and General Plan land use designations of Urban Residential. Additionally, to the northeast there is approximately 145 acres of active employment uses between the I-10 freeway and Van Buren Street. There is also a major interchange planned for El Mirage Road and the Interstate 10 Freeway, which will provide additional regional access to the Property.
- SOUTH:** To the south of the Property across Van Buren Street is a mixture of vacant property that is zoned for C-2 uses, the Coldwater Springs Apartments, and the Coldwater Springs single-family development.
- EAST:** Directly to the east of the Property are properties owned by River Crossing Storage. The property is being used for RV and boat storage uses. There is also an approximately 3-acre vacant parcel. These properties have Commercial Office (C-O) zoning and a General Plan land use designation of Urban Residential.
- WEST:** Directly to the west of the Property are properties being used for a mixture of agricultural and residential uses. These properties have AG zoning and a General Plan land use designation of Urban Residential.

Existing Services

Water

The domestic, fire and irrigation water needs for development are anticipated to be provided via connections to the existing 16-inch water main in Van Buren Street and the provision of a created on-site water loop. The on-site water loop will be sized to provide for the connection to domestic, fire, and irrigation water. It is anticipated that the water system will be located within proposed access and roadway easements and easements provided for utility purposes. Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to water services will be completed as approved during the Site Plan phase.

Sanitary Sewer

The sanitary sewer needs for development are anticipated to be provided via connections to an existing sanitary sewer main. There is a 30-inch sanitary sewer main in Van Buren Street. Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to sewer services will be completed as approved during the Site Plan phase.

Transportation Access

Van Buren Street serves as the southern boundary of the rezoning request. This roadway is currently a four-lane arterial roadway with a two-way center turn lane with future build out to be six lanes. Half street improvements will be made by the developer on Van Buren Street as required.

Flood Zone Determination

The Property is classified as Zone X.

IV. PROJECT DESCRIPTION

Cerro Vista is designed to be a high quality, luxury urban living development providing a vibrant community that provides on-site amenities and open space for both the modern professional and those interested in a “lock and leave” lifestyle. While adding to the existing housing in the area, Cerro Vista provides a unique housing development that caters to those looking for something different than the typical traditional housing offered in Avondale. The development will be arranged in building masses with a prominent frontage presence on Van Buren Street and Corporate Drive (future) with enhanced entry features from Van Buren Street. (See *EXHIBIT G–Preliminary Site Plan*)

The current General Plan land use designation of Urban Residential allows for the development of 30+ du/acre. In a May 2018 City Council Work Session meeting, City staff presented that the Property and the surrounding area was envisioned by the City to include the High Density Residential land use category near Van Buren Street. In further discussions with City staff, it was determined that high density residential on the Property and the surrounding area would be appropriate. However, it was discussed that the emphasis of the high density residential should be on creating a unique urban experience and providing a place that attracted residents who could live, work, and plan in Avondale.

This high density residential use is compatible with the proposed land uses to the north and east, which include The BLVD located approximately ½ mile to the north and east of the Property. Cerro Vista will provide higher density housing that will bring the residents and synergy needed to attract and support future retail and mixed-use areas of The BLVD. Additionally, adjacent employment areas to the north and northwest provide opportunities for Cerro Vista residents to work in Avondale without having to seek employment out of the City.

While Cerro Vista is proposing to amend the General Plan land use from Urban Residential to High Density Residential, the Applicant's intent is to maintain the urban feel that is desired in this area.

By allowing the land use change to accommodate a lower density than 30+ du/ac on the Property, along with promoting a unique urban development, the developer will be able to create a high density development that is not found in Avondale. This will allow the Property to develop in a manner that maintains the urbanity envisioned for this area and that will be compatible with the intent of the General Plan and Freeway Corridor Specific Plan for this area.

Preliminary Site Plan Description

EXHIBIT G, the Preliminary Site Plan, shows two (2) different types of high-density housing types on the site. They are A) the urban loft apartments consisting of one (1) to three (3) bedroom urban lofts located within the larger buildings on the north and south ends of the Property and B) the two (2) story carriage unit buildings with garage parking underneath those buildings centrally located on the Property.

The urban loft apartments are designed and arranged so that the exposure of the outside of the buildings enhances and promotes a walkable atmosphere. Greater architectural variety will be placed on the outer portions of the buildings. These building masses will surround and frame the inner court areas of parking. This design is meant to shield most of the court parking areas away from the recreation and walkable areas of the Property, thus creating an enhanced pedestrian environment.

The urban loft apartments on the south end of the developments are three (3) story in height. Greater detail will be placed on those fronting onto Van Buren Street to create a massing frontage that interacts with the adjacent roadway. The *"Illustration 1"* found in *EXHIBIT J – Conceptual Perspective Illustrations* shows the frontage of these buildings to Van Buren Street with connective walkways and doorways to the trail easement that will exist here. The massing and architectural features shown in *EXHIBIT I – Preliminary Building Elevations* and *EXHIBIT J – Conceptual Perspective Illustrations* for the Van Buren Street buildings demonstrate the interactive and visual impact it will have. This will create an emphasis on walkability and connectivity to other parts of Avondale.

The urban loft apartments on the north end of the development will be two (2) story in height. These residential buildings will focus on creating massing and architectural diversity that interacts with the east, west, and south property boundaries, creating interactivity and enhanced aesthetics that are demonstrated in the *EXHIBIT I – Preliminary Building Elevations*. These buildings will be arranged in a way that the parking areas are found in the inner court created by the building arrangement, as shown on the Preliminary Site Plan. Besides the parking stalls found on the Preliminary Site Plan, approximately 50% of the first story length distance of the loft apartment buildings facing a parking area shall contain enclosed parking areas. This requirement will promote a more pedestrian, urban

feel to the Cerro Vista development by providing areas where cars will not be easily seen in the development.

The other high-density housing of the Cerro Vista development will consist of two (2) story carriage unit buildings with garage parking underneath those buildings. These carriage units will be arranged primarily in the center of the development around the central park amenity area and to the west and east of the central park area. The carriage units will be accessed by central staircases that access the upstairs units. The elevations of the carriage units can be found as *"Building Type 4"* in the *EXHIBIT I – Preliminary Building Elevations*. A demonstration of the carriage units can also be seen in *"Illustration 3"* found in *EXHIBIT J – Conceptual Perspective Illustrations* showing the carriage units surrounding the central park amenity area.

The Cerro Vista development proposes a maximum of 249 residential units with a density of 23.94 dwelling units per acre. The Cerro Vista development will be developed in one (1) phase.

The building massing of the lots will be complemented by a centrally located usable open space including community gathering areas and vegetated refuge areas. The central park area is designed to cater to community gatherings and the promotion of interaction among neighbors. The residential buildings frame open space area where residents will gather and will contain a spacious and aesthetically pleasing environment with various high-quality amenities.

A centrally located open space area will connect the Property from north to south centering on a main core of open space with amenities including a clubhouse, BBQ ramada and other shade ramadas, a pool/spa, fire pits, and other open spaces areas as shown on the provided plans. A dog park area will be located on the east portion of the development, as shown on the Preliminary Site Plan. These amenity areas will be easily accessible to all residents with each of these areas being connected throughout the development with connective pathways. The clubhouse will be strategically centrally located and will provide an entry focal point at the end of the main entry drive aisle to create a sense of arrival for residents and visitors. A demonstration of the central park area can be seen in *EXHIBIT H – Preliminary Landscape/Vegetation Plan* and in *"Illustration 3"* found in *EXHIBIT J*.

Two main access points are proposed for the Property. The main entrance is planned as an approximately 50-foot wide driveway with 10-foot center median. This full access driveway is projected to accommodate all ingress vehicles and half of all outbound trips. The driveway has an approximately 150-foot throat length prior to its first internal residential cross-drive and visitor parking area located near the clubhouse. The cross-drives are gated prior to entering the residential area east and west. A demonstration of the main entrance drive of off Van Buren Street can be seen in *"Illustration 2"* found in *EXHIBIT J*. The second Property access is an approximately 30-foot wide exit-only driveway

located at the north end of the Property. (The Transportation Impact Analysis provided by Lee Engineering, dated March 13, 2018 provides additional information regarding traffic circulation and traffic counts for the development)

V. LAND USES

Permitted Uses are those allowed in the R-4 Zoning District found in City of Avondale Zoning Ordinance.

VI. DEVELOPMENT STANDARDS

Since Cerro Vista is a unique development and the proposed development standards outlined in the table below would be unique to Cerro Vista.

R-4 DEVELOPMENT STANDARDS	
Development Standard	R-4 Development Standard*
Maximum units allowed	24 dwelling units per acre
Minimum Lot Width	50'
Minimum Lot Depth	100'
Maximum Height	45' ³
Maximum Building Coverage	50%
Minimum setbacks:	25' ⁴
Front Yard (Van Buren Street/South Property Line)	(Reduced to 8' per footnote 4)
Side Yard (East & West Property Lines)	15'
Rear Yard (Corporate Drive/North Property Line)	25' ⁴ (Reduced to 8' per footnote 4)

*1. Zero (0) feet for lots with common walls; fifteen (15) feet for lots with no common walls.

2. May be reduced to ten (10) feet in the case of single-family attached or detached units.

3. The maximum height of buildings in the R-4 Zoning District shall be allowed to exceed forty-five (45) feet in height if located on land identified by any of Avondale's specific area plans (e.g. Freeway Corridor Specific Plan, North Avondale Specific Plan) as appropriate for additional height. In those instances, the maximum building height shall not exceed the height specified by the particular specific area plan.

4. City of Avondale Zoning Ordinance – Section 2, Residential Districts. May be reduced to eight (8) feet for buildings with individual dwelling units that front onto a residential street and that provide direct access from residential units to the public sidewalk (e.g. townhomes or walk-up apartments). As it relates to this provision, direct access shall be defined as the shortest feasible paved connection to the public sidewalk from the entrance of a residential unit(s). Direct access shall not require pedestrians to navigate through internal sidewalks and exit through a centralized location in order to access the public right-of-way.

Description of Proposed Cerro Vista Development Standards

These proposed development standards will allow the unique urban development proposed in this rezoning request and are not out of conformance with typical development standards for this type of high density development.

The proposed minimum lot width (50') and depth (100') are identical to those found in the R-4 development standards. As proposed, Cerro Vista will be developed as an entire single lot that will be managed and maintained by a rental and property management company.

The proposed maximum height of forty-five feet (45') is identical to the height found in the R-4 development standards. The Property is located within the Freeway Corridor Specific Plan, which does allow for building heights to exceed forty-five feet (45') in height. However, Cerro Vista's highest buildings will be 3-story buildings and they do not anticipate exceeding the forty-five feet (45') in height, but the developer would like the flexibility should higher ceilings or if the market changes and the need for more height becomes necessary for additional floors/units in the future.

The proposed maximum building coverage of 50% is identical to the coverage found in the R-4 development standards.

Since Cerro Vista will be developed as an entire single lot, the proposed minimum setbacks shall be applicable to the respective boundary lines of the Property.

The front yard is the south boundary line (adjacent to Van Buren Street), which has the main entryway into Cerro Vista. The rear yard is the north boundary line, which will be adjacent to the future Corporate Drive. Both the front and rear yard setback shall be a minimum of eight feet (8'). These setbacks are supported by the Avondale Zoning Ordinance as the typical twenty-five feet (25') front yard setback for multi-family apartment uses may be reduced to eight feet (8') when buildings have dwelling units that front onto a street and provide direct access from residential units to a public sidewalk (e.g. walk-up apartments). Since the front and rear yards will be facing onto streets with pedestrian sidewalks, it is appropriate to reduce the front and rear yard setbacks to accommodate a more pedestrian oriented environment. These setbacks will promote walkability and urbanity by providing the unique design of buildings directly interacting with the adjacent pedestrian walkways and streets.

The side yards will be the Property boundary lines located on the east and west sides of the Property. These side yard setbacks shall be fifteen feet (15'), which is identical to the side yard setback requirements found in the R-4 development standards.

Street side setbacks that are typically found in the Avondale Zoning Ordinance are not applicable to Cerro Vista as these setbacks are addressed with the front and rear setback development standards.

Additional Development Standards and Requirements

The following requirements are supplemental to Avondale's Multi-Family Residential Design Manual. In the case of a conflict, the more stringent standard governs.

1. The builder of any multi-family development should refer to the design manuals for multi-family development adopted by City and shall serve as guidelines for site and architectural design.
2. Landscape
 - a. The landscaping within the development shall meet Section 1204 of the Avondale Zoning Ordinance.
 - b. The landscaping shall meet or exceed the guidelines for landscaping as set forth in Avondale's Multi-Family Residential Design Manual.
3. Lighting
 - a. Minimization of light pollution for the protection of nighttime views is an important component of the design theme for the project, as well as for the adjacent neighboring properties. In response, all exterior lighting for common open space areas, development entries and adjacent to the internal streets will comply with Section 707: Outdoor Lighting. A photometric plan will be provided at the time of final Site Plan approval.
4. Walls and Fences
 - a. All walls and fences shall meet Section 1207 of the Avondale Zoning Ordinance.
 - b. All walls and fences shall meet or exceed the guidelines for set forth in Avondale's Multi-Family Residential Design Manual.
5. Parking
 - a. Parking counts and design shall meet Section 8 of the Avondale Zoning Ordinance and be designed as set forth in Avondale's Multi-Family Residential Design Manual. Required parking is 446 (using 1:10 visitor ratio), or 462 using the 1:5 visitor ratio. Actual parking has increased from 447 to 466. With the lower unit count and added surface we now comply with the 1:5 ratio. We have gained 37 open spaces and lost 18 garage spaces. Overall parking ratio grew from 1.75/unit to 1.87/unit.

- b. Under Section 206.B.5.C of the Avondale Zoning Ordinance, it requires that garage parking shall be provided for a minimum of twenty percent (25%) of parking, excluding visitor parking, in apartment developments with one hundred (100) or more dwelling units. The Cerro Vista development proposes to increase the number of enclosed parking garage spaces. The intent is to increase the urbanity as well as the pedestrian feel of the Cerro Vista development. The specific locations of the enclosed parking garages will be determined during the Site Plan phase. Additionally, see vehicle parking table for number of spaces.

VEHICLE PARKING					
<u>Required:</u>	<u># Units</u>		<u>Spaces Required</u>		
1 Bedroom Units	65	x	1.5	=	98 P.S.
2 Bedroom Units	149	x	1.75	=	261 P.S.
3 Bedroom Units	35	x	2.0	=	70 P.S.
Guest	249	x	0.1	=	25 P.S.
Required Total:					454 P.S.
Required Garages: (Per Zoning Code)	429	x	0.25	=	108 G.S.
Provided:					
Open Spaces				=	250 P.S.
Tandem Spaces				=	96 P.S.
Garages				=	120 P.S.
Provided Total:			(1.87:1)		466 P.S.

6. Signage

- a. All development signage shall meet Section 9 of the Avondale Zoning Ordinance and be designed as set forth in Avondale's Multi-Family Residential Design Manual.

VII. ARCHITECTURAL DESIGN CRITERIA

The proposed architectural design of Cerro Vista consists of luxurious, urban loft apartments with various building types that are arranged as a group of various masses, two (2) to three (3) multi-story apartment building types, one clubhouse, and one garage carriage unit building type. The architectural theme is a modern, urban style of different sized layered volumes, materials, and strategically placed linear horizontal elements.

The building masses are organized as a series of elements that include patios and balconies; thereby adding a great deal of variety and visual interest to the elevations. Most of the buildings on the site are arranged around open spaces where residents may gather, these courtyards contain spacious and aesthetically pleasing environments with various high-quality amenities focused on social interaction. The distinctive architecture features

three stories with architectural elements at different elevations. The various elements of the development harmoniously blend a contemporary architectural style with color, form and texture. (See attached *EXHIBIT H-Preliminary Landscape/Vegetation Plan*, *EXHIBIT I - Preliminary Building Elevations*, and *EXHIBIT J - Conceptual Perspective Illustrations (1, 2, and 3)* demonstrating the architectural design criteria discussed herein.

Furthermore, Cerro Vista will be subject to provisions set forth in Avondale's Multi-Family Residential Design Manual for architecture and design.

The following information is provided as additional support for the design criteria required for the Cerro Vista development.

Architectural Character

The architectural character is a contemporary, urban style with different sized layered volumes, materials, and strategically placed linear horizontal elements. The architecture along Van Burren Street will be placed close to the right of way to give an urban city feel as the buildings will interact with the public pedestrian walkway with the use of large overhangs for shading and landscaping.

Style

The distinctive contemporary urban architecture features two (2) to three (3) stories with architectural elements at different elevations. The various elements of the development harmoniously blend a contemporary urban architectural style with color, form and texture. To help emphasize the urban feel horizontal bands are used to define vertical scale and with the use of materials and color. To help further define the urban feel, the use of oversized windows will be used at select locations of different buildings. Building along public right of ways will have larger more decorative windows while large windows within the site, not within view of the public ways, will have a lesser degree of decorativeness.

Required Features and Design Elements

The City of Avondale General Development Standards sets forth additional requirements for multifamily development to encourage creative and innovative design techniques, quality and merit. The proposed development will include the following as demonstrated in *EXHIBIT I - Preliminary Building Elevations*, which will be further developed during the Preliminary Site Plan Design Review:

- Variety of window styles and sizes with a mixture of the window locations for asymmetry
- Provide large roof overhangs at select locations
- Add metal features such as metal brackets at the roof overhangs
- Variety of parapet heights for more variation and asymmetry
- Create different railing configurations at the balconies to provide visual interest
- Combine the sidewalk level canopy into one continuous one in the middle of the building
- Vary the color locations on the elevations to help with asymmetry

- Add masonry elements to add to the variety of material
- Private exterior open space will be provided to most units that is at least 80 square feet
- Shading elements on the south and west sides of buildings by overhang and/or trees
- Shading for private exterior spaces will be provided through recessed patios and balconies, recessed windows, and the use of landscape
- This project will also be sensitive towards “green design” by use of, energy star appliances, programmable thermostats, and water efficient plumbing fixtures and landscaping

Building mass

There are five (5) proposed building types demonstrated on *Exhibit G-Preliminary Site Plan* and on *EXHIBIT I-Preliminary Building Elevations*, which are arranged as a group of various masses, two (2) to (3) story loft apartment building types, a carriage unit building type, and a Clubhouse. These buildings types are as follows:

- BUILDING TYPE 1 – This is the larger 3-story loft apartment building shown on the southeast portion of the Preliminary Site Plan.
- BUILDING TYPE 2 – This is the smaller 3-story loft apartment building shown on the southwest portion of the Preliminary Site Plan.
- BUILDING TYPE 3 – These are the 2-story loft apartment buildings shown on the north end portion of the Preliminary Site Plan.
- BUILDING TYPE 4 – This is the 2-story carriage unit building shown in the central portion of the Preliminary Site Plan.
- BUILDING TYPE CH – This is the 1-story Clubhouse located at the north end of the main entryway off of Van Buren Street.

The building masses are organized as a series of elements that include, patios, and balconies; thereby adding a great deal of variety and visual interest to the elevations. The massing will be offsetting in plan to create ins and outs of the elevation planes help creating shadows to emphasize each volume. The volumes will also consist of varying heights to help break up the roof line and help define each volume, along with the use of material and color.

Building materials

The project proposes a wide variety of materials to accentuate the architectural style and theme. Included in our palette of materials are:

- Stucco system of a light dash finish for a smooth appearance with various paint color options and a trim color.
- Decorative metal railings on the upper floor balconies and at stair locations.
- Deep overhangs at upper floor balconies for shade and architectural interest.

- Deep overhangs with metal finishes and decorative rod and turnbuckles will be provided for along the public pedestrian walkway for shading and public right of way visual interest.
- Architectural masonry will be used at the patio walls, and at select locations on select building elevations.

Color Palette

The proposed color palette will be a mixture of cool and warm colors. The cool colors consisting of different shades of grey, from medium dark grey for metal work and select stucco volumes to a lighter tint of grey as accent above select building materials and trims, such as window sills, in-between masonry at patio piers, and along parapet decorative caps. Warmer colors as beige or tan will be the primary color for the buildings. The masonry will be of a selected brick color to also act as secondary color to help accentuate the urban theme.

VIII. SITE DESIGN, LANDSCAPING, PEDESTRIAN OPEN SPACE AND AMENITIES

The physical design of Cerro Vista is intended to foster connections and relationships among neighbors, while respecting privacy. Buildings are massed together and oriented to face adjacent streets and open space areas creating a sense of place and security. A multi-use trail borders the Property along Van Buren Street. Internal pathways will connect to this public trail to enhance walkability and connectivity to the public.

The development will be gated with decorative walls surrounding the Property. A decorative primary entry sign will welcome residents coming from Van Buren Street. There will also be an exit only driveway gate on the north side of the Property at Corporate Drive. Pedestrian walkways link the residences to the open space retention areas and the high-quality amenity areas.

Pedestrian Focus

The Cerro Vista development will facilitate pedestrian circulation within the entire project. The layout of the building and residential units facilitates the integrated pedestrian pathways, which encourage residents to walk to open spaces, trails and on-site recreational amenities. The pedestrian paths will feature enhanced landscaping, differentiated paving and lighting to make these pedestrian areas pleasing and safe. The use of differentiated paving will also be used to increase safety by showing where pedestrian paths cross vehicular circulation.

The Applicant is working with the City of Avondale in providing property to establish a multi-use trail along Van Buren Street. Residential units have been designed to connect onto this multi-use trail to enhance the pedestrian-oriented design of the development. This trail will provide regional connectivity with connections throughout the City of Avondale and along the Agua Fria River. This regional trail promotes pedestrian and

bicycle connectivity of the residents to the adjacent employment and recreational uses such as bicycling, jogging and walking that will enhance the quality of Cerro Vista. This trail will be acquired and maintained by City of Avondale.

Landscaping and Open Space

The development will provide a minimum of 20% useable open space in accordance with Avondale's Multi-Family Residential Design Manual. While the development will meet this open space standard, the quality of those spaces will be very high with the inclusion of high quality amenities. The central area will consist of a clubhouse and pool/spa area, surrounded by fire places, shade ramadas, and BBQ. This centralized area will create a space for community gatherings and allow individuals and families place to socialize and recreate. There will also be a dog park area located across from the central park area to the east. These will be connected with a large open space corridor between these larger open space areas to create ample usable open space areas on the Property.

The open space areas will provide opportunities for landscaping, including shade trees, grass turf areas, and playground features. The purpose of the landscaped and open space area will be to complement and enhance the pedestrian scale of the development. Pedestrian pathways and small open spaces will provide linkage throughout the site as well as providing a sense of place for the residents. The landscaping throughout the development will be desert themed, while providing shade and comfort to pedestrians and users of open space and amenity areas.

Landscaping for Cerro Vista is proposed to go beyond providing the basic amenities by accompanying the programming with a strong sense of place and style. Cerro Vista's primary entrance is accessible from Van Buren Street. The City of Avondale Street Tree Master Plan calls for a strong pattern established with linear plantings of Indian Rosewood (*Dalbergia sissoo*) trees along Van Buren Street. This formal structure is echoed in the Cerro Vista landscape design with a focal entry planting and Fan Palms in the median to guide people into the site.

It is by creating a strong central axis with the repetition of linear tree plantings, using the same species as the Street Tree Master Plan, that one is visually and physically transported through the space. Focusing the plant materials in the dense axis of the site assists in wayfinding, and flow in the programming of the various nodes along and adjacent to the core. The consolidation of the primary amenities along the central corridor also leads to a vibrant 'urban landscape' feel, reflecting the aspirations and character of The BLVD as an up and coming metropolitan hub. The corridor acts like an artery that branches off to sustain life and activity for the site as a whole.

Located along the primary corridor are nodes of activity in the form of a pool and spa area, multiple ramadas, seating areas and grilling spaces. Use of turf throughout the corridor has an array of purposes by providing retention and creating an urban oasis effect from the cooling properties of transpiration. These strong design strategies help Cerro

Vista seamlessly integrate into the urban core of Avondale, while also setting itself apart in a distinct way. These landscape elements will play an integral role in the urban life and experience of the Cerro Vista community.

IX. REZONING REVIEW AND ANALYSIS

As stated previously, the purpose of the R-4 zoning district for Cerro Vista is to provide a high quality, luxury urban living development facilitating a vibrant community with an urban living experience in the Van Buren corridor.

With its modern design, Cerro Vista will provide loft apartments that create a unique urban experience not currently available within the City of Avondale, but is demanded by both millennials, professionals, and empty nesters throughout the Valley. The current development standards of the Avondale standards residential districts are designed for typical single-family residential that is ubiquitous to Avondale.

Cerro Vista is designed to provide on-site amenities and open space for both the modern professional and those interested in a “lock and leave” lifestyle. While adding to the existing housing in the area, Cerro Vista provides a unique housing development that caters to those looking for something different than the typical traditional housing offered in Avondale. The Cerro Vista development is unique to Avondale and the rezoning proposes development standards that will facilitate this unique community.

The rezoning to R-4 is further justified with the following supreme enhancements of the development:

- Providing enhanced amenities that are not typically provided or required, including a clubhouse, BBQ ramada and other shade ramadas, a pool/spa, fire pits, and other open spaces areas as shown on the provided plans.
- Greater connectivity with the central amenity areas and all housing units being easily accessible to all residents throughout the development with connective pathways.
- Focusing all housing units on communal open spaces that are focused on providing an enhanced pedestrian and community experience.
- Enhanced vegetation at entries ways and strategically placed open space areas to provide a sense of arrival to the development.
- A unique housing product that focuses more on providing a holistic urban experience.

The Cerro Vista development meets or exceeds the following findings, as follows:

1. *The proposed development is in conformance with the General Plan and applicable specific plan(s).*

As outlined in the “Conformance with Avondale Plans” Section of this narrative, the Cerro Vista development is in conformance with the intent of the General Plan and the Freeway Corridor Specific Plan (See Section XII herein).

2. *The proposed rezoning meets the zoning requirements of the Zoning Ordinance, Subdivision Regulations, Design Manuals and other applicable regulations and requirements.*

As stated, the Cerro Vista development meets all the requirements of the Avondale Zoning Ordinance, Subdivision Regulations, and Design Manuals.

3. *That adequate public infrastructure and services exist to serve the proposed development or all necessary public infrastructure and services to serve the proposed development will be completed in connection with the development.*

As provided within the Cerro Vista development and accompanying engineering plans and reports, the development has adequate public infrastructure and services to serve the proposed development.

4. *The proposed rezoning will result in compatible land use relationships within the proposed development and with adjacent properties.*

The Property has had a current General Plan land use designation of Urban Residential for a long period of time. This land use was designated for anticipation of the future development of the properties north of Van Buren Streets for a variety of uses such as employment, commercial, and other high density uses. Additionally, uses on the Property and to the north to the I-10 Freeway have been envisioned as being transitional uses that are compatible to The BLVD area to the east.

The proposed high density housing will be lower density than that 30+ du/acre allowed by the Urban Residential land use designation, but will still maintain an urban feel that will be compatible with the envisioned developments for the surrounding properties. Cerro Vista will be designed in a way that is complementary to the surrounding neighborhoods and is supported by current market conditions.

During a Work Session in May 2018 the City Council and City staff discussed the possibilities for this area, including the Property. In that meeting it was discussed that the Council would like to see greater flexibility for this area and would like to move high density residential areas away from the Freeway and more towards Van Buren Street. Additionally, in discussions with City staff, the Applicant has discussed the compatibility of the proposed housing with this area and the Applicant crafted the high-density residential product based on those discussions.

Additionally, during a November 2018 City Council Work Session, City staff and City Council recognized that there was only approximately 18% of land in Avondale being used for multi-family uses and that there was still a need for additional multi-family developments. However, the Council suggested that additional multi-family

developments should be of a quality that attract the types of renters that will live, work, and play in Avondale. It was further suggested that this could be accomplished with the right location in the City and providing urban, high-quality amenities that attract young professionals and seniors that wish to make Avondale home. When looking at Cerro Vista, the variety of building types, architectural styles, high-quality amenities and development standards provide that type of multi-family for Avondale. The location of this development is perfectly situated near Avondale's core and adjacent to current and future employment areas that will provide good paying jobs for those living at Cerro Vista.

5. *The proposed development standards are consistent with or exceed the desired character of development for the area.*

As stated, the proposed development standards have been crafted to provide a unique housing development that will be of a character that will maintain the urban feel desired in this area. The active open space, amenities, connectivity, and community center enhance upon the traditional development standards of a typical apartment complex.

X. INFRASTRUCTURE

Road improvements, right-of-way, easements.

Surrounding Street Improvements

The Project will construct the adjacent half-street improvements for Van Buren Street, which the City classifies as a collector roadway. All existing power lines that are less than 69kv will be converted underground and the poles will be removed at Corporate Drive.

Additional right-of-way and improvements may be required for turn and deceleration lanes.

Utilities

Water

The City is the water service provider for the Property. The proposed water for Cerro Vista will consist of taps into the 16" water main currently in Van Buren Street, which will consist of two (2) separate taps for a domestic water meter and a landscape water meter. A 16" in-line valve will be installed between the two (2) 8" fire line taps for safety purposes. This will accommodate fire flow and residential demand requirements as demonstrated within the Preliminary Master Water Report. All connections will follow the City of Avondale's supplement to MAG Specifications and Details, and American Water Works Association Standards. Since there is an existing water main fronting the property there is no need to construct a new waterline adjacent to the project.

Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to water services will be completed as they relate

to the specific phase that will be developed and will be explicitly determined during the Site Plan phase.

Sanitary Sewer

The City is the wastewater service provider for the Property. The proposed sewer for Cerro Vista will consist of approximately 1,648 LF of 8-inch sewer line and 7 manholes as shown within the Preliminary Master Sewer Report for the project. There will be a single connection within Van Buren Street into the 30-inch existing sewer main.

Since there is no existing sewer stub for the project from the existing 30-inch sewer main within Van Buren Street, a new manhole will be constructed within the proposed Van Buren Street right-of-way as part of this project. Since there is an existing sewer main fronting the property there is no need to construct a new sewer line adjacent to the project.

Precise locations for connections and networks shall be determined at the Site Plan phase. All infrastructure related to sewer services will be completed as they relate to the specific phase that will be developed and will be explicitly determined during the Site Plan phase.

Grading and Drainage

A Master Drainage Report is provided with this rezoning submittal. The on-site retention requirements shall be per City of Avondale standards and will meet 100-year storm event retention requirements for on-site and adjacent off-site flows. Historic flows may safely pass through or be routed around the site.

Cerro Vista proposes two (2) surface retention basins along the north boundary and two surface basins within open space areas within the property as shown on the Preliminary Master Drainage Report. The remainder of the onsite drainage will be directed to eight (8) feet diameter CMP pipe (approximately 915 LF) under parking stalls so as not to conflict with other onsite utilities. Seven (7) drywells will be required to drain the onsite retention volume within all surface retention basins and underground pipe within the required 36-hour drain time. The actual number of drywell are dependent upon further testing at time of construction.

It is proposed to provide three surface retention basins along the south boundary of the project to capture design flows within the adjacent proposed half-street improvements of Van Buren Street.

XI. OWNERSHIP AND MAINTENANCE

The future developer will construct common areas and facilities, which will include circulation and access roadways, utilities for the purposes of transmission and distribution, signage, common area and perimeter landscaping. Site common areas will ultimately be operated, owned and maintained by the owner of Cerro Vista development.

XII. CONFORMANCE WITH AVONDALE PLANS

The Property is designated as Urban Residential on the City's General Plan Map. The Property is also within the Freeway Corridor Specific Plan (*See EXHIBIT C – Existing Avondale General Plan Map*).

Under separate application (Application Case #: PL-18-0079), the Applicant is requesting to amend the map to the High Density Residential land use category that is intended to accommodate residential densities that range from 12 to 30 dwelling units per acre. This land use category states that units should include apartments, condominiums, or patio homes and should provide a level of intensity to promote a village environment with easy access to services, business and recreation.

The proposed rezoning to Multi-Family Residential-4 (R-4) will be consistent with this vision by providing 23.94 dwelling units per acre with connections to surrounding commercial and employment use. The proposed Cerro Vista development will also be consistent with several elements within the City's General Plan 2030 as follows.

AVONDALE GENERAL PLAN 2030

Land Use Element, Goal 1: Establish an Avondale identity based on a healthy lifestyle that promotes land uses which foster an economically sustainable and socially dynamic community.

Land Use Element, Goal 3: Promote a strong balance of high quality residential, employment, recreation, and educational land.

These goals can be obtained by providing an alternative residential development to the typical homogenous single-family residential that exists in Avondale. Cerro Vista will provide a high density, quality community that will be compatible the existing surrounding employment, commercial, and residential uses and will also provide an added catalyst to creating urbanity adjacent to The BLVD. The type of residents and lifestyle that the Cerro Vista development will attract will be centered on professionals, millennials, and those wanting to live an urban "lock and leave" lifestyle. Thus, it will provide a well-balanced land use encouraging social interaction and creating a larger sense of community amongst residents.

Housing Element, Goal 2: Champion the development of housing types not currently available in the City to allow for a variety of socio-economic levels.

Cerro Vista will be an urban living community that is unique within the City of Avondale. The luxury urban apartments will be designed in a way that creates a cohesive, connected community. Residents to the Cerro Vista can be in the range from new professionals, small families, and empty nesters and are looking for a vibrant community to live in Avondale. The Property design will create more of a sense of place within the area and will encourage more social and community interaction.

Housing Element, Goal 4: Require excellence and innovation in residential design and construction.

Policy B: Support creatively designed subdivision layouts, particularly layouts in which open space and recreation areas containing amenities are thoughtfully integrated throughout.

Policy C: Utilize the City's Design Manuals to promote quality development and attractive residential communities, updating these documents when necessary to reflect changing preferences and styles.

Policy D: Encourage subdivision design that promotes non-vehicular access to trails and transit routes/centers as a component of a healthy lifestyle.

Policy E: Endorse the use of Crime Prevention through Environmental design (CPTED) principles when designing residential communities.

Cerro Vista incorporates these policies with Goal 4 by focusing on the City's Design Manuals to create a layout with high-quality open space and recreation areas centrally located on the Property to provide easy access to all resident. Buildings are oriented to face each other, the internal private streets, and open space areas to "eyes" on the community and making it safer. Some of the residential unit have also been designed to be connected to the future development of the public access trail along Van Buren Street. Thus, providing the great opportunity for connectivity to this trail, which will promote pedestrian and bicycle access to all surrounding areas of the City.

Open Space Element, Goal 2: Create linkages to parks, trails, rivers, and mountains.

Recreational Amenities Element, Goal 4: Create shared use linkages throughout the community in order to support a healthy lifestyle.

These goals will be met with the development of the public access trail along Van Buren Street, Cerro Vista will provide the necessary access for shared connections to the City and other transit nodes along Van Buren. This will encourage the linking of City area and promoting physical activity for the well-being of Avondale residents.

Recreational Amenities Element, Goal 1: Ensure every person has convenient access to safe public parks and affordable recreation opportunities.

Policy A: Continue to ensure that private development provides local, accessible neighborhood parks and tot lots under the management of a Home Owners Association.

Cerro Vista will meet this goal by providing high quality open space areas with a centrally located open space corridor that ensures residents have full access to the amenities that will encourage social and community interaction.

Bicycling Element, Goal 1: Develop a safe bicycle transportation system that provides connectivity throughout the City, including major public and private facilities, and to transit.

Bicycling Element, Goal 3: Increase recreational opportunities for bicyclists throughout Avondale.

Cerro Vista is within close proximity to employment, commercial, and The BLVD area. With the connective trails along Van Buren and the creation of this dense, urban core of housing, there will be a great opportunity for residents to utilize bicycles for access to the services and employment that they need access to. This will greatly add to Avondale's opportunities for bicycle/pathway networks in the surrounding areas.

Urban Design Element, Goal 5: Maximize housing opportunities in locations within a half-mile of transit, with good access to employment areas, neighborhood services, and public facilities in order to promote a healthy community both sustainably and economically.

Policy A. Distribute higher residential densities throughout our City in identified urban growth areas and facilitate the development of residences in mixed-use development within these growth areas.

Policy B. Develop residentially-designated and mixed use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

Policy C. Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street types of development.

Policy D. Facilitate the development of housing close to jobs to provide residents with the opportunity to live and work in the same community.

Policy E. Encourage consolidation of parcels to promote mixed-use and high density development at locations identified in the TOD Element and on the Land Use Map.

Cerro Vista meets this goal and all policies by providing a high density urban community that has strong pedestrian access to surrounding employment and commercial uses, and is readily accessible to The BLVD area within a ½ mile to the east. Additionally, a bus transit stop currently exists across the street from Cerro Vista on the southeast corner of Van Buren Street and Fairway Drive creating additional access to transit opportunities the residents. With the combination of these transit and pedestrian opportunities for the Property, Cerro Vista is well poised to create a dynamic, high density community within this growth area that will create vitality for future mixed-uses, retail, and employment uses that will come into the area.

THE AVONDALE FREEWAY CORRIDOR SPECIFIC PLAN

The Avondale Freeway Corridor Specific Plan covers the majority of land within a ½ mile each way of the freeway located within the Avondale city limits. The major focus of the visibility of the freeway with the City and steering uses that enhance that visibility and

encouraging employment, commercial, and mixed uses. The Plan also focus on higher density residential districts that will support these uses.

Objective #3: The Freeway Corridor will be the southwest valley's premier job center.

GP Growth Area Element, Goal #1: "Create destination employment centers in targeted areas of the City that will help to improve balance between jobs and population."

With the creation of a high amount of jobs that this objective envisions, there will be a great need for populations that can fulfill those jobs. Cerro Vista provides a high density development that provides not only additional population near employment areas but will likely attract residents that will need all ranges of employment from the professional to the staff worker.

Objective #4: Ensure new development in the Plan area is pedestrian/bicyclist friendly and contributes to a walkable community.

The location of Cerro Vista creates a development that ensure residents have full access to opportunities to walk or bike to destinations for work, recreation, or access to services within the City. The development of the trail along Van Buren Street in front of the development will contribute to the Van Buren Street Drainage and Recreational Corridor that provides east/west connectivity for the Freeway Corridor. This allows pedestrians to travel from 99th Avenue to the Agua Fria River in a beautiful, spacious, and landscaped environment for full access throughout the City.

AVONDALE STRATEGIC FIVE-YEAR PLAN

The Avondale Strategic Five Year Plan was designed with the vision and guidance from the Avondale City Council, and crafted with input from engaged residents, local businesses and key personnel across the City's organization. The Plan represents a cohesive and intelligent approach to continuing the path to Avondale's vision to create a community that is both family friendly and economically robust. A City that is Aspiring, Achieving and Accelerating.

The Property is in a unique location which provides the opportunity to develop the proposed Cerro Vista project along the Van Buren corridor while being compatible with the existing developments in the area, supporting housing opportunities for The BLVD area, and creates/enhances the synergy with the adjacent employment areas. In addition, the increased level of employment opportunities that will come in the future to the north of the Property along Interstate-10 will ultimately help support employment opportunities for the Cerro Vista residents and vice versa. This adjacency will be a positive addition to ensuring that economic opportunities provided by these employment areas will stay with Avondale's residents. This will complement and support the economic vision of the Strategic Five Year Plan.

Additionally, the following goals of the Strategic Five Year Plan will be met with the proposed rezoning.

Initiative #1, Strategic Goal: Encourage build-out in residential housing opportunities that support diverse housing options.

With its modern design, Cerro Vista will provide loft apartments that create a unique urban experience not currently available within the City of Avondale, but is demanded by both millennials, professionals, and empty nesters throughout the Valley. The current development standards of the Avondale standards residential districts are designed for typical single-family residential that is ubiquitous to Avondale.

Cerro Vista is designed to provide on-site amenities and open space for both the modern professional and those interested in a “lock and leave” lifestyle. While adding to the existing housing in the area, Cerro Vista provides a unique housing development that caters to those looking for something different than the typical traditional housing offered in Avondale. The Cerro Vista development is unique to Avondale and contributes to the diversity of housing that the Strategic Five Year Plan envisions.

Initiative #2, Strategic Goal, Action Item: Establish relationships with potential partners for the development of trail and river corridors.

The proposed Cerro Vista development provides for a multi-use trail along Van Buren Street, which promotes pedestrian and bicycle connectivity of the residents to the adjacent employment and other surrounding uses. The portion of the trail in the Cerro Vista right-of-way is part of the larger trails master plan for Avondale and contributes to this connectivity. This trail will be acquired from the Property owner by the City of Avondale and will be maintained by the City of Avondale.

XIII. SCHOOLS

The Applicant has provided the City the executed copies of the Certificate of Adequate Schools Facilities from the Littleton Elementary School District #65 (*Collier Elementary School*) and the Tolleson Union High School District (*La Joya Community High School*). See Exhibit K – Certificate of Adequate Schools Facilities.

Tolleson Union High School District has adequate school facilities, so no further action is required. However, Littleton Elementary School District #65 does not have adequate school facilities for the proposed project. Therefore, the current property owner has entered into a Donation Agreement with the Littleton Elementary School District #65 to help mitigate any potential impacts that the Cerro Vista development could have on the school district.

CONCLUSION AND SUMMARY

Cerro Vista is in a unique location adjacent to existing employment areas, the active Van Buren Street corridor, and The BLVD area to the east. This location provides the perfect

site for an urban multi-family community that will synergize with the surrounding area. The proposed rezoning to Multi-Family Residential-4 (R-4) creates a design and development standards that complement the surrounding employment, commercial, and residential uses while providing a luxury, urban housing development not currently found in Avondale.

The proposed rezoning is consistent with the policies of the City of Avondale's General Plan 2030 and the Freeway Corridor Specific Plan. The proposed plan intends to develop a vacant site that will provide a vibrant urban feel, reflecting the aspirations and character of The BLVD as an up and coming metropolitan hub. Cerro Vista will draw residents such as professionals, millennials, and empty nesters, which will attract a variety of residents to the downtown area of Avondale.

The sense of place and strong design strategies will help Cerro Vista seamlessly integrate into the urban core of Avondale, while also setting itself apart in a distinctive way. The Avondale General states that the City should entice these types of developments, which are geared towards the exciting, urban enclave of The BLVD. Additionally, with the City's focus on the importance of high-quality amenities and interactive social spaces within developments, Cerro Vista provides the framework to realize that vision on the Property.

The proposed Cerro Vista development establishes a level of quality, building design, and site design expectations for this multi-family residential development. The Cerro Vista development includes exhibits and imagery that represent the level of quality being proposed. We look forward to Cerro Vista being a unique multi-family development that bring a high quality urban experience to its residents.

Exhibit ‘A’



APN: 500-01-001W & -001X
Acres: 11.05 Acres

Exhibit A - Regional Aerial Context Exhibit
Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘B’

Exhibit ‘C’

GENERAL PLAN

Legend

- Planning Boundary
Growth Area
- Land Use**
- Rural Low Density Residential
 - Estate/Low Density Residential
 - Medium Density Residential
 - Medium/High Density Residential
 - High Density Residential
 - Local Commercial
 - Freeway Commercial
 - Historic Avondale District
 - Sports and Entertainment
 - Office/Professional
 - Industrial
 - Business Park
 - Corporate Park
 - Gila River Scenic District
 - Open Space and Parks
 - Public/Civic
 - Education

- City Center
Specific Plan
Area
- Gateway Employment
 - Employment Mixed Use
 - Residential Mixed Use
 - Neighborhood Commercial
 - Townhouse Residential

- TOD**
- Urban Residential
 - Urban Commercial
 - High Intensity Office
 - Mixed Use

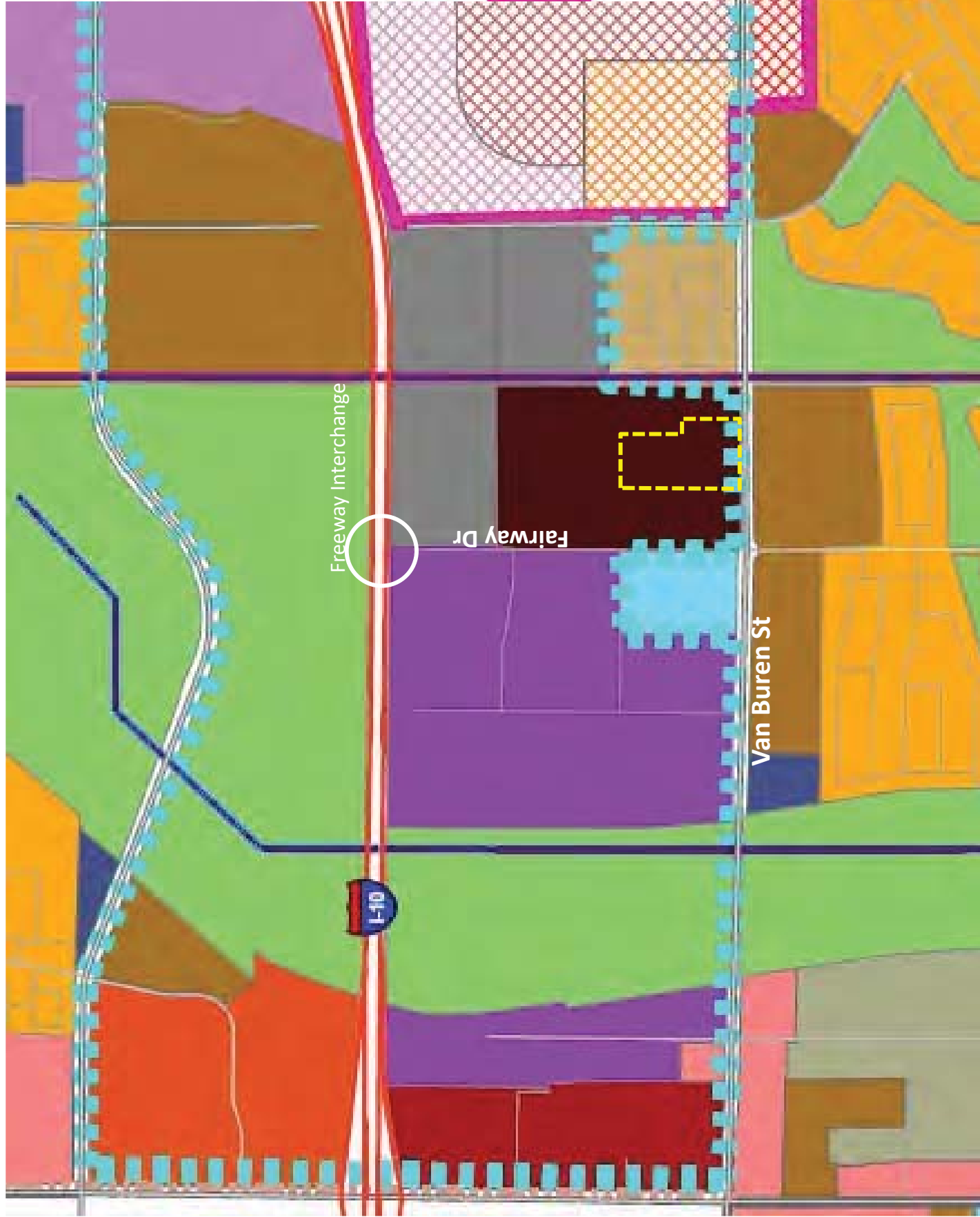


Exhibit C – Existing Avondale General Plan Map
Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘D’

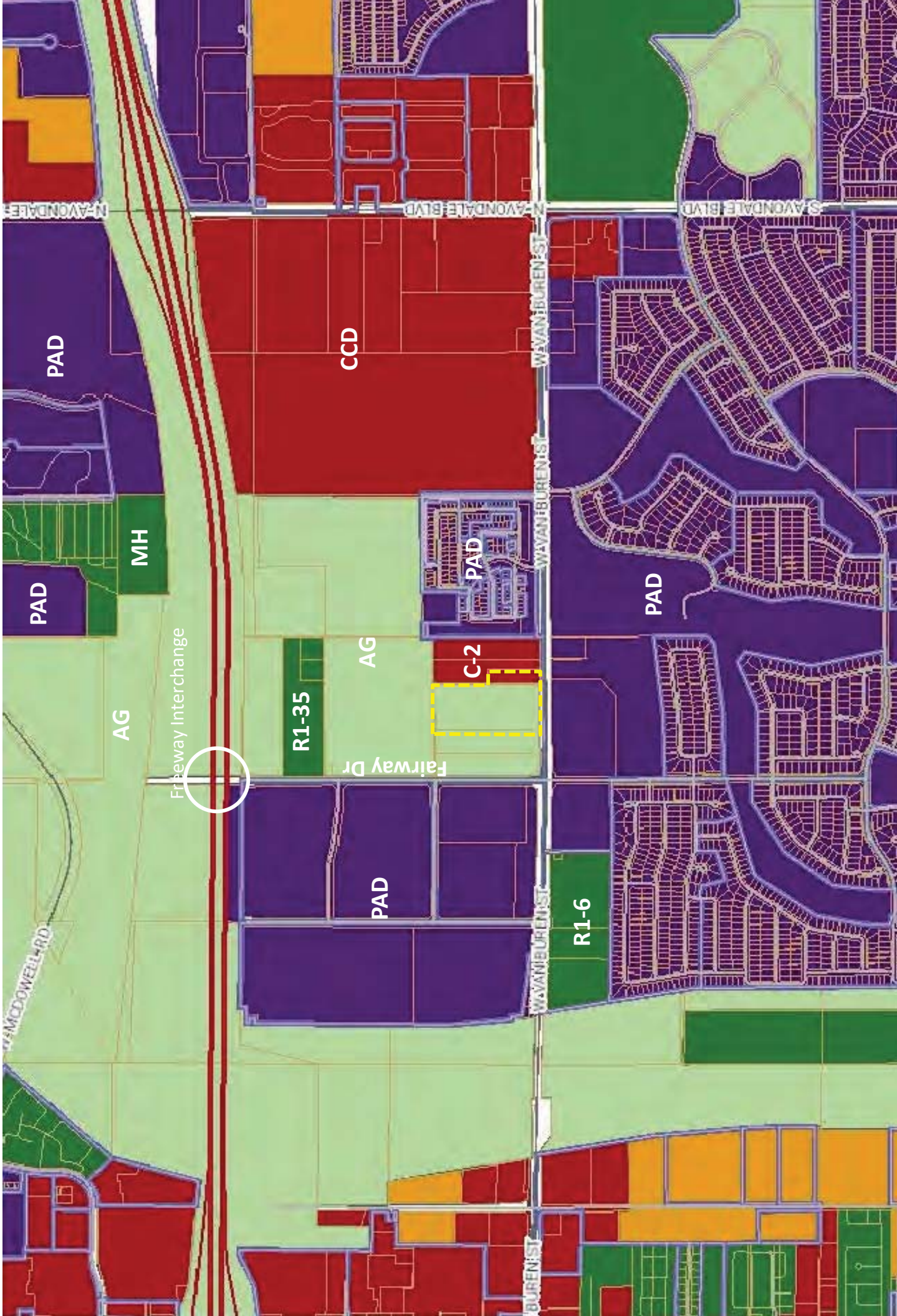


Exhibit D – Existing Avondale Zoning Map
Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘E’

GENERAL PLAN

Legend

- Planning Boundary
- Growth Area
- Land Use
 - Rural Low Density Residential
 - Estate/Low Density Residential
 - Medium Density Residential
 - Medium/High Density Residential
 - High Density Residential
 - Local Commercial
 - Freeway Commercial
 - Historic Avondale District
 - Sports and Entertainment
 - Office/Professional
 - Industrial
 - Business Park
 - Corporate Park
 - Gila River Scenic District
 - Open Space and Parks
 - Public/Civic
 - Education

- City Center Specific Plan Area
- Gateway Employment
- Employment Mixed Use
- Residential Mixed Use
- Neighborhood Commercial
- Townhouse Residential

- TOD
 - Urban Residential
 - Urban Commercial
 - High Intensity Office
 - Mixed Use

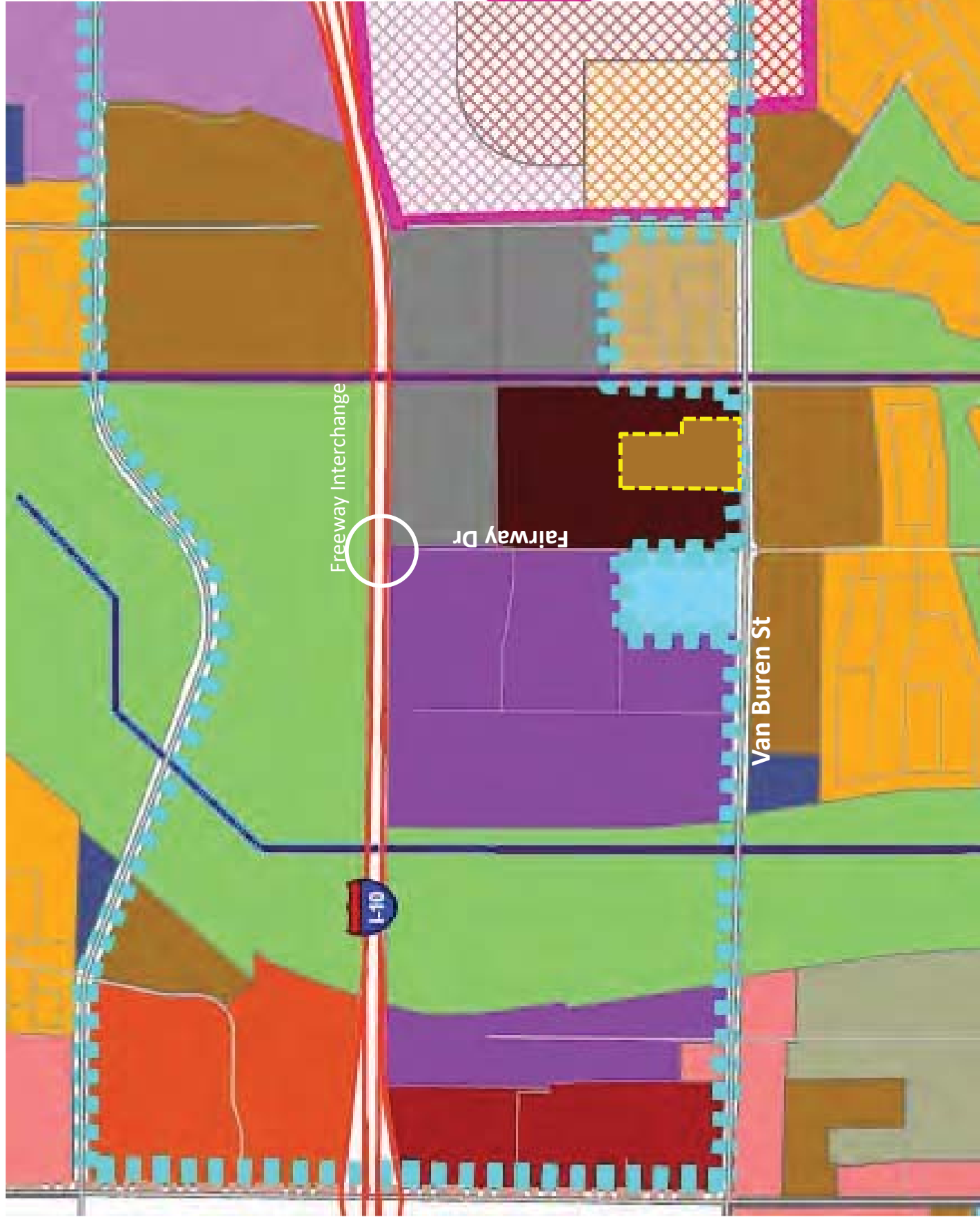


Exhibit E – Proposed Avondale General Plan Map
 Cerro Vista – Van Buren St & Fairway Dr

Exhibit ‘F’

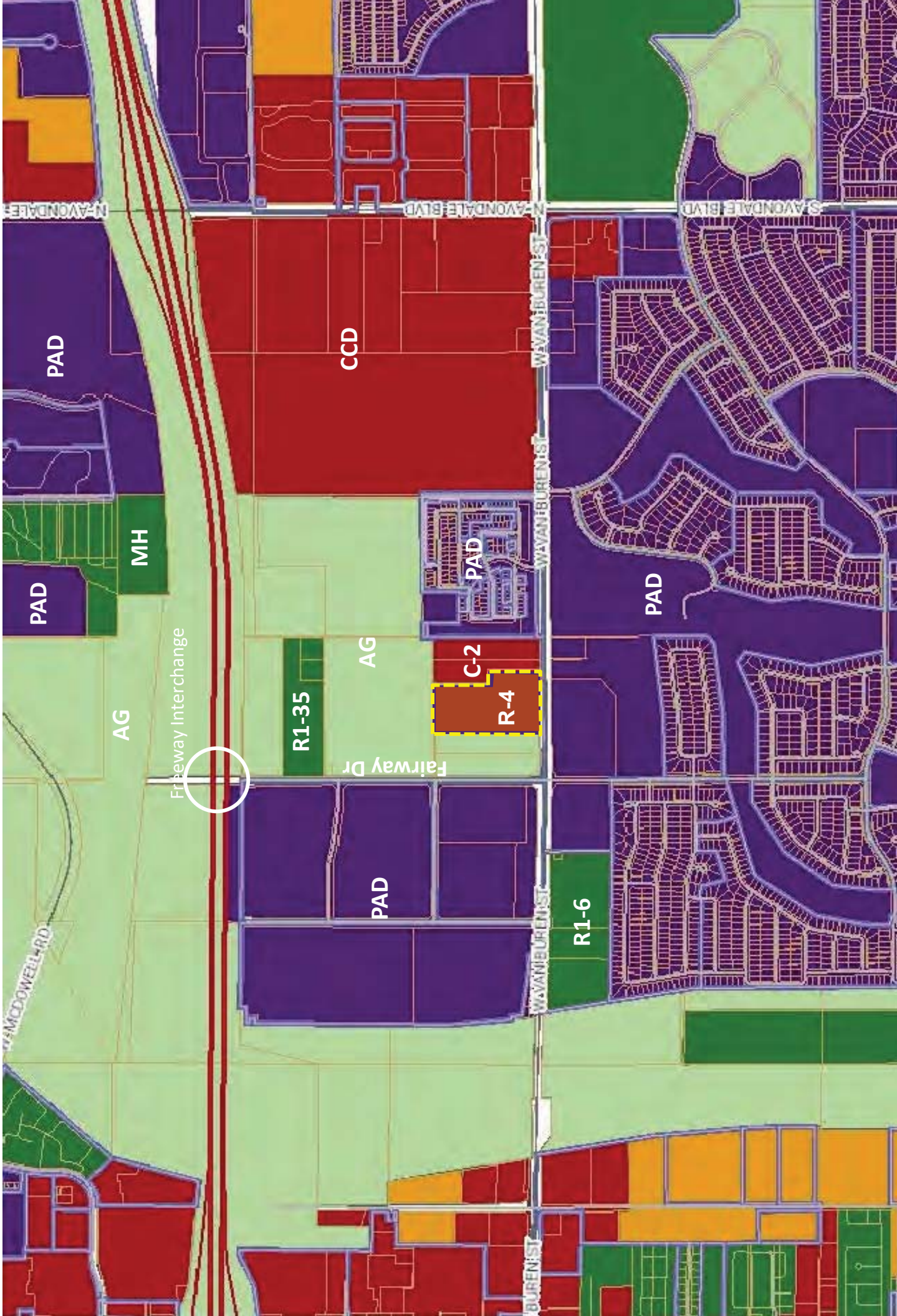


Exhibit F – Proposed Avondale Zoning Map
Cerro Vista – Van Buren St & Fairway Dr

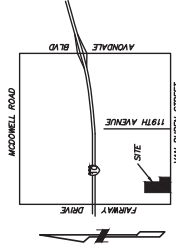
Exhibit ‘G’

Electronically submitted April 29, 2021

FAIRWAY DRIVE



dwg name: **PRELIMINARY
SITE PLAN**
dwg no: **PD1.00e**



PROPOSED NEW MULTIFAMILY DEVELOPMENT FOR:
QUYP DEVELOPMENT SERVICES
CERRO VISTA
AVONDALE, AZ



log no:

Exhibit ‘H’



CERRO VISTA

15' 30'
plan scale 1:30
date: 10.15.18



andersonbaron
plan · design · achieve
50 n. mcclintock drive, ste 1
chandler, arizona 85226
ph. 480.699.7956 f. 480.699.7986

Exhibit ‘I’



FRONT ELEVATION
SCALE: 3/32" = 1'-0" (FACING AND SURFING)



SIDE ELEVATION
SCALE: 3/32" = 1'-0"



REAR ELEVATION
SCALE: 3/32" = 1'-0"



FRONT ELEVATION
SCALE: 3/32" = 1'-0" (PAPER AND SCREEN)



SIDE ELEVATION
SCALE: 3/32" = 1'-0"



REAR ELEVATION
SCALE: 3/32" = 1'-0"



SIDE ELEVATION
SCALE 3/32" = 1'-0"



FRONT ELEVATION
SCALE 3/32" = 1'-0" (CORPORATE DRIVE)



SIDE ELEVATION
SCALE 3/32" = 1'-0"

3/5/2018
10:00 AM



REAR ELEVATION
SCALE: 1/8" = 1'-0"



SIDE ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION



RIGHT ELEVATION

Exhibit ‘J’



BMA ARCHITECTURE



PROPOSED NEW MULTI-FAMILY DEVELOPMENT FOR:
QUYP DEVELOPMENT SERVICES
CERRO VISTA
AVONDALE, AZ

dwg name: ILLUSTRATION 1
dwg # PD0.01
date: 10-12-2018
BMA# 2017-32
log#

BMA architecture
commercial | industrial | multi-family
3000 W. Camelback Road, Suite 100
Phoenix, AZ 85017
P: 480.693.1241 | www.BMAarchitecture.com





Exhibit ‘K’



CERTIFICATE OF ADEQUATE SCHOOL FACILITIES

An application for Minor General Plan Amendment/Rezone has been submitted to the City of Avondale, Development & Engineering Services Department, for review.

Project: Cerro Vista Project Manager: Jeremy Hall
Request: Minor GPA & PAD Rezone Acreage/Parcel Size: 11.40 Acres
Current Density Allowed: 30+ DU/AC Density Proposed: 23.26 DU/AC
Total number of residential units proposed: 255

As an authorized representative of the District, please complete the questionnaire below.

Does the District have adequate capacity to accommodate the estimated enrollment from the proposed development?

Yes ☐ No ☒

If answered no, please summarize the needs of the district as they relate to serving the students generated by the proposed development.

The estimated need anticipated is 3.5 classrooms with an estimated impact of \$ 913,869 or \$ 3,500 per unit.

Is a school site within the proposed development needed?

Yes ☐ No ☒

If answered yes, how many acres is needed for the school site?

Is the district currently working with the developer to provide or help meet the needs identified above through a developer assistance or impact agreement? Yes ☒ No ☐

If answered yes, please explain below:

Developer had entered into an impact agreement signed/dated 3-12-2019, which Littleton Elementary School District expects will remain in effect given there are no changes to the project parcel/density.

****If additional writing space is needed, please attach pages to this form****

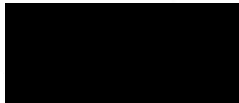
Date Reviewed: 1-26-2021

School District: Littleton Elementary School District #65

District Superintendent: Dr. Roger Freeman

Phone #: 623-478-5611

E-mail: freeman.roger@littetonaz.org

Signature: 

It is the developer's responsibility to ensure that this form is completed by an authorized representative of the District noted above and returned to the Development & Engineering Services Department prior to the scheduling of any City Council meetings

Development & Engineering Services Department

11465 W. Civic Center Drive, #110, Avondale, AZ 85323 • Phone (623) 333-4000 • Fax (623) 333-0400 • TDD (623) 333-0010

www.avondale.org/developmentservices



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If additional writing space is needed, please attach pages to this form

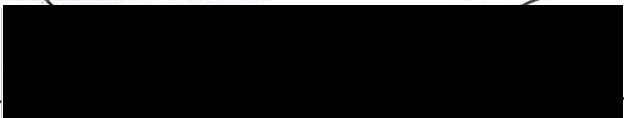
Date Reviewed: **January 25, 2021**

School District: **Tolleson Union High School District #214**

District Superintendent: **Nora Gutierrez**

Phone #: **623-478-4001**

E-mail: **nora.gutierrez@tuhsd.org**

Signature: 

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www.avondale.org/developmentservices

Exhibit F

Cerro Vista Conceptual Site Plan

Electronically submitted April 29, 2021

FAIRWAY DRIVE



PROPOSED NEW MULTIFAMILY DEVELOPMENT FOR:
QUYP DEVELOPMENT SERVICES
CERRO VISTA
AVONDALE, AZ



BMA ARCHITECTURE
3013 East Spaulding Road, Suite 100 • Gilbert, AZ 85234

for no:

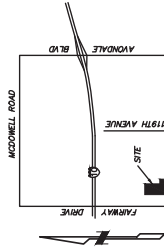


Exhibit G

Cerro Vista Conceptual Renderings and
Building Elevations



Electronically submitted April 29, 2021







FRONT ELEVATION
SCALE: 3/32" = 1'-0" (FACING AND SURFING)



SIDE ELEVATION
SCALE: 3/32" = 1'-0"



REAR ELEVATION
SCALE: 3/32" = 1'-0"

Electronically submitted April 29, 2021



FRONT ELEVATION
SCALE: 3/32" = 1'-0" (PAPER AND SCREEN)



SIDE ELEVATION
SCALE: 3/32" = 1'-0"



REAR ELEVATION
SCALE: 3/32" = 1'-0"



SIDE ELEVATION
SCALE 3/32" = 1'-0"



FRONT ELEVATION
SCALE 3/32" = 1'-0" (CORPORATE DRIVE)



SIDE ELEVATION
SCALE 3/32" = 1'-0"

3/5/2018
10:00 AM



REAR ELEVATION
SCALE: 1/8" = 1'-0"



SIDE ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION



RIGHT ELEVATION

Exhibit H

Neighborhood Meeting Summary
Cerro Vista

Summary of Neighborhood Meeting

Thursday, April 22, 2021

Cerro Vista Residential Community

Start: 6:00 PM (approx.); End: 7:00 PM (approx.)

Zoom Virtual Conference

Proposal: High-density, luxury residential community

Location: East of the northeast corner of Van Buren Road and Fairway Drive

Case #: Minor General Plan Amendment and Rezoning; PL-18-0079 and PL-18-0080

Results/Summary of Neighborhood Meeting:

A total of seven (7) people attended the neighborhood meeting, which included:

- the applicant (Jeremy Hall – Virtua)
- two (2) representatives of the applicant (Paul Gilbert, Felipe Zubia – Beus Gilbert McGroder)
- four (4) representatives of the City (Vice Mayor Malone-Council; Councilmember Dennis-Council; Commissioner White-Planning Commission; and Brian Craig-Planning Manager).

The meeting began with a brief, but comprehensive presentation by Mr. Gilbert. This presentation was followed by discussion with the participants. Below is a summary of the discussion/questions that were raised.

Questions:

1. How much commercial acreage is being converted to multi-family? Answer: Less than 1 acre, the remaining vacant commercial zoning/acreage has now been built out by the expanded storage to the east.
2. What the current ratio of multifamily is to single-family in Avondale? Answer: The applicant does not have this citywide info, but staff indicated they would research the issue and report back in time for Council meeting. It was also noted that the site is already zoning for multifamily
3. Who is the builder? Answer: the builder will be the Applicant, Virtua and the contractor to build will be Morgan Construction. It was noted by a participant that they were happy to hear that construction will start in the near future.
4. Why are the 3-story buildings located adjacent to Van Buren and 2-stories in back (north property line (Corporate Drive), why not reverse? Answer: It was noted that the property directly across the street from the proposed Cerro Vista is zoned Commercial and Multifamily. The multifamily to the south is developed and the commercial to the south has been acquired by a Charter School. Additionally, staff added that they are supporting the 3-stories along Van Buren to give an urban brownstone feel/look to the Van Buren corridor which is appropriate given the proximity of the BLVD District.
5. Are there garages and covered parking? Answer: yes, garages and covered parking are provided consistent with Avondale requirements.

6. What is the street on the north side that will be constructed? Answer: staff indicated that a minor collector, Corporate Drive, will be constructed by the Fairway 10 project. Cerro Vista will be responsible for their half-street (1 lane and improvements) along their frontage. Full buildout of Corporate Drive will be 3-lane, (one lane in each direction, plus a center lane).
7. Will there be a deceleration lane on Van Buren into the project? Answer: Staff answered yes, one is called out in the traffic report.
8. One participant suggested that city staff should examine ways to sign the multi-use path so that users of the multi-use path are alerted as they approach driveways that cross the path. Another participant agreed with the request.

Exhibit I

Certificates of Adequate School Facilities



CERTIFICATE OF ADEQUATE SCHOOL FACILITIES

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Request: Minor GPA & PAD Rezone Acreage/Parcel Size: 11.40 Acres
Current Density Allowed: 30+ DU/AC Density Proposed: 23.26 DU/AC
Total number of residential units proposed: 255

As an authorized representative of the District, please complete the questionnaire below.

Does the District have adequate capacity to accommodate the estimated enrollment from the proposed development?

Yes ☐ No ☒

If answered no, please summarize the needs of the district as they relate to serving the students generated by the proposed development.

The estimated need anticipated is 3.5 classrooms with an estimated impact of \$ 913,869 or \$ 3,500 per unit.

Is a school site within the proposed development needed?

Yes ☐ No ☒

If answered yes, how many acres is needed for the school site?

Is the district currently working with the developer to provide or help meet the needs identified above through a developer assistance or impact agreement? Yes ☒ No ☐

If answered yes, please explain below:

Developer had entered into an impact agreement signed/dated 3-12-2019, which Littleton Elementary School District expects will remain in effect given there are no changes to the project parcel/density.

****If additional writing space is needed, please attach pages to this form****

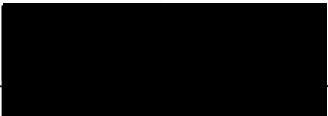
Date Reviewed: 1-26-2021

School District: Littleton Elementary School District #65

District Superintendent: Dr. Roger Freeman

Phone #: 623-478-5611

E-mail: freeman.roger@littetonaz.org

Signature: 

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If answered yes, please explain below:

If additional writing space is needed, please attach pages to this form

Date Reviewed: January 25, 2021

School District: Tolleson Union High School District #214

District Superintendent: Nora Gutierrez

Phone #: 623-478-4001

E-mail: nora.gutierrez@tuhsd.org

Signature

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www.avondale.org/developmentservices

ORDINANCE NO. 2041-0821

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 11.51 ACRES GENERALLY LOCATED 500 FEET EAST OF THE NORTHEAST CORNER OF FAIRWAY DRIVE AND VAN BUREN STREET, AS SHOWN IN APPLICATION PL-18-0080, FROM AGRICULTURAL (AG) AND COMMERCIAL (C-2) TO MULTI-FAMILY RESIDENTIAL (R-4).

WHEREAS, the Council of the City of Avondale (the “City Council”) desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”), pursuant to ARIZ. REV. STAT. § 9-462.04, to change the zoning description for $\pm$ 11.51 gross acres generally located 500 feet east of northeast corner of Fairway Drive and Van Buren Street, as shown in application PL-18-0080, from Agricultural (AG) and Commercial (C-2) to Multi-Family Residential (R-4) (the “Zoning Atlas Amendment”); and

WHEREAS, all due and proper notices of the public hearings on the Zoning Atlas Amendment held by the City of Avondale Planning Commission (the “Commission”) and by the City Council were given in the time, form and substance provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, on May 19, 2021, the Commission held a public hearing on the Zoning Atlas Amendment, after which hearing the Commission recommended approval; and

WHEREAS, the City Council held an additional public hearing regarding the Zoning Atlas Amendment on August 23, 2021; and

WHEREAS, in accordance with Article II, Sections 1 and 2 of the Arizona Constitution, the City Council has considered the individual property rights and personal liberties of the residents of the City before adopting this Ordinance.

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 Zoning Atlas Amendment for $\pm$ 11.51 gross acres generally located 500 feet east of northeast corner of Fairway Drive and Van Buren Street, as more particularly described and depicted on Exhibit A attached hereto and incorporated herein by reference, is

hereby approved, rezoning such property from Agricultural (AG) and Commercial (C-2) to Multi-Family Residential (R-4), subject to the City of Avondale adopted codes, requirements, standards and regulations, and the following stipulations:

1. Approval and recordation of a Final Plat, consolidating the parcels, dedicating 30 feet of right-of-way for Corporate Drive along the property's north property line, and dedicating an 8-foot-wide public utility easement (PUE) parallel to the Corporate Drive right-of-way, shall be required prior to issuance of any permits for the project. Abandonment of the existing 20-foot fire access easement in Corporate Drive must occur before the Final Plat can be recorded.
2. The developer shall construct the north half of Van Buren Street, the south half of Corporate Drive, and any other off-site improvements required adjacent to the project frontage (including fiber conduit installation in accordance with the City's Transportation Plan and development codes) in the first phase of development.
3. Development shall be completed in accordance with the City of Avondale General Engineering Requirements Manual and City of Avondale Supplement to the MAG Uniform Standard Specifications and Details.
4. Development shall adhere to all applicable provisions of the Avondale Zoning Ordinance and the City of Avondale Multi-Family Residential Design Manual.
5. Extinguishment of Groundwater Rights and pledging of those rights to the City's assured water supply account will be required prior to issuance of any permits for this project.
6. If the developer constructs the project, it will generally conform to the site plan elevations and narrative submitted in connection with the application and will further abide by all of the other stipulations proposed by the Planning Staff and City Council ("Zoning Documents"). In the event the developer sells or otherwise conveys the property or project to a third party, it will require the purchaser, and all subsequent purchasers, to also abide by the terms and conditions of this stipulation and construct to the same standard. Minor changes to building footprint, window/balcony placement, and an additional third story on the two rear buildings may be reviewed and approved by the City administratively, provided the additional third story does not exceed the approved permitted height. This provision will be placed in the purchase contract, and any subsequent purchase contracts, and both the seller and the buyer will be specifically required to acknowledge this obligation. Any purchase contract, or other conveyance document involving the property or project will also contain a provision that designates the City as a third-party beneficiary of the purchase contract or conveyance document. However, nothing herein shall prevent the developer or any subsequent purchaser from petitioning the City Council to modify or change the site plan, narrative, elevations or other stipulations. The City Council will be under no obligation to make any changes proposed to the Zoning Documents.

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 execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2041-0821

[Legal Description and Map]

See following pages.

ZONING LEGAL DESCRIPTION

THAT PART OF THE SOUTH 1013.00 FEET OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1 (BRASS CAP IN HANDHOLE) FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 1 (BRASS CAP IN HANDHOLE) BEARS NORTH 00 DEGREES 14 MINUTES 36 SECONDS EAST (BASIS OF BEARING);

THENCE NORTH 89 DEGREES 38 MINUTES 06 SECONDS EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 464.41 FEET TO A POINT ON EAST LINE OF THE WEST 464.46 FEET OF SAID SOUTHWEST AND THE TRUE POINT OF BEGINNING.

THENCE NORTH 00 DEGREES 15 MINUTES 41 SECONDS EAST ALONG SAID EAST LINE A DISTANCE OF 1013.26;

THENCE NORTH 89 DEGREES 39 MINUTES 42 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 431.10 FEET TO A POINT ON THE EAST LINE OF THE WEST 895.92 FEET OF SAID SOUTHWEST QUARTER;

THENCE SOUTH 00 DEGREES 13 MINUTES 49 SECONDS WEST ALONG LAST SAID EAST LINE A DISTANCE OF 486.40 FEET;

THENCE NORTH 89 DEGREES 35 MINUTES 20 SECONDS EAST A DISTANCE OF 120.59 FEET;

THENCE SOUTH 00 DEGREES 17 MINUTES 05 SECONDS EAST A DISTANCE OF 486.72 FEET TO A POINT ON SAID SOUTH LINE.

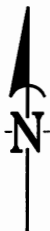
THENCE SOUTH 89 DEGREES 38 MINUTES 06 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 431.64 TO THE POINT OF BEGINNING.



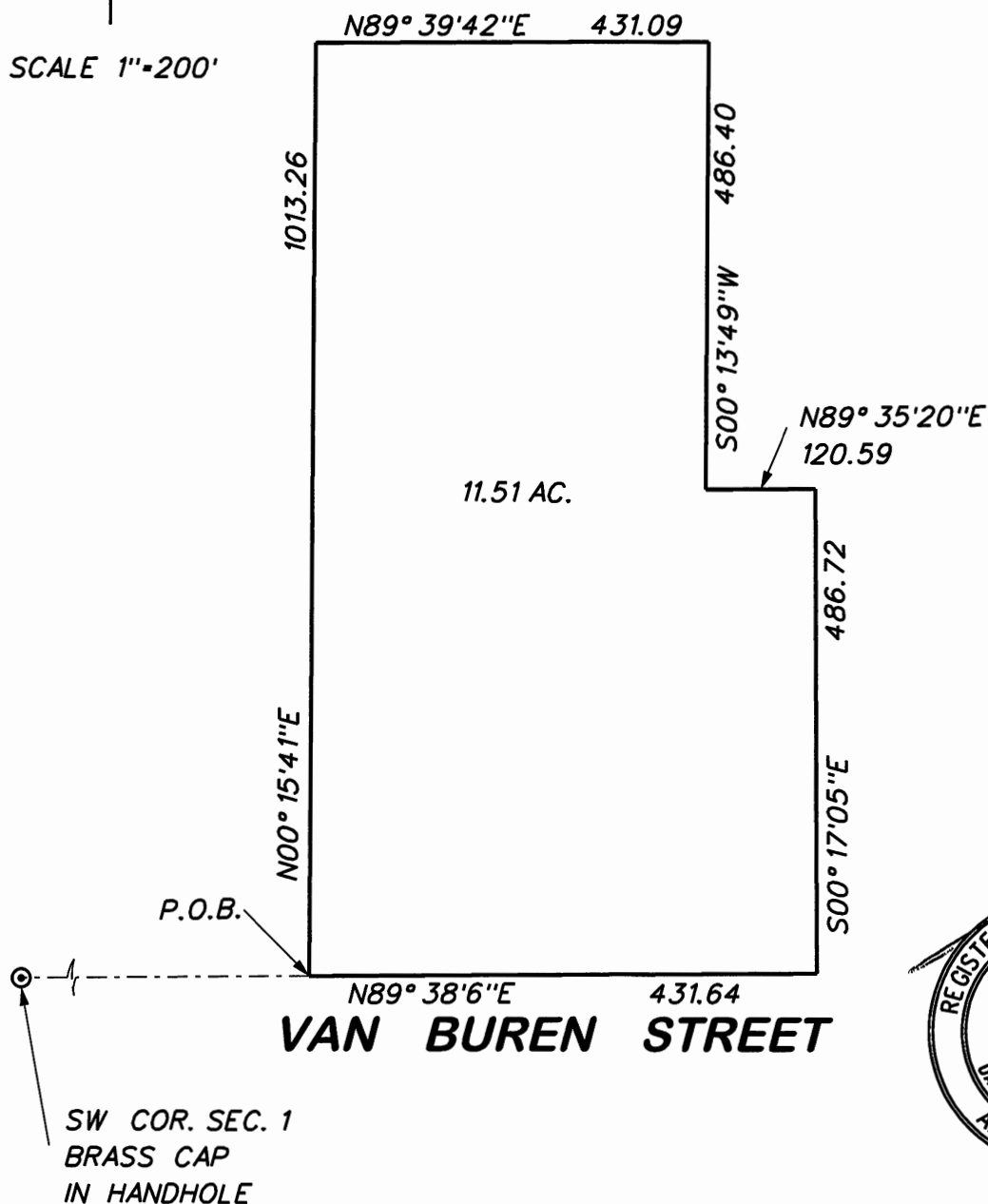
EVERETTALAN
{ GROUP }

6300 E. Cave Creek Road, Ste. 202 ☐ Cave Creek, Arizona 85331
Phone 480.990.0545 ☐ Fax 480.994.9097 ☐ www.EverettAlanGroup.com
Job No. 180115

ZONING EXHIBIT



SCALE 1"=200'



EXP. 9-30-2019

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JOB NO.
180115

CITY COUNCIL REPORT

SUBJECT: Public Hearing - Resolution 1070-0821- Updating City of Avondale Water and Sewer Rates

MEETING DATE: 8/23/2021

TO: Mayor and Council

FROM: Keith Fallstrom, Interim Finance and Budget Director, (623) 333-2016

THROUGH: Lindsey Duncan, Deputy City Manager, (623) 333-1012

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Areas:

- Innovative Program and Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government. The proposed rates simplify the rate structure, which allows for improved understanding, easier maintenance, and the ability to use the latest utility billing software.
 - Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources. The proposed rates help ensure continued access to safe and secure water, sewer, and solid waste services, which is vital to public health and safety.
 - Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning. The proposed rates continues a tiered rate schedule to provide affordable water for basic usage and to promote water conservation.
-

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Resolution 1070-0821, modifying water and sewer rates to become effective October 1, 2021 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The public hearing and consideration of the resolution on water and sewer rates is the final step to adopt revised utility rates. On June 7, 2021, as required by ARS 9-511.01, the City Council approved a Notice of Intent setting forward the date for a public hearing and council action on utility rates for August 23. Prior to the adoption of the notice of intent, work sessions on utility rates were held with City Council on May 3, May 17, and June 7 and public outreach meetings were held on May 12, May 18, and May 26. For Water and Sewer rates, a report supporting the revised rates was posted to the City of Avondale website and a copy of the Notice of Intent was published in the Southwest Valley version of the Arizona Republic on July 22, 2021, as required by ARS 9-511.01.

DISCUSSION:

The Ordinance would modify water and sewer rates. The first rate change would be effective October 1, 2021 and the second rate change would be effective January 1, 2023.

Water - The Water utility serves approximately 23,000 residential customers and approximately 575 commercial customers. The financial policies of the city call for the Water utility to maintain a fund balance of 6 months of the operating budget of the previous year. The last rate increase for Water was effective February 2018. The Water utility faces expenditure pressures from increasing costs to purchase water, increased capital costs, potential shortfalls in Colorado River water, and normal inflation. The city retained the services of a consultant, Raftelis, to evaluate the current water rate structure and to ensure the rates accomplish the goals of financial stability, equity, simplicity, and conservation. Water rate structures were evaluated to reflect the usage patterns of customers and several changes are recommended to better meet this goal. With those goals in mind, the following changes are proposed for October 2021:

- Financial Stability: Increase overall water revenue collection by 1%.
- Equity: Reduce cross-customer class subsidy by increasing total residential rates. Reduce the base fee for all customers. Move highest residential tier from starting at 12,000 gallons to 15,000 gallons to target discretionary water use.
- Simplicity: Move commercial and multi-family customer classes to a flat per 1,000 gallon charge.
- Conservation: Create unique customer classification for landscape customers.

Staff anticipates that an average customer consuming nine thousand gallons of water per month will see an increase of approximately \$2.57. Other customers may see differing results based on their consumption patterns.

For FY 2023, increases to the meter base fees and a tier rate adjustment are expected to increase an average customer's monthly water bill by \$1.88.

Sewer - The Sewer utility serves approximately 22,300 residential customers and approximately 560 commercial customers. The financial policies of the city call for the Sewer utility to maintain a fund balance of 6 months of the operating budget of the previous year. The last rate increase for Sewer was effective February 2018. The Sewer utility faces expenditure pressures from increasing costs for electricity and chemicals for water treatment, the cost of aging infrastructure, and the cost of adding additional infrastructure to meet the needs of growth. The city retained the services of Raftelis to evaluate the current sewer rate structure and ensure the rates accomplish the goals of financial stability, equity, and simplicity. With those goals in mind, the following changes are proposed for October 2021:

- Financial Stability: Increase base user fee while decreasing the per 1,000 gallon charge. This will reduce the variability in revenue collections.
- Equity: Base user fee tied to meter size rather than flat rate.
- Simplicity: Phase in a single volume rate for non-residential customers by FY 2024.

Average single family customer (with 6,000 gallons of wastewater) will not see a noticeable increase in their sewer bill for FY 2022 and will see an increase of \$0.56 in FY 2023.

The net effect on an average Avondale customer will be combined increases of approximately \$2.50 per month for water and sewer in both FY 2022 and FY 2023.

BUDGET IMPACT:

The proposed rates will help ensure the water and sewer utilities remain fiscally sustainable and can continue to make strategic investments in infrastructure and operations.

RECOMMENDATION:

Staff is recommending Council hold a public hearing on the proposed utility rates. After the conclusion of the public hearing, staff recommends that Council approve Resolution , Updating City of Avondale Water and Sewer Rates.

RESOLUTION NO. 1070-0821

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A RATE SCHEDULE FOR WATER AND WASTEWATER USER CHARGES AND SETTING AN EFFECTIVE DATE.

WHEREAS, pursuant to the provisions of ARIZ. REV. STAT. § 9-511.01, the Council of the City of Avondale (the “City Council”) may increase water and wastewater rates if: (i) a written report supporting the increased rate or rate component, fee or service charge has been prepared, or supporting data has been provided, in the form required by ARIZ. REV. STAT. § 9-511.01(A)(1), and made available to the public by filing a copy in the office of the City Clerk at least 30 days before the public hearing on the increased rate, rate component, fee or service charge; (ii) a notice of intention to increase water or wastewater rates or rate components has been adopted; (iii) a public hearing has been held on the proposed increase, not less than 60 days after adoption of the notice of intention; and (iv) a copy of the notice of intention showing the date, time and place of such hearing has been published one time in a newspaper of general circulation within the boundaries of the municipality not less than 20 days before the public hearing date; and

WHEREAS, City Staff has performed a revenue sufficiency and cost of service analysis, determined that the City of Avondale’s water and wastewater rates or rate components need to be increased and documented their findings in a written report (the “Report”); and

WHEREAS, a copy of the Report has been made available to the public by filing a copy in the office of the City Clerk at least 30 days prior to the public hearing on the proposed increase in water and wastewater user charges in accordance with ARIZ. REV. STAT. § 9-511.01(A)(1); and

WHEREAS, a Notice of Intent to Increase Water and Wastewater User Charges for the City’s water and wastewater utility services was adopted in Resolution 1038-0621, approved by the City Council on June 7, 2021, and was thereafter published in accordance with ARIZ. REV. STAT. § 9-511.01(A)(2); and

WHEREAS, the City does not have departments, boards or other subdivisions that are authorized to establish or modify taxes or fees without City Council approval as described in ARIZ. REV. STAT. § 9-499.15(C), but the City has none-the-less provided a written notice of the proposed increase in water and wastewater user charges on the City’s website in a manner the City believes complies with ARIZ. REV. STAT. § 9-499.15(B)(3); and

WHEREAS, a public hearing on the proposed increase was held on August 23, 2021, in accordance with ARIZ. REV. STAT. § 9-511.01(A)(2); and

WHEREAS, the City Council finds that the proposed increases in the water and wastewater user charges are fully supported by the Report and will fully and fairly recover the cost of providing water and wastewater services from each customer class.

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 City Council hereby accepts the Report and desires to implement the rate increases recommended therein.

SECTION 3. The increased rates for water and wastewater charges are hereby adopted in the amounts and schedules as set forth in Exhibit A and Exhibit B, both attached hereto and incorporated herein by reference.

SECTION 4. The increased rates shall take effect at 12:01 a.m. for billing cycles beginning subsequent to October 1, 2021 for the year one rates and January 1, 2023 for the year two rates.

SECTION 5. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and 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, August 23, 2021.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1070-0821

[Water Charges]

See following page.

Water	October 1, 2021	January 1, 2023
<u>Fixed Charges all users</u>		
3/4" Meter	\$9.00	\$10.00
1" Meter	\$15.40	\$15.40
1 1/2" Meter	\$25.81	\$28.68
2" Meter	\$40.85	\$45.39
3" Meter	\$74.75	\$83.05
4" Meter	\$123.13	\$136.81
6" Meter	\$243.01	\$270.01
8" Meter	\$387.06	\$430.06
10" Meter	\$555.58	\$617.30
Hydrant Meter	\$211.47	\$136.81
<u>Residential Usage Charge per 1,000 gallons</u>		
0-6,000 gal	\$1.93	\$1.93
6,000-15,000 gal	\$3.09	\$3.38
15,000+ gal	\$4.83	\$4.83
<u>Non-Residential Usage Charge per 1,000 gallons (not including Landscape)</u>		
Non-Residential	\$2.86	\$2.93
Multi-Family	\$2.86	\$2.93
Hydrant Usage – all gal	\$4.83	\$2.93
<u>Landscape Usage</u>		
<u>3/4" Meter</u>		
0-12,000 gal	\$1.93	\$1.93
12,000-24,000 gal	\$3.09	\$3.38
25,000+ gal	\$4.83	\$4.83
<u>1" Meter</u>		
0-21,000 gal	\$1.93	\$1.93
21,000-42,000 gal	\$3.09	\$3.38
43,000+ gal	\$4.83	\$4.83
<u>1.5" Meter</u>		
0-40,000 gal	\$1.93	\$1.93
40,000-80,000 gal	\$3.09	\$3.38
80,000+ gal	\$4.83	\$4.83
<u>2" Meter</u>		
0-64,000 gal	\$1.93	\$1.93

64,000-128,000 gal	\$3.09	\$3.38
128,000+ gal	\$4.83	\$4.83
<u>3" Meter</u>		
0-120,000 gal	\$1.93	\$1.93
120,000-240,000 gal	\$3.09	\$3.38
240,000+ gal	\$4.83	\$4.83
<u>4" Meter</u>		
0-200,000 gal	\$1.93	\$1.93
200,000-400,000 gal	\$3.09	\$3.38
400,000+ gal	\$4.83	\$4.83
<u>6" Meter</u>		
0-400,000 gal	\$1.93	\$1.93
400,000-800,000 gal	\$3.09	\$3.38
800,000+ gal	\$4.83	\$4.83
<u>8" Meter & 10" Meter</u>		
0-640,000 gal	\$1.93	\$1.93
640,000-1,280,000 gal	\$3.09	\$3.38
1,280,000+ gal	\$4.83	\$4.83

EXHIBIT B
TO
RESOLUTION NO. 1070-0821

[Wastewater Charges]

See following page.

Wastewater	October 1, 2021	January 1, 2023
<u>Customer Charge</u>		
3/4" Meter	\$7.50	\$8.00
1" Meter	\$11.27	\$12.02
1 1/2" Meter	\$20.40	\$21.76
2" Meter	\$32.28	\$34.43
3" Meter	\$58.44	\$62.33
4" Meter	\$95.74	\$102.12
6" Meter	\$187.53	\$200.04
8" Meter	\$279.95	\$298.61

	October 1, 2021		January 1, 2023
<u>Customer Class</u>	<u>Volume charge per</u>	<u>Return Factor</u>	<u>Volume charge per</u>
	<u>1,000 gal</u>		<u>1,000 gal</u>
Residential*	\$3.94	80%	\$3.95
Multi-family	\$3.94	80%	\$3.95
Mobile Home Park	\$3.94	80%	\$3.95
Auto Steam Cleaning	\$3.94	80%	\$3.95
Bakery Wholesale	\$5.90	80%	\$3.95
Hospital & Convalescent	\$3.94	80%	\$3.95
Markets with Garbage Disposal	\$5.60	80%	\$3.95
Repair Shop and Service Station	\$3.94	80%	\$3.95
Restaurant	\$5.90	80%	\$3.95
Schools & Colleges	\$2.96	80%	\$3.49
Bars W/O Dining	\$3.94	80%	\$3.95
Laundromat	\$3.94	80%	\$3.95
Commercial Laundry	\$3.94	80%	\$3.95
Car Wash	\$2.66	80%	\$3.35
Professional Office	\$2.94	80%	\$3.48
Department Store & Retail	\$3.10	80%	\$3.57
Hotel w/Dining	\$4.70	80%	\$3.95
Hotel w/o Dining	\$3.94	80%	\$3.95
Mortuaries	\$3.94	80%	\$3.95

*Residential charges are calculated using the average water usage for the months of December, January and February, adjusted by the listed return factor.