



City of Avondale
City Council Meeting
Monday, September 11, 2023

Mayor and Council

Kenneth Weise, Mayor

Mike Pineda, Vice Mayor

Tina Conde, Council Member | Curtis Nielson, Council Member

Veronica Malone, Council Member | Gloria Solorio, Council Member

Max White, Council Member

Administration

Ron Corbin, City Manager

Cherlene Penilla, Assistant City Manager | Tracy Stevens, Assistant City Manager

Nicholle Harris, City Attorney | Marcella Carrillo, City Clerk

City Council Chambers

11465 West Civic Center Drive
Avondale, AZ 85323



City Council Meeting
Notice & Agenda
Monday, September 11, 2023

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

SPECIAL MEETING

5:30 PM

Physical Access to the Council Chambers will be available 30 minutes prior to the meeting.

CALL TO ORDER BY MAYOR

1. ROLL CALL BY THE CITY CLERK

2. PROCLAMATION - US CONSTITUTION WEEK

The City Council will present a Proclamation recognizing US Constitution Week, September 17-23, 2023. This item is for discussion only.

3. PROCLAMATION - NATIONAL HOUSEKEEPING WEEK

The City Council will present a Proclamation recognizing National Housekeeping Week, September 10-16, 2023. This item is for discussion only.

4. RECOGNITION OF 2023 ARIZONA PARKS AND RECREATION ASSOCIATION AWARDS

City staff will present the four awards that the City of Avondale received at the Arizona Parks and Recreation Association (APRA) Annual Awards Banquet on August 22, 2023. This item is for discussion only.

5. SWEARING-IN AND BADGE-PINNING CEREMONY (DISCUSSION ONLY)

The following Fire and Medical Department employees will be sworn in to their newly promoted roles:

- Dave Wagner, promoted to Assistant Fire Chief
- Freddy Cruz, promoted to Battalion Chief
- Steve Mayhew, promoted to Battalion Chief
- Garry Siler, promoted to Battalion Chief

6. ADJOURNMENT

Request to Speak: Anyone wishing to address the Council regarding items listed on the agenda or under unscheduled public appearance should submit a Request to Speak online at <http://www.avondaleaz.gov/requesttospeak> prior to consideration of that agenda item.

REGULAR MEETING

6:00 PM

Physical Access to the Council Chambers will be available 30 minutes prior to the meeting.

CALL TO ORDER BY MAYOR

PRESENTATION OF COLORS & THE PLEDGE OF ALLEGIANCE PRESENTED BY THE AVONDALE POLICE DEPARTMENT AND THE FIRE & MEDICAL DEPARTMENT HONOR GUARDS IN REMEMBRANCE OF 9/11

1. ROLL CALL BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES (Time is limited per person. Please state your name.)

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.

a. ACCOUNT TRANSFER - GENERAL OBLIGATION (GO) BOND CONSTRUCTION 2019 FUND

City Council will consider a request to approve the transfer of interest accumulated in the GO Bond Construction 2019 Fund, approximately \$20,500, to the General Fund along with the necessary budget adjustments utilizing the unanticipated revenue contingency budget and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

b. EMERGENCY SERVICES AGREEMENT - PHOENIX SPEEDWAY, LLC - ISM RACEWAY

The City Council will consider a request to approve an Emergency Services Agreement with Phoenix Speedway, LLC, for the City to provide emergency services during certain events at ISM Raceway in Avondale and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

c. WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT WITH TELEPORT COMMUNICATIONS AMERICA, LLC

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

d. REDUCTION IN FORCE FOR DEPARTMENT REORGANIZATION

City Council will consider a request pursuant to Avondale Chapter Policy 17 section B to approve a reduction in force due to the Human Resource Department's reorganization resulting in the elimination of the Human Resource Manager position. The Council will take appropriate action.

e. RESOLUTION 1053-0923 - SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR THE PHOENIX FIRE DEPARTMENT REGIONAL DISPATCH SYSTEM

City Council will consider a request to adopt Resolution 1053-0923, approving the second amendment to an Intergovernmental Agreement with the City of Phoenix for the Phoenix Fire Department Regional Dispatch System and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. RESOLUTION 1054-0923 - INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF HOMELAND SECURITY - CYBER READINESS PROGRAM

City Council will consider a request to adopt Resolution 1054-0923, approving an intergovernmental agreement with the State of Arizona Department of Homeland Security to use the statewide Cyber Readiness Program and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The council will take appropriate action.

g. RESOLUTION 1055-0923 - AUTHORIZING THE MAYOR TO SIGN ON BEHALF OF THE CITY FOR THE SISTERHOOD AGREEMENT BETWEEN THE CITY OF AVONDALE, ARIZONA AND ROCKY POINT, SONORA

City Council will consider a request to adopt Resolution 1055-0923, authorizing the Mayor to sign on behalf of the City for the Sisterhood Agreement between the City of Rocky Point of the State of Sonora of the United Mexican States and the City of Avondale of the State of Arizona of the United States of America 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 1056-0923 - AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY HUMAN SERVICES DEPARTMENT - COMMUNITY ACTION PROGRAM (CAP) SERVICES

City Council will consider a request to adopt Resolution 1056-0923, approving Amendment No. 1 of the Intergovernmental Agreement (IGA) with the Maricopa County Human Services Department for the provision of the Community Action Program (CAP) services, 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 1057-0923 AMENDMENT NO. 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY HUMAN SERVICES DEPARTMENT - COMMUNITY ACTION PROGRAM (CAP) SERVICES

City Council will consider a request to adopt Resolution 1057-0923, approving Amendment No. 2 of the Intergovernmental Agreement (IGA) with the Maricopa County Human Services Department for the provision of the Community Action Program (CAP) services, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

4. REGULAR AGENDA

a. GENERAL PLAN PROGRESS UPDATE

City staff, in partnership with the consultant Michael Baker International, are preparing the General Plan update and conducting this City Council Work Session to present what has transpired since the last General Plan presentation to the City Council and Planning Commission at a Work Session held on November 7, 2022. This item is for information and discussion only. No action will be taken.

5. SUMMARY OF CURRENT EVENTS FROM THE MAYOR, VICE MAYOR, AND COUNCIL MEMBERS (5 Minutes)

6. 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 of the City Auditor's employment evaluation.

Council Members of the City of Avondale will attend either in person or by telephone or video 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 o por vídeo. Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o intérprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

CITY COUNCIL REPORT

SUBJECT: Proclamation - US Constitution Week

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Sandra Salas, Management Analyst

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area: Innovative Program Service Delivery - Avondale will continue to serve as a model of innovative, efficient, and responsive government.

PURPOSE:

The City Council will present a Proclamation recognizing US Constitution Week, September 17-23, 2023. This item is for discussion only.

BACKGROUND:

US Constitution Week, September 17-23, 2023, marks the two hundred and thirty-sixth anniversary of the framing of the Constitution of the United States of America by the Constitution Convention.

DISCUSSION:

It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it. Public Law 915 guarantees the issuing of a proclamation each year by the president of the United States of America designating September 17 through 23 as Constitution Week.

BUDGET IMPACT:

This item does not have a budget impact.

RECOMMENDATION:

This item is for presentation only.

Contact person for document distribution:



PROCLAMATION

US CONSTITUTION WEEK

September 17-23, 2023

Whereas, September 17, 2023, marks the two hundred and thirty-sixth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention; and

Whereas, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

Whereas, Public Law 915 guarantees the issuing of a proclamation each year by the president of the United States of America designating September 17 through 23 as Constitution Week,

NOW THEREFORE, I, Kenneth Weise, by virtue of the authority vested in me as Mayor of the City of Avondale, Arizona, do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

And ask citizens to reaffirm the ideals of the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

Mayor

Attest:

City Clerk

CITY COUNCIL REPORT

SUBJECT: Proclamation - National Housekeeping Week

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Sandra Salas, Management Analyst

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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.

PURPOSE:

The City Council will present a Proclamation recognizing National Housekeeping Week, September 10-16, 2023. This item is for discussion only.

BACKGROUND:

National Housekeeping Week, September 10-16, 2023, is a week-long celebration dedicated to recognizing the efforts of hard-working housekeepers.

DISCUSSION:

Building operations such as hotels, restaurants, casinos, and other official buildings all function under the long hours and efforts of housekeeping. If housekeeping did not exist and buildings were not properly cleaned, it can lead to illness and productivity loss for the people who visit, eat, live, work and play there. Housekeepers have one of the toughest jobs in a building, but also one of the most important. Recognizing September 10-16, 2023, as National Housekeeping Week and extend sincere gratitude and appreciation to the hospitality industry of Avondale who provide excellent service every day.

BUDGET IMPACT:

This item does not have a budget impact.

RECOMMENDATION:

This item is for presentation only.



PROCLAMATION

National Housekeeping Week

September 10-16, 2023

Whereas, National Housekeeping Week is a week-long celebration dedicated to recognizing the efforts of hard-working housekeepers.

Whereas, any building operation such as hotels, restaurants, casinos, and other official buildings all function under the long hours and efforts of housekeeping, and

Whereas, if housekeeping did not exist and buildings are not properly cleaned, it can lead to illness and productivity loss for the people who visit, eat, live, work and play there, and

Whereas, the true heroes of any building operation, housekeepers have one of the toughest jobs in a building, but also one of the most important.

NOW THEREFORE, I, Kenneth Weise, by virtue of the authority vested in me as Mayor of the City of Avondale, Arizona, do hereby proclaim September 10-16, 2023, as National Housekeeping Week and extend sincere gratitude and appreciation to the hospitality industry of Avondale who provide excellent service every day.

Mayor

Attest:

City Clerk

CITY COUNCIL REPORT

SUBJECT: Recognition of 2023 Arizona Parks and Recreation Association Awards

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Bryan Hughes, Parks and Recreation Director

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

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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 staff will present the four awards that the City of Avondale received at the Arizona Parks and Recreation Association (APRA) Annual Awards Banquet on August 22, 2023. This item is for discussion only.

BACKGROUND:

The City of Avondale was recognized with four awards at the Arizona Parks and Recreation Association Annual Awards Banquet held at Renaissance Phoenix Glendale Hotel & Spa on Tuesday, August 22, 2023.

DISCUSSION:

The 2022 Blank Canvas Summer Showcase was recognized as the Outstanding Program Award – Youth Enrichment Program. Participants were provided with a FREE 18 x 24-inch blank canvas to create original artwork inspired by each individual's ideas surrounding beauty, values, and culture. Canvases were provided by Avondale's Neighborhood and Family Services Department.

Alamar Park was recognized with the Outstanding Facility Award (Population 10,000-100,000). The 40-acre community park opened in October 2022 and was developed in cooperation with Brookfield Residential. Valley Rain Construction served as the general contractor on the project.

Mayor Weise was recognized with the Outstanding Elected Official Award. The award recognized Mayor

Weise's leadership and commitment to parks and recreation in Avondale during his time on the City Council.

Lastly, Corey Larriva, Parks and Recreation Assistant Director, was recognized with the APRA President's Award for his contributions to APRA as the 2023 Conference Co-Chair. The award was presented by APRA President Miranda Gomez, City of Buckeye Community Services Director.

Congratulations to Mayor Weise, Corey, and the City of Avondale!

BUDGET IMPACT:

Not applicable

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution:

CITY COUNCIL REPORT

SUBJECT: Account Transfer - General Obligation (GO) Bond Construction 2019 Fund

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Renee Weatherless, Finance and Budget Director

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

Inovative Program and Service Delivery - These budget adjustments and transfers will allow for the efficient use of city resources.

PURPOSE:

City Council will consider a request to approve the transfer of interest accumulated in the GO Bond Construction 2019 Fund, approximately \$20,500, to the General Fund along with the necessary budget adjustments utilizing the unanticipated revenue contingency budget and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On May 16, 2022, City Council approved an interfund transfer of \$676,601 from the GO Bond Construction 2019 Fund to the General Fund to reimburse it for FY2021 expenditures for the police expansion project and the construction of the resource center. This transfer was to facilitate the closing of the GO Bond Construction 2019 Fund. After consulting with our external auditor, this transfer was finally completed in August 2023 and will be reflected in the FY2023 financial statements. However, this delay resulted in additional interest revenue of approximately \$20,500 that now needs to be transferred to the General Fund to complete the closure of the GO Bond Construction 2019 Fund.

DISCUSSION:

This final transfer will allow the city to close the GO Bond Construction 2019 Fund.

BUDGET IMPACT:

The recommended transfer will increase the General Fund balance by about \$20,500.

RECOMMENDATION:

Staff recommends authorizing the interfund transfer of the balance of the GO Bond Construction 2019 Fund, approximately \$20,500, to the General Fund along with the necessary budget adjustments utilizing the unanticipated revenue contingency budget.

Contact person for document distribution: n/a

CITY COUNCIL REPORT

SUBJECT: Emergency Services Agreement - Phoenix Speedway, LLC - ISM Raceway

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Larry Rooney, Fire Chief

THROUGH: Dale Nannenga, Public Safety Chief, (623) 333-7207

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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.
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PURPOSE:

The City Council will consider a request to approve an Emergency Services Agreement with Phoenix Speedway, LLC, for the City to provide emergency services during certain events at ISM Raceway in Avondale and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On November 10, 2010, the City entered into a development agreement with Phoenix Speedway, LLC d.b.a. Phoenix International Raceway (PIR) which set forth certain requirements including the obligation for the City and PIR to develop a separate emergency services agreement relating to significant events, including NASCAR race events, which is now ISM Raceway.

The initial emergency services between the parties was approved by City Council on October 3, 2011 and subsequent agreements have been in place for five-year terms since that time. The most recent agreement expired in June 2023.

DISCUSSION:

The Emergency Services Agreement applies to major events, typically NASCAR racing events, that occur at ISM Raceway and sets forth a requirement that those events be managed in accordance with the National Incident Management System (NIMS) unified command process. For those events, the City agrees to provide the personnel and equipment necessary for the provision of emergency medical services during events. The City will also complete all pre-event planning to ensure NIMS compliance and to provide an appropriate facility to house the Unified Command Center (UCC).

In return, PIR agrees to maintain certain infrastructure improvements, provide certain services to support

emergency operations and to reimburse the city for personnel costs and UCC support.

The initial term of the revised and restated agreement will expire June 30, 2024 and provides for five, one-year extensions.

BUDGET IMPACT:

Expenditures related to this item are typically made from appropriations in the Fire and Medical budget. These expenditures include the cost of overtime for personnel to staff the temporary fire station at the track and part-time emergency dispatchers in the Unified Command Center, including benefits; support costs including meals for those personnel; and technology support for the Unified Command Center. Through this agreement, the city is reimbursed by PIR for emergency service costs for an amount not to exceed \$53,000 for a typical major event, in addition to reimbursement for dispatch and communication services at \$20 per hour. This amendment results in an increase in reimbursement of \$15,000 for emergency services and \$5 per hour for dispatch and communication services.

RECOMMENDATION:

Staff recommends that the City Council consider a request to approve the amended and restated Emergency Services Agreement with Phoenix Speedway, LLC, for the City to provide emergency services during certain events at ISM Raceway in Avondale and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

Contact person for document distribution: Marsha Chavez

**EMERGENCY SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX INTERNATIONAL RACEWAY**

THIS EMERGENCY SERVICES AGREEMENT (this “Agreement”) is entered into to be effective as of September 11, 2023 (the “Effective Date”), by and between the City of Avondale, an Arizona municipal corporation (the “City”) and Phoenix Speedway LLC, a Delaware limited liability company d/b/a Phoenix International Raceway (“PIR”). The City and PIR are sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

A. The City and PIR entered into a Development Agreement on November 22, 2010 (the “Development Agreement”) which set forth certain requirements, including the obligation to develop a public safety services plan for major race events which was to be memorialized in a separate written agreement between the Parties.

B. The Parties agree and understand that the provision of fire services and emergency medical services (“EMS”) at a level typically provided by the Avondale Fire & Medical Department (fire services and EMS are collectively referred to herein as the “Emergency Services”) is unique at the Phoenix Raceway.

C. The City and PIR previously entered into an agreement on October 3, 2011 (the “2011 Agreement”), which (i) set forth the Parties’ understanding as to each Party’s responsibility for certain actions and infrastructure improvements related to providing Emergency Services at ISM Raceway, f/k/a Phoenix International Raceway (the “Raceway”), for a NASCAR sanctioned race event or other event that could reasonably be expected to attract a daily spectator attendance in excess of 25,000 and including three race days, or such other event agreed to by the Parties (each, a “Major Event”) and (ii) established expectations for future coordination between the City and PIR with respect to the provision of Emergency Services for Major Events.

D. The City and PIR entered into another agreement on October 30, 2017 (the “2017 Agreement”), to amend and restate their respective responsibilities as set forth in the 2011 Agreement.

E. The City and PIR now desire to enter into this Agreement which restates provisions of 2011 Agreement and the 2017 Agreement and also includes additional terms as deemed necessary by the Parties.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereto agree as follows:

1. Avondale Responsibilities.

1.1 In General. The City agrees to provide Emergency Services (with levels of Service/Staffing in accordance with Exhibit B) to PIR during Major Events, as follows:

A. For NASCAR sanctioned Major Events at the Raceway, the City agrees to provide EMS outside the ticketed area perimeter fence line, which shall include the parking areas, RV area and RV camping area to the south of PIR in Estrella Mountain Regional Park, as those areas are shown on Exhibit A, attached hereto and incorporated herein. by reference.

B. During Major Events, the City agrees to provide EMS assistance the designated ambulance provider as necessary in the areas to the east of Cactus Lane (as shown on Exhibit A), which shall include the infield, grandstands, corporate tent area and areas around the grandstands.

C. During Major Events the City agrees to provide on-site fire, rescue and hazardous materials coverage for the entire Raceway property, with the exception of the track and pit area, for which the City will assist PIR, contract personnel on an as-needed basis when requested to do so by PIR personnel.

D. Should an emergency incident for which external resources must be requested through the Valley automatic aid system to assist (a "Significant Event") occur, the City will (1) assume command of all fire, rescue and EMS resources and activities in accordance with adopted City codes, ordinances and regulations and (2) operate under the National Incident Management System ("NIMS") Unified Command structure and the normal operating guidelines of the Valley automatic aid system.

E. The City agrees to provide the appropriate fire inspection personnel necessary throughout a Major Event to enforce all aspects of the currently adopted City of Avondale Fire Code in all venue areas. Permit fees as established by the City will be charged to the responsible entity.

1.2 Operational Responsibilities. The City agrees to provide the following in support of Major Events at PIR:

A. All pre-event agency planning, and coordination is necessary to comply with the NIMS Unified Command process and procedures.

B. A vehicle, or other alternative, of appropriate size, design and technological configuration, with available, appropriate technical support personnel to support a Unified Command Center (UCC) facility for the duration of the Major Event. Specific dates/times for set-up and demobilization of the UCC are indicated in Exhibit B, attached hereto and incorporated herein by reference.

C. Fire Service command level personnel are necessary to staff the fire positions within the UCC.

D. A fully functional temporary fire station, to include necessary emergency dispatch notification capabilities, to be established on the El Mirage Road, north of the north tram road fence line, as depicted on Exhibit A.

E. Fire service apparatus, equipment and personnel necessary to staff fire department emergency response apparatus from the temporary fire station. A deployment model for a typical major race event is outlined in Exhibit B. This deployment may be adjusted as determined by the Parties at the pre-event planning meetings.

F. Coordination with an appropriate ambulance provider to provide a transport ambulance on-site on a 24-hour basis as indicated in Exhibit B.

G. Sufficient Phoenix Regional Wireless Cooperative (PRWC) radios to equip fire, EMS and law enforcement personnel and appropriate headsets for use in high noise environments, where necessary.

H. An appropriate number of fire inspectors, as determined by the Fire Chief and Fire Marshal, to facilitate vendor set-up and operation while ensuring vendor compliance with the requirements of the City fire code and payment of applicable permit fees.

2. PIR Responsibilities. PIR agrees to provide necessary infrastructure, operational requirements, and other support necessary to provide adequate Emergency Services coverage during Major Events, and for such other events as deemed necessary by the Parties, as set forth below.

2.1 Infrastructure Improvements.

A. PIR agrees to maintain previously installed keyless, electrically powered, emergency access gates on El Mirage Road at the location as indicated on Exhibit A, to allow emergency vehicle access across Mountain Road (the tram road) to the south camping area in Estrella Mountain Regional Park. The

gate will at all times have appropriate electrical back-up capability.

B. PIR and the City have agreed upon a location of sufficient size and configuration for the City to operate a temporary fire station to include parking of fire and EMS apparatus and sufficient recreational vehicles to house emergency service personnel on a 24-hour basis. Sufficient parking spaces, either paved or unpaved, will be provided for both the temporary fire station and UCC for the parking of personal vehicles for on-duty personnel. See Exhibit A for the temporary fire station and UCC locations.

2.2 PIR Operational Responsibilities. PIR agrees to provide the following in support of Major Events:

A. Appropriate credentials for on-duty Emergency Service personnel for full facility access.

B. Necessary recreational vehicles or trailers in the temporary fire station area to appropriately house the personnel assigned to the temporary fire station. These will include at a minimum, RVs or trailers of sufficient size to comfortably sleep up to nine fire personnel. Bunks/beds must be of a sufficient size to accommodate average adults and each bunk/bed may be utilized by only one person. Individual Bunks/beds cannot be shared. Units will be equipped with adequate restroom and kitchen facilities.

C. All RVs and/or trailers will be in place and fully functional on the day scheduled for the temporary fire station set-up.

D. Electrical supply mechanism to appropriately power the temporary fire station housing units and the UCC or another operations center as necessary.

E. If generators are utilized to provide electrical power, appropriate assistance for setup and initial connection, in addition to daily service/maintenance.

F. Necessary arrangements to resupply on-board water and maintain the black water system on RVs or trailers assigned to the fire station and UCC or operations center (if necessary) on a daily priority basis.

G. Portable restrooms in an appropriate number and configuration, as determined jointly by the Parties, to support the personnel located at the UCC or operations center.

H. Appropriate arrangements to fully service the portable restrooms on a daily basis.

I. One golf cart to support UCC operations for the Safety Officer.

J. A fire/EMS communications supervisor and a communications technical specialist will be provided to assist in setting up the UCC, the fire station dispatch system and the Emergency Services communications system on the set-up and ops check days indicated in Exhibit B. These personnel shall be City employees and PIR shall reimburse the City for such costs associated with this additional personnel and set-up equipment, which are not included in the cost model set forth in Exhibit B.

K. Arrangements shall be made by City staff to feed staff personnel assigned to work the event including meals, snacks and related items which shall be reimbursed by PIR, which are not included in any other referenced amounts.

L. Once the UCC is operational, a communications supervisor and sufficient dispatchers and communications technicians shall be staffed to support the Unified Command concept. A minimum suggested staffing level is set forth on Exhibit C, attached hereto and incorporated herein by reference. These personnel shall be City employees and PIR shall reimburse the City for these costs, which are not included in the cost model set forth in Exhibit B.

3. **Mutual Responsibilities.** The Parties agree that all Major Events and/or Significant Events occurring at the Raceway will be addressed in accordance with a Unified Command structure and operate under NIMS.

3.1 **Event Planning.** The Parties mutually agree to include each other in any pre-event planning meetings which may have an impact on Emergency Service operations, including all event command planning processes.

3.2 **Pre-event Meeting.** The Parties jointly agree to conduct a specific initial pre-event meeting to discuss Emergency Service operations at least three months prior to a Major Event to determine staffing needs, mobilization/demobilization schedules, and other operational issues. Other emergency service entities will be included in this meeting if determined by the Parties to be appropriate.

4. **Compensation.**

4.1 **Emergency Services Costs.** PIR. agrees to compensate the City for Emergency Services costs associated with Major Events according to the staffing model set forth in Exhibit B which provides a staffing model for a typical Major Event utilizing a blended average personnel cost model. PIR's cost for fire station staffing shall not exceed \$53,000.00 for a typical Major Event based on the staffing model shown in Exhibit B. If the Parties agree to a different staffing model, the not-to-exceed cost shall be adjusted accordingly.

4.2 Communications Personnel. PIR agrees to compensate the City for Fire & EMS dispatchers, and communications technician personnel at the rate of \$25 per hour for dispatchers and communication technicians, based on the staffing model shown in Exhibit B.

4.3 Invoice. The City agrees to invoice PIR for all costs, including Emergency Services costs, and communications personnel costs, within 30 days following completion of the Major Event.

4.4 Payment. PIR agrees that Emergency Service invoices will be paid within 30 days of receipt.

5. General Provisions.

5.1 Independent Contractor. The Parties acknowledge and agree that their obligations under this Agreement are being fulfilled as independent contractors of one another, and not as employees or agents of the other Party. Neither Party's employees nor subcontractors are entitled to workers' compensation benefits from the other Party. Neither Party has the authority to supervise or control the actual work of the other Party, its employees, or subcontractors. The City and PIR do not intend to, nor will they combine business operations under this Agreement.

5.2 Laws and Regulations. Both Parties shall keep fully informed and shall at all times during the performance of their respective duties under this Agreement ensure that they and any person for whom they are responsible remain in compliance with all rules, regulations, ordinances, statutes or laws affecting the Emergency Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration ("OSHA") standards.

5.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into such amendment on behalf of the City and PIR, respectively.

5.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement, whether such law is required by a Federal, State, County or other entity with authority over the City, but not including the City, will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

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

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

5.6 Relationship of the Parties. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

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

5.8 Assignment. No right or interest in this Agreement shall be assigned by PIR without prior, written permission of the City signed by the City Manager and no delegation of any duty of PIR shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by PIR in violation of this provision shall be a breach of this Agreement by PIR.

5.9 Subcontracts. No subcontract shall be entered into by either Party with any other party to complete its performance specified herein without the prior written approval of the other Party. Each Party is responsible for performance under this Agreement whether or not subcontractors are used.

5.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as a waiver by either Party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of a Party to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the other party from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of such Party's to insist upon the strict performance of this Agreement.

5.11 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the

court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

5.12 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: City Manager
With copy to:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: Nicholle Harris, City Attorney
If to PIR:	Phoenix Speedway LLC. 125 S. Avondale Boulevard, Suite 200 Avondale, Arizona 85323 Attn: Latasha Causey, President
With a copy to:	Legal Department One Daytona Boulevard Daytona Beach, Florida 32114 Attn: General Counsel

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.

5.13 Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of the Agreement and the Exhibits hereto, the Agreement shall govern.

5.14 Term and Effective Date. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2024 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement will be reviewed prior to June 30 of each year and may be renewed for up to four successive one-year terms (each a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, and (ii) the City and PIR approve the additional one-year term in writing (including any price or staffing adjustments as agreed to by the Parties). The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Ron Corbin, City Manager

Date: _____

ATTEST:

Marcella Carrillo, City Clerk

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2023, before me personally appeared Ron Corbin, the City Manager of the City of Avondale, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who they claim to be, and acknowledged that they signed the above document, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“PIR”

PHOENIX SPEEDWAY LLC,
a Delaware limited liability company

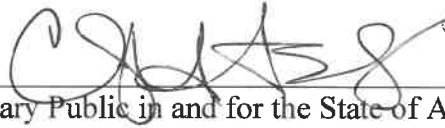


Latasha Causey, President

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On August 24, 2023, before me personally appeared Latasha Causey, the President of PHOENIX SPEEDWAY, LLC, a Delaware limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who they claim to be, and acknowledged that they signed the above document, on behalf of Phoenix Speedway, LLC.



Notary Public in and for the State of Arizona

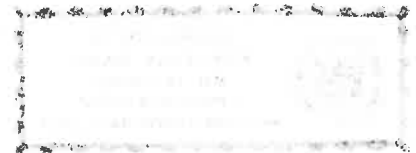


(Affix notary seal here)

EXHIBIT A
TO
EMERGENCY SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Location Map]

See following page.



OFFICIAL MAP OF PHOENIX RACEWAY

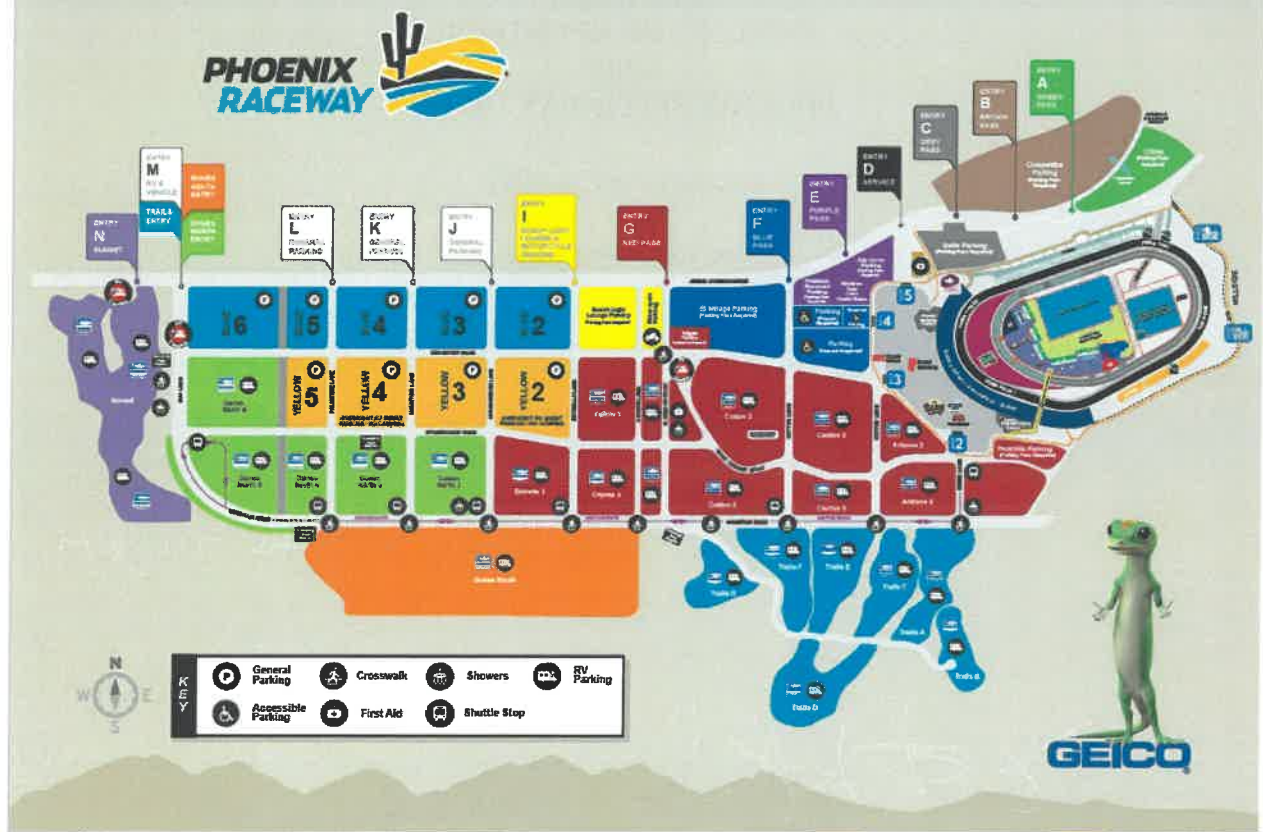


EXHIBIT B
TO
EMERGENCY SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Deployment Model]

See following page.

Exhibit B

Fire Station Deployment Model (Typical NASCAR Race Event) *

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday Race Day	Sunday Race Day	Monday
EOC	Set-up	Ops Checks	Operational 0800					Demob 1200
Station		Set-up	Operational 0800					Demob 1200
Engine¹					Staffed	Staffed	Staffed	
Brush²			Staffed	Staffed	Staffed	Staffed	Staffed	
Cub Cadets (2)³						Staffed	Staffed	
Shift Cmdr.					Staffed	Staffed	Staffed	

*Costs figures are estimated based on a blended average salary - fire station positions are filled on a 24-hour basis. This deployment model may be adjusted as determined jointly by the Parties at the pre-event planning meeting.

¹ Engine company: One captain, one engineer, two firefighters - at least two of the four must be paramedics

² Brush engine: One engineer, one firefighter

³ Quick response cub cadets (2): One paramedic firefighter each.

⁴ Shift Commander: One battalion chief and battalion safety officer

EXHIBIT C
TO
EMERGENCY SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Communications Supervisors / Dispatchers]

See following page.

Exhibit C

Communications Supervisors / Dispatchers (Typical NASCAR Race Event) *

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday Race Day	Sunday Race Day	Monday
Fire/EMS Comm. Supervisor			0900 -2300	0900-2300	0900-2300	0900.....2300	0900 -2300	
Fire/EMS Dispatcher			One 0800- 0800	One 0800-0800	Two 0900-2300 One 2300- 0900	Two 0900-2300 One 2300 - 0900	Two 0900-2300 One 2300-0900	
Comm. Tech	Two 0800-1700	Two 0800-1700	Two 0800-1700	One 0800-1700	One 0800-1700	One 0800-1700	One 0800-1700	
LawEnf. Operations Coordinator			0900-2300	0900-2300	0900-2300	0900-2300	0900-2300	
LawEnf. Dispatcher			One 0800- 0800	One 0800-0800	Two 0900-2300 One 2300 - 0900	Two 0900-2300 One 2300 - 0900	Two 0900-2300 One 2300-0900	
Ambulance Operations Coordinator					0900 -2300	0900-2300	0900-2300	
Track Services Coordinator					0900 -2300	0900-2300	0900-2300	

*suggested minimum staffing requirements

CITY COUNCIL REPORT

SUBJECT: Wired Telecommunications License and Right-of-Way Use Agreement with Teleport Communications America, LLC

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Kirk Beaty, Director, Public Works Department

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

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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.
-

PURPOSE:

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

BACKGROUND:

Teleport Communications America, LLC, (TCA) provides telecommunications services for single mode fiber. With recent expansion in the West Valley, TCA desires to install and construct fiber telecommunication infrastructure within the City's right-of-way to provide telecommunication services to businesses within the region.

DISCUSSION:

The Wired Telecommunications License and Right-of-Way Use Agreement (Agreement) will:

- Allow TCA to install, operate, maintain, and repair conduit systems and fiber optic cable within the City's right-of-way.
- Allow for the possibility of the City to receive and use in-kind dark fiber from TCA for City purposes.
- Require TCA to provide as-built drawings of any conduit located within the right-of-way to the City electronically in a format compatible to our GIS system.

TCA shall be responsible for maintenance and repair of all fiber installed. The Agreement requires security funding that must be met by TCA to guarantee that they observe, fulfill, and perform all terms of the

Agreement. The funding shall be provided prior to issuance by the City for any permit to construct, install, maintain, or perform any work under the Agreement. Standard insurance requirements are outlined in the Agreement.

The initial term of the Agreement is five (5) years, with a renewal option for three (3) additional five (5) year terms.

BUDGET IMPACT:

The City will charge plan review and permit fees in accordance with its current Rates and Fees Schedule and will assess an annual right-of-way use fee of \$1.04 per linear foot of trench (not to exceed a 5% cap of Licensee's gross revenues) or receive in-kind dark fiber once the fiber is leased to third parties.

RECOMMENDATION:

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

Contact person for document distribution: Yulonda Moore, Natalie Railey

WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT

This Wired Telecommunications License and Right-of-Way Use Agreement (“Agreement”) is entered into this ____ day of _____, 2023 by and between the City of Avondale, an Arizona municipal corporation (“City”) and Teleport Communication America, LLC, a Delaware limited liability company (“Licensee”).

RECITALS

WHEREAS, the City owns public street and alley right-of-way and public utility easements within the boundaries of the City of Avondale;

WHEREAS, Licensee wishes to install, operate, maintain and repair cable containing bundles of multiple optical fibers, within the City’s right-of-way subject to the requirements of this Agreement;

WHEREAS, the City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation, repair, and maintenance of facilities within the City’s boundaries pursuant to the Avondale City Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to, ARIZ. REV. STAT. §§ 9-581, 9-582, and 9-583), by the City’s police powers, its authority over City’s public right-of-way, and its other governmental powers and authority;

WHEREAS, the City desires to reserve rights to construct, use, and allow others to construct and use all manner of additional improvements in the right-of-way, while granting Licensee a license to install, operate, maintain and repair Conduit Systems and Fiber Optic Cable within the City’s right-of-way;

WHEREAS, Licensee agrees to provide and maintain accurate maps showing the location of all Fiber Optic Cable owned or used by Licensee in the City right-of-way, and to comply with such other mapping requirements as the City may establish from time to time;

WHEREAS, Licensee will secure the appropriate licenses, encroachments and other permits required by the City for the placement of its Conduit Systems, Fiber Optic Networks, and related facilities within City Right of Way;

WHEREAS, Licensee has agreed to comply with public property use requirements that City has and may establish from time to time.

NOW THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants to Licensee a telecommunication license and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

DEFINITIONS

Cable Services shall have the same meaning as defined in Chapter 4.5 of the Avondale City Code, herein incorporated by this reference, and in ARIZ. REV. STAT § 9-581. Cable Services is not a Telecommunications Service.

Conduit means pipes made of varying materials designed to protect buried Fiber Optic Cables.

Conduit System means any combination of Conduits, ducts, inner-ducts, manholes, and hand holes – all joined to form an integrated whole.

Dark Fiber means Fiber Optic Cables that have not been connected to transmission equipment or otherwise part of a Fiber Optic Network. Dark Fiber sales and leasing is not a Telecommunications Service.

Facilities means the plant, equipment, and property used in the provision of communication and Telecommunication Services and not owned by the City, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW.

Fiber Optic Cable means a cable containing bundles of optical fibers used to carry optical signals. Fiber Optic Cables may be part of a Fiber Optic Network.

Fiber Optic Network means a communication system consisting of an optical transmitter used to convert an electrical signal into an optical signal to send into an optical fiber, Fiber Optic Cables routed through Conduits and buildings, amplifiers, and an optical receiver to recover the signal as an electrical signal. A Fiber Optic Network contains Fiber Optic Cables and is used for the purpose of Telecommunications Services.

Gross Revenues means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half per cent annually, that is received directly or indirectly by the Licensee, its affiliates, subsidiaries or parent or any person, firm or corporation in which the Licensee has a financial interest or that has a financial interest in the telecommunications provider and that is derived from the Telecommunications Services provided in the area of jurisdiction. Gross revenues include all revenue from charges for Telecommunications Services to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive Telecommunications Services, and any other receipts from subscribers derived from operating the telecommunications system to provide Telecommunications Services, including receipts from forfeited deposits, sale or rental of equipment to provide Telecommunications Services, late charges, interest and sale of program guides. Gross revenues also include all income the Licensee receives from the lease of its facilities located in the public streets, roads and alleys, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from fees, taxes or other fees or charges that the Licensee collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

Right-of-Way (“ROW”) means the roads, streets, highways, and alleys and all other dedicated public rights-of-way and public utility easements of the City.

Telecommunications means the transmission of information, between or among points specified by a user, of the user's choosing, without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, or the sale or leasing of Dark Fiber for transmission purposes.

Telecommunications Services means the offering of Telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public. Telecommunications Services does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, the sale or leasing of Dark Fiber for transmission purposes, or the sale or leasing of Conduit.

AGREEMENT

1. LICENSE; TERM

- 1.1. **License; Route.** The City hereby grants to Licensee a non-exclusive, revocable license to use the designated portion of the ROW ("Route") subject to and conditioned upon Licensee's full, timely, complete, and faithful performance of all obligations required under this Agreement. Such use of the Route will be for the sole purpose of operating and maintaining a wired network as described in this Agreement. The Route will be occupied by Licensee's Conduit System, Fiber Optic Network, plant, equipment, and property used in the provision of communication and Telecommunication Services, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW (collectively, the "Licensee's Facilities") and is as reflected on the map (i.e. use area) in **Exhibit A**, herein incorporated by this reference. For the avoidance of doubt, under no circumstances shall the Route include any other property other than the ROW. Licensee may request modification or expansion of the Route by submitting all required permits for construction to the City. Any modifications or expansions to the Route shall be governed by the terms and conditions of this Agreement and must be approved in writing by the City in its sole discretion. Any modifications or expansions shall become part of the Route. Licensee shall not use any portion of the ROW that is abandoned by the City or removed from the City's legal boundaries or for any purpose other than that expressly stated in this Agreement.
- 1.2. **Term; Effective Date.** This Agreement is effective the date the last party signs ("Effective Date") and shall remain in effect for five (5) years from the Effective Date ("Term"), unless sooner terminated. No provision of this Agreement may be construed to grant any automatic extension, renewal, or replacement thereof.
 - 1.2.1. **Holdover.** If Licensee's Facilities remain in the Route, and Licensee continues to use such Licensee's Facilities beyond the expiration of the Term, the Agreement shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed sixty (60) days beyond the expiration of the Term, and no permits will be issued to Licensee by the City until a new license agreement has been approved by the City Council.

- 1.2.2. Failure by Licensee to have a valid license to use the Route or other ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to Licensee. If, however, Licensee has timely filed its application and is in active negotiations with the City prior to the expiration of the Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to Licensee prior to the expiration of the Agreement.
- 1.3. Renewal. The parties may extend the Term of this Agreement for up to three (3) additional five (5) year periods upon the mutual written consent of both parties. Such renewal must be made within one-hundred eighty (180) days prior to the termination of the initial Term of the Agreement. Licensee understands that the City may adopt future code amendments or fee schedules relating to use of the ROW, which may become applicable to this Agreement upon its initial or subsequent renewal. Licensee acknowledges the right of the City to adopt and implement such lawful code amendments and/or fee schedules.
- 1.4. Amendments. This Agreement may not be amended without the written approval of both parties, except as described herein.
- 1.5. No Real Property Interest. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Route is limited to the license rights created by this Agreement, which creates a revocable (subject to the terms and provisions herein), non-exclusive license in the Route. The City and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Route or any portion of the ROW. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Route. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the Route or Licensee's use thereof.
- 1.6. "AS-IS" Condition. Licensee is responsible for the study and inspection of the Route to be used pursuant to this Agreement and for determining the fitness for use intended by Licensee. The City expressly disclaims all warranties of merchantability or fitness for a particular purpose or absence of hazardous conditions associated with the Route and the ROW. Licensee accepts the Route and ROW in "AS-IS" condition, without representation or warranty of any kind by the City, its officers, agents, or employees, and subject to all applicable laws governing the use of the Route for the permitted uses allowed by this Agreement.
- 1.7. Mapping Requirement. Licensee shall maintain as-built drawings of Licensee's Facilities located within the Route and furnish a copy to the City using as-builts in pdf and AutoCAD. Upon completion of new or relocation construction of Licensee's Facilities in the Route, Licensee shall create and maintain precise, up-to-date maps of any of Licensee's Facilities and the Route using as-builts in pdf and AutoCAD and will make this information available

to the City at least annually, or upon request of the City. The information provided by Licensee under this Section will be accurate to the best of Licensee's knowledge. Licensee shall make every reasonable effort to provide accurate and useful information, and the City acknowledges that the information will be provided on an "as-is" and "as-available" basis.

- 1.8. Dark Fiber and Other uses. To the extent Licensee occupies the ROW with empty Conduit and/or Dark Fiber and/or uses the ROW to provide interstate services other than Telecommunication Services as defined by ARIZ. REV. STAT § 9-581, such use or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits, and laws.
- 1.9. Cable System. If Licensee obtains or seeks federal, state, or local approval to provide Cable Services over Licensee's Facilities within the City, this Agreement shall remain in effect according to its terms, and Licensee shall continue to pay any fee required by this Agreement, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise. This Agreement does not allow Licensee to provide any type of video programming or other programming or transmission within the City that may be subject to a cable television license or franchise within the City's boundaries.
 - 1.9.1. Licensee shall not use Licensee's Facilities to provide Cable Services, cable television, or for open video service without the proper formal authorization by the City in separate agreements.
 - 1.9.2. Licensee may enter into User Contracts, as defined in Section 3.8, to allow third-parties to use Licensee's Facilities for Cable Services, cable television, or for open video service only if the third-party has already entered into the proper agreements with the City that allows the third-party to conduct such activities.

2. USE OF THE ROW; PERMITS

- 2.1. Maintenance of Licensee's Facilities. Licensee shall be solely responsible for all maintenance, repair, and provision of all utilities for Licensee's Facilities under this Agreement. Licensee shall at all times repair and maintain Licensee's Facilities and the Route at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding the best industry practices.
- 2.2. Liability for Licensee's Work. For purposes of this Agreement, whenever work is done in the ROW or adjacent to the ROW as part of any work Licensee is performing in the ROW, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all persons, firms, partnerships, corporations, associations or other organization, or a combination of any of them, including any subcontractor hired and/ or used by Licensee, that performs services or provides goods relating to this Agreement and that the obligations of this Agreement are imposed on both Licensee and any of Licensee's contractors (and any subcontractors used thereunder), who will be considered Licensee's representatives and for whom Licensee will be responsible.

- 2.3. Licensee shall ensure that Licensee and its employees, agents, contractors, and representatives comply with all ROW use requirements, including, but not limited to, the following:
- 2.3.1. Licensee shall ensure that Licensee's Facilities are constructed, installed, operated, repaired, and/or maintained in accordance with the Avondale City Code and established practices with respect to the ROW, including, but not limited to, obtaining the proper permits prior to commencing any work and following all terms and conditions of such permits.
 - 2.3.2. Licensee's use of the ROW shall be according to plans approved by the City Engineer, provided that such approval of plans shall not be unreasonably withheld or delayed.
 - 2.3.3. Licensee's Facilities to be constructed, installed, operated, maintained, repaired, upgraded, and/or removed shall be located or relocated as to interfere as little as possible with traffic or other authorized uses within the ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, paving, and/or location or relocation of Licensee's Facilities shall be subject to regulation by the City Engineer.
 - 2.3.4. Provided such guidelines complies with State and Federal law, the City may issue reasonable policy guidelines to all licensees/permittees with Telecommunications Services and Right-of-Way Access Agreements to establish procedures for determining how to control the issuance of engineering permits to multiple licensees/permittees for the same one-mile segments of the ROW. Licensee agrees to cooperate with the City in establishing such policies with procedures established by the City Manager or their designee to coordinate the issuance of multiple engineering permits in the same one-mile segments of the ROW.
 - 2.3.5. Licensee and its employees, agents, contractors, and representatives are subject to the City's exercise of its police, regulatory, and other powers as the City now has or may later obtain, and a license or other agreement may not waive application of the same. The City shall have continuing jurisdiction and supervision over any facilities located within or on the ROW, including, but not limited to, Licensee's Facilities. Daily administrative, supervisory, and enforcement responsibilities are hereby delegated and entrusted to the City Manager or their designee to interpret, administer, and enforce the provisions of this Agreement.
- 2.4. Permits before Construction/Installation. Licensee may not install, construct, locate, or attach any Licensee's Facilities to any property within the City, including the ROW, until Licensee has applied for and received approval for permits from the City Engineer. Licensee shall be solely responsible for any and all acts, errors, omissions, and negligence of Licensee's contractors (and any subcontractors used thereunder) who are involved in the design, installation, construction, maintenance, repair, location, relocation, and/or any other activity involving Licensee's Facilities subject to this Agreement. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with all

provisions of the Avondale City Code, including, but not limited to, off-site construction regarding streets and sidewalks and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Licensee's use of the ROW as may be deemed best for the public interest, safety, or welfare, to the same extent that such restrictions and limitations are applied to all non-governmental occupants/users of the ROW.

- 2.5. Details/Specifications for Permits. Licensee shall submit all applicable permit applications together with the details, plans, and specifications for City review and approval, and pay all applicable application, review, and inspection fees, prior to any and all construction work to be performed pursuant to this Agreement.
- 2.6. Stipulations. Licensee and its contractors shall abide by all stipulations of all licenses and permits issued.
- 2.7. Permits for Relocation. If Licensee desires to change the location of any portion of Licensee's Facilities from the initial permit application(s), Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction, which approval shall not be unreasonably withheld or delayed.
- 2.8. Criteria for Approval. The City will approve or deny applications based on the availability of space at the location(s) sought by Licensee, safety, and other considerations in accordance with the Avondale City Code, the City's practice, applicable ROW construction regulations, and other applicable laws.
- 2.9. Construction Standards. Any of Licensee's Facilities placed in the ROW shall be constructed using industry standard boring and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, Fiber Optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Licensee and/or its contractors shall install any new Conduit and access points (e.g. manholes, pull boxes) using industry standard practices and in full compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the City's supplements to MAG, and the City's General Engineering Requirement Manual ("GER").
 - 2.9.1. Aerial Facilities. In accordance with the GER, Licensee may place Fiber Optic Cables above ground along the Route where there are existing aerial/aboveground facilities. If such existing aerial/aboveground facilities are subsequently relocated underground, Licensee shall relocate its then-existing aerial/aboveground Fiber Optic Cables underground in those locations and locate any new Fiber Optic Cables underground in those locations.
- 2.10. Written Approval for Changes. Licensee shall obtain written approval from the City Engineer or their designee if Licensee desires to change any components of any Licensee's Facilities, which shall not be unreasonably withheld, delayed, or denied.

- 2.11. Work Restrictions/Requirements. Licensee shall comply with and ensure that its contractors comply with the City of Avondale Temporary Work Zone Traffic Management Policy (“Avondale Work Zone Policy”), as amended from time to time, herein incorporated by this reference. All of Licensee’s work under this Agreement shall follow the Avondale Work Policy, which includes, but is not limited to, defined road types, allowable hours of work and holiday/event restrictions, and other work requirements and restrictions. The City will provide the Avondale Work Policy as requested and may be found on the City of Avondale website.
- 2.12. Right to Inspect. The City shall have the right, but not the obligation, to inspect all construction and/or installation work performed subject to the provisions of this Agreement and to make such tests as the City deems necessary to meet the City’s standards, the Avondale Work Policy, the MAG Uniform Standard Specifications and Standard Details for Public Works Construction, and any and all applicable City supplements thereto.
- 2.13. Common Installations. Licensee shall reasonably coordinate the installation of Licensee’s Facilities with other utilities and the City to accommodate opportunities for common installation. Nothing herein shall require Licensee to incur any material additional expense to accommodate common installations.
- 2.14. Boring; Street Openings. Although the exact placement and location of Licensee’s Facilities shall be determined by the City through the permitting process, Licensee has expressed its intent and the City has expressed its desire to have such Licensee’s Facilities installed outside of the paved street area whenever such location is feasible and reasonable. If Licensee intends to place Licensee’s Facilities by directional boring under such streets when feasible and reasonable, said bore profiles based on vacuum pothole information shall be part of the engineered plans to be submitted to the City. Arterial streets shall not be bored, unless approved by the City Engineer in writing. In the event that a street opening in the pavement cannot be avoided, Licensee agrees to pay a fee in accordance with the City’s Development Services Fee Schedule, as amended, and the Avondale Municipal Code (including, without limitation, trenching permit fees and fees for excavation in paved streets).
- 2.15. Dedicated Personnel. Licensee shall provide and identify a representative (e.g. project manager) who shall be the contact person for the City during any construction periods.
- 2.16. Adjacent Property-Owners. Licensee shall provide written notice to adjacent property-owners, or other individuals or entities having lawful control of adjoining property, of any activity by Licensee that may interfere with access to said property during all construction activities or other operations, except to the extent that this requirement of maintain access is waived in writing by the adjacent property-owner or other individual or entity having lawful control of such adjoining property. If an emergency requires activity without such written notice, Licensee shall use commercially reasonable efforts to provide timely actual notice to the adjacent property-owner or other individual or entity having lawful control of such adjoining property. Upon request, Licensee shall promptly provide the City with the documentation of such permission from such affected property owner.

- 2.17. Opening/Alteration. Whenever Licensee or Licensee's contractors (and any subcontractors used thereunder) shall cause any opening or alteration to be made for any purpose in any public streets or public places the opening or alteration shall be completed and restored with due diligence within seven (7) business days following completion of Licensee's work which necessitated such opening or alteration, weather permitting. Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or Licensee's contractors (and any subcontractors used thereunder) to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.
- 2.18. Restoration. After any work, installation, repair, maintenance, replacement, or relocation work performed in the Route, Licensee shall restore all disturbed areas of the Route, affected ROW, and any affected surrounding property to the same condition or better that existed immediately prior to the commencement of the installation, repair, maintenance, replacement or relocation work. Such restoration includes, but is not limited to, repairing and/or replacing to the City's standards, rules, and policies (as amended from time to time) all pavement, sidewalks, curbs, landscaping, or other City improvements that may be disturbed or damaged by Licensee's activities or work under this Agreement.
- 2.19. Clean; Removal of Debris. Licensee and/or its contractors shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site, the Route, and the ROW in a safe, neat, and clean condition.
- 2.20. Safety. Licensee and its contractors shall be solely and completely responsible for the conditions of any job site, including safety of all individuals (including employees) and property, during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. The safety provisions herein shall conform to all applicable federal (including OSHA), state, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the stricter requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 2.21. Traffic Control. Licensee shall comply with the following traffic control requirements:
- 2.21.1. Licensee's traffic control shall comply with the City of Avondale Temporary Work Zone Traffic Management Policy, herein incorporated by this reference. Licensee shall follow the guidelines contained in the latest editions of the Manual on Uniform Traffic Control Devices ("MUTCD"), herein incorporated by this reference, and the City of Phoenix Traffic Barricade Manual, herein incorporated by this reference. Licensee shall additionally comply with any special provisions herein.
- 2.21.2. At the time of the pre-construction conference, Licensee shall designate an individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are

protected from hazards and accidents. Any entity wishing to obtain a permit to place, maintain, and/or remove temporary traffic control within the City of Avondale shall obtain an annual traffic control permit from the City per the Avondale Work Zone Policy. At the same time, the City shall designate a representative who will be responsible for ensuring that all traffic control and traffic control alterations are implemented per the traffic control specifications as defined in the approved traffic control plan.

- 2.21.3. Licensee shall have the full responsibility and liability for traffic control for a project. Licensee shall submit a traffic control plan (“Traffic Control Plan”) to Traffic Engineering for approval – five (5) business days prior to beginning work under this Agreement. The Traffic Control Plan shall include all motor vehicles, bicyclists, and pedestrians. Licensee shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of construction; otherwise, construction will cease until the Traffic Control Plan is approved. During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with the Avondale Work Zone Policy, the latest edition of the MUTCD, and/or the latest edition of the City of Phoenix Traffic Barricade Manual. The most restrictive manual shall apply. Licensee shall pay any and all applicable barricade fees.
- 2.21.4. In the event Licensee or Licensee’s contractors (and any subcontractors used thereunder) damages any traffic signal equipment, traffic signal Conduit, loop detectors, and/or circuits, Licensee shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to Licensee at cost.
- 2.21.5. Licensee shall notify all adjacent and/or affected residents and/or businesses in advance of any street, alley, sidewalk, and driveway closures per the Avondale Work Zone Policy so that they can make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.
- 2.21.6. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Traffic Engineering.
- 2.22. Arizona 811. Licensee and Licensee’s contractors (and any subcontractors used thereunder) shall comply with ARIZ. REV. STAT §§ 40-360.21 through 40-360.32 and participate as a member of Arizona 811 with the necessary records and persons to provide location service of Licensee’s Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the agreement or proof of membership shall be filed with the City Engineer.
- 2.23. Compliance with Laws. Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, the Avondale City Code, Arizona law, and federal law in the exercise and performance of its rights and obligations under this Agreement. If

it is necessary for Licensee to comply with any law or regulation of the Federal Communications Commission (“FCC”) or the ACC) to engage in the business activities anticipated by this Agreement, Licensee shall comply with such laws or regulations. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

3. **NON-EXCLUSIVITY; THIRD-PARTY CONTRACTS**

- 3.1. Non-Exclusive. This Agreement is non-exclusive and nothing herein shall prevent the City from granting like or similar privileges to any other individual or entity.
- 3.2. City’s Control of ROW. Any and all rights granted to Licensee shall be subject to the prior and continuing right of the City to use and manage the ROW exclusively or concurrently with any individuals and/or entities and to manage the City’s own Conduit, Fiber Optic cables, or facilities. Any and all rights granted to Licensee shall be subject to all deeds, easements, dedications, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create, or vest any real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights. The City shall have full authority to regulate, on a non-discriminatory basis, use of the Route and the ROW and to resolve competing demands and preferences regarding use of the Route and the ROW and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, the City may take any or all of the following into account in regulating use of the Route and the ROW:
 - 3.2.1. All timing, public, operational, financial, and other factors affecting existing and future proposals, needs, and plans for Competing Activities, as defined in Section 3.6;
 - 3.2.2. All other factors the city may consider relevant, whether or not mentioned in this Agreement; and/or
 - 3.2.3. Differing regulatory regimes and/or laws applicable to claimed rights, public benefits, community needs, and all other factors relating to Competing Activities, as defined in Section 3.6.
- 3.3. Accommodate City’s Activities. Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its facilities and/or the ROW, and for that purpose to require Licensee, at no expense to the City, to remove, relocate, or abandon in place Licensee’s Facilities in order to accommodate the activities of the City. The City shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee’s Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

- 3.4. City's Rights. There is hereby reserved to the City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful ordinance or law, and Licensee by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of the City.
- 3.5. Interference with Communications Operations. Licensee shall not install, operate, or allow the use of any equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of the City's existing or future fire, emergency, or other communications equipment, methodology, or technology. Licensee shall be responsible to ensure compliance with this requirement by all persons using the Route through or under Licensee. If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology, or technology that causes the interference until Licensee takes corrective measures to alter the Route
- 3.6. Competing Activities. Licensee accepts the risk that there may exist, now or in the future, all manner of work and improvements upon the ROW ("Competing Activities"). Competing Activities include, but are not limited to, laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, or realigning, whether above, upon, or below the surface of the ROW and whether occasioned by the existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land, (i) all manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description, (ii) all manner of other transportation facilities and their appurtenances, (iii) all manners of pipes, wires, cables, Conduits, sewers, storm drains, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, (iv) all manner of other utility facilities and their appurtenances, (v) all manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances, and (vi) all other uses of the ROW that the City may permit from time to time.
- 3.7. Subordinate Rights. Any right or privilege claimed pursuant to this Agreement by Licensee for any use of the ROW shall be subordinate to: (i) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (ii) any prior lawful occupancy or use thereof by any other individual or entity; and (iii) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with the property rights established independent of this Agreement. Licensee shall not obstruct, impede, disrupt, or interfere with or prevent any Competing Activities or any person or entity that has prior or subsequent rights to use the Route and/or ROW.
- 3.8. Third-Party Contracts. Licensee may enter into contracts with third-parties ("ROW Users") in the ordinary course of Licensee's business for use of Licensee's Facilities within the Route, subject to this Agreement. Such contracts ("User Contracts") are subject to all terms and conditions of this Agreement, including, but not limited to, the following:

- 3.8.1. No ROW User shall transmit data over Licensee's Fiber Optic Network, use Licensee's Facilities, or use the Route for any purpose, except under a User Contract with Licensee;
- 3.8.2. ROW Users shall not perform any construction, maintenance, repair, or any other work in the ROW, unless a ROW Users has a separate agreement with the City to do so; and
- 3.8.3. Identities of ROW Users shall be disclosed to the City, upon reasonable request, but will be deemed confidential if consistent with Arizona public records laws.
- 3.9. Disruption by Others. The City and its officials, agents, employees, or contractors shall not be liable to Licensee or its customers, the ROW Users, or other contractors for any service disruption or for any other harm caused to them or the Route due to Competing Activities.
- 3.10. Compliance with Agreement. Licensee shall cause all persons and/or entities using the ROW through or under Licensee or this Agreement to comply with all terms and conditions of this Agreement. Licensee is responsible for any and all violations of this Agreement by persons and/or entities using the ROW through or under Licensee or this Agreement.

4. **FEES**

- 4.1. City's Right of Fair and Reasonable Compensation. By entering into this Agreement, neither party waives any current or future rights reserved under the law or the Telecommunications Act of 1996, including, but not limited to, those rights pursuant to Section 253(c) that reserve the City's right to manage the ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the ROW.
- 4.2. Licensee's Payments. Licensee shall pay to the City each of the following separate and cumulative amounts (collectively, the "Fee Payment"):
 - 4.2.1. An amount (the "Annual Fee Payment"), consistent with ARIZ. REV. STAT. § 9-583(C)(2), based on Licensee's (a) Facilities in the ROW that carry interstate traffic between and among Licensee's interstate points of presence, exclusive of Facilities used by the local network and the portion of the interstate network that carries intrastate calls, (b) empty Conduit that is leased/licensed, and/or (c) Dark Fiber that is leased/licensed.
 - 4.2.2. An amount (the "Permit Fee Payment") based on Licensee's permit review and other costs as set out below.
 - 4.2.3. An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this Agreement as set out below.
 - 4.2.4. An amount (the "Transaction Privilege Tax") based on any qualifying services under the Avondale Tax Code.

4.2.5. All other amounts required by this Agreement.

4.3. Annual Fee Payment Amount. The amount of the Annual Fee Payment shall be eighty-nine cents (\$1.04) per linear foot of trench in the ROW.

4.3.1. Within ten (10) days after the Effective Date, and on each annual anniversary of the Effective Date, Licensee will report to the City the amount of linear feet of trench installed in the ROW or on other City-owned property. The Annual Fee Payment for the coming year is calculated by multiplying the current annual per linear foot fee, as adjusted by annual CPI under section 4.6 for the year of payment, by the linear footage of trench installed in the ROW or on other City-owned property. The City must receive the Annual Fee Payment before the City will issue any new encroachment permits for additional Facilities or equipment in the ROW or other City-owned property.

4.3.2. The Annual Fee Payment shall be adjusted annually as set forth in this Section. Commencing on the first anniversary of the Commencement Date (being the start of Year 2), and during the Term on each anniversary thereafter, the adjusted fee payment amount shall be the Annual Fee Payment established for the immediately preceding Year as increased by the percentage increase, if any, in the CPI-U (as defined below) from the Base Year 1st Half (as defined below) to the Current Year 1st Half (as defined below). The "CPI-U" means the Consumer Price Index, All Items, for All Urban Consumer, Phoenix Area, published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"). The period from January to June immediately preceding the then-current anniversary of the Commencement Date shall be the "Current Year 1st Half," and the period from January to June for the year before that shall be "Base Year 1st Half." (For example, if the Commencement Date were September 1, 2019 and the increase in the Annual Fee Payment were being calculated for the Year beginning September 1, 2020, then the increase would be the increase in the CPI-U from 1st Half 2019 to 1st Half 2020). In no event may the adjusted fee be less than the Annual Fee Payment for the prior year. If the Bureau ceases publishing the Consumer Price Index, or materially changes the method of its computation or other features thereof, the City shall substitute therefore a comparable index that is reasonably acceptable to both parties and is based upon changes in the cost of living or purchasing power of the consumer dollar published by any governmental agency, responsible financial periodical, trade association, or educational institution.

4.3.3. In the event Licensee cancels or returns a permit and does not construct or install the Licensee's Facilities approved by such a permit, the fees Licensee previously paid for the respective permit may be applied as a credit to a future Annual Fee Payment or may be refunded to Licensee by the City.

4.3.4. Notwithstanding the above, Licensor and Licensee agree that the Annual Fee Payment shall not be greater than an amount equal to five percent (5%) of

Licensee's Gross Revenues during each computation period for the Annual Fee Payment; however, such 5% annual cap shall only apply once Licensee has paying customers in the Route which are deemed Gross Revenues. Until Licensee has such paying customers that would be deemed Gross Revenues under this Agreement, Licensee will be subject to the Annual Fee Payment in full with no cap. If at any time Licensee no longer has paying customers or otherwise does not receive any Gross Revenues subject to the 5% cap, the Annual Fee Payment shall resume with no cap until such a time that Licensee again has applicable paying customers. The City shall have the right, at any time, to require written documentation to show that Licensee obtains paying customers; Licensee shall promptly comply with providing such documentation.

- 4.3.5. Notwithstanding the above, Licensors and Licensee may make an in-kind exchange in connection with the Annual Fee Payment, with the Licensors installing City Conduit or fiber at specific locations at the City's election.
- 4.4. Appropriate Taxes. Licensee shall pay any applicable city, county and state transaction privilege and use taxes. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this Section.
- 4.5. Permit Fee Payment Amount. Licensee shall pay all applicable construction permit fees, including, but not limited to, charges for encroachment permit applications, issuance, inspection, testing, plan review, and any other fees adopted by the City and applicable to persons doing work or encroaching in the ROW.
- 4.6. Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), Phoenix Area, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted amount shall be calculated as described in Section 4.3.2. This computation is expressed by the following formula:

$$\frac{\text{Current Year 1st Half}}{\text{Base Year 1st Half}} \times \text{Current Amount} = \text{Adjusted Fee}$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, the City shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by the City in the City's reasonable discretion. Any delayed adjustment shall be effective retroactively.

- 4.7. Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.
- 4.8. Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all Fee Payment on the following schedule:
- 4.8.1. Licensee shall pay Annual Fee Payment by the anniversary date of each year of this Agreement.
- 4.8.2. Licensee shall pay Permit Fee Payment at the times and in the amounts specified by the City's normal processes for permitting, including, but not limited to, construction permits, encroachments, issuances, inspections, testing, plan review, and other processes applicable to persons doing work or encroaching in the ROW.
- 4.8.3. All other Fee Payment shall be payable quarterly in arrears on the last calendar day of the first month of the next calendar quarter. For example, the Violation Fee Payment for the first calendar quarter of a year shall be payable on or before April 30.
- 4.9. Fee Payment Amount Report. Each installment of Fee Payment by Licensee, other than Permit Fee Payment, shall include a report showing the manner in which each component of the Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment.
- 4.10. Damage Fees. Licensee shall pay all reasonable costs associated with any damage caused by Licensee or its subcontractors, employees, or agents to the ROW or other public property.
- 4.11. Violation Fee Payment. During the Term of this Agreement, the City may suffer certain money damages in the form of administrative cost and inconvenience, disharmony among Competing Activities, and general inconvenience in ROW use by the City, Competing Activities, and the public as a result of an uncured violation of this Agreement by Licensee ("Inconvenience Costs"). Assessing the actual damages for these Inconvenience Costs may be impracticable to determine. In lieu of paying the actual damages for these Inconvenience Costs, the City may assess Violation Fee Payments against Licensee to cover the damages that caused the Inconvenience Costs and is as described in Section 4.11.1. The Violation Fee Payments will be assessed with the processes described in Section 4.11.2. The Violation Fee Payments are only intended to remedy the Inconvenience Costs that the City suffers. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way the City's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment. Provided however, that if the City determines to exercise any other legal or equitable remedy provided by this Agreement or otherwise, City may not, in addition to such remedy, assess a Violation Fee Payment. Except for any failure to properly restore

the public ROW under 4.11.1.1, or other violation of this Agreement by Licensee that in the City's sole determination may impact the health, safety, or welfare of the public, City shall use reasonable efforts to notify Licensee of any violation of this Agreement and permit Licensee an opportunity to cure such violation in accordance with the applicable cure period in this Agreement or as otherwise agreed by City.

4.11.1. The Violation Fee Payments per calendar day or part thereof are as follows:

- 4.11.1.1. The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after the City's notice to correct such defects except where such curative efforts by Licensee are precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.
- 4.11.1.2. Following a ten (10) day notice to cure, the amount of Two Hundred Fifty Dollars (\$250.00) per calendar day for each failure to make Licensee's books and records available as required by this Agreement.
- 4.11.1.3. The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this Agreement.
- 4.11.1.4. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee in violation of this Agreement that causes Inconvenience Costs and that is not cured after three (3) calendar days' notice.

4.11.2. Process for assess a Violation Fee Payment:

- 4.11.2.1. If the City determines that Licensee is liable for Violation Fee Payment, then the City shall issue to Licensee a notice of the City's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.
- 4.11.2.2. Licensee shall pay the Violation Fee Payment within ten (10) calendar days after the City's notice. The following shall apply for any Violation Fee Payment:
- 4.11.2.3. Licensee shall have thirty (30) calendar days after the notice to pay the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.
- 4.11.2.4. If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.

4.11.3. Except as may be expressly stated in this Section 4, no cure period applies to the accrual of Violation Fee Payment.

4.11.4. Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment

4.12. Deadlines for Annual Fees. For any annual payment(s) owed, Licensee shall make such payment(s) to the City within ten (10) business days of the Effective Date and by the anniversary of the Effective Date for the duration of the Term.

4.13. Late Fees. Licensee agrees that if it fails to pay any amounts owed to the City by the time prescribed for payment, Licensee shall pay interest on the amounts owed at the rate of one percent (1%) per month.

4.14. Requirement of Insurance, Performance Bond, and Letter of Credit. Prior to any work being performed in the ROW, Licensee shall secure all requirements in this Agreement and provide the City with all insurance requirements prior to the commencement of any work, including, but not limited to, all certificates of insurance required by this Agreement.

4.15. Performance Bond or Letter of Credit.

4.15.1. Prior to receiving any permit to construct, install, maintain or perform any work under this Agreement, Licensee shall either:

4.15.1.1. cause to be filed and maintain until completion of the construction, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000.00) or 125% of the amount of the construction costs (whichever is greater) to guarantee that Licensee shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum of the bond, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. The City and Licensee agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund;

4.15.1.2. or, as alternative to Section 4.15.1.1, provide either a cash deposit into a suitable interest-bearing account, established by the City, or a domestic irrevocable standby letter of credit, in the sum of not less than One Hundred Thousand Dollars (\$100,000.00) or 125% of the amount of the construction costs (whichever is greater) as security for the faithful performance by it of all the provisions of this Agreement, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under the Agreement and license issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Fiber Optic Network (the "security fund"). The City shall have the full power of withdrawal of funds from the account or letter of credit except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall

be made from the security fund without the prior written approval of the City Engineer and ten (10) days' prior written notice of intent to withdraw to Licensee.

- 4.15.2. Within twenty (20) days after notice to Licensee that any amount has been withdrawn by the City from the security fund, Licensee shall deposit a sum of money or present to the City an additional irrevocable letter of credit sufficient to restore such security fund account to the original amount.
- 4.15.3. If Licensee: (i) fails, within ten (10) business days of a notice of intent to draw on the security fund, to either dispute the notice in writing or to pay the City any taxes or fees due and unpaid or any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of Licensee in connection with this Agreement; or (ii) fails, within thirty (30) days of such notice of failure from the City to dispute the notice in writing, or comply with any provision of this Agreement which the City reasonably determines can be remedied by an expenditure of funds from the security fund; the City may immediately withdraw the amount thereof from the security fund. Upon such withdrawal, the City shall notify Licensee of the amounts and date thereof.
- 4.15.4. The rights reserved to the City, with respect to the security fund, are in addition to all other rights of the City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right City may have.
- 4.15.5. Licensee shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the Agreement or upon termination of the Agreement at an earlier date, provided that there is then no outstanding default on the part of the Licensee. Any funds that the City erroneously or wrongfully withdraws shall be returned to Licensee, within thirty (30) business days of such a determination.
- 4.16. In Kind. This Agreement does not currently require any in-kind payment to City by Licensee. However, if Licensee has not paid any fees required under Section 4, the Parties may agree in writing to new in-kind payments to offset to any fees not paid by Licensee to the extent permitted by law. This subsection imposes no obligation on the City to agree to offset any fees in this Agreement or in any future agreement.
- 4.17. Audits. The City shall have the right to audit or otherwise inspect any and all customer contracts, subleases, sublicenses, or otherwise subcontracts, including without limitation, all ROW User agreements with Licensee, to the extent reasonably necessary to confirm compliance with this Agreement, including proper payment of all fees under this Section 4. The City may conduct such audits as often as reasonably necessary in order to justify the necessary payments, but no less than one (1) time per annual term, beginning on the Effective Date.

5. RELOCATION

- 5.1. Licensee shall relocate, at no expense to the City, any of Licensee's Facilities, or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose or any City or other governmental project whenever directed to do so by City. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. Within ninety (90) days after service of notice by the City, Licensee shall remove the designated portions of Licensee's Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Licensee shall take reasonable steps to remove Licensee's Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.
- 5.2. Licensee agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating, or reconstructing any portion of Licensee's Facilities on public property or ROW. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of Licensee's Facilities. Licensee will maintain any annual permits required by the City for such maintenance and emergency repairs. Licensee will notify the City before undertaking the emergency repairs and will apply for and obtain the necessary permits in a reasonable time after notification.
- 5.3. If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such actual relocation costs by drawing upon the performance bond or letter of credit required pursuant to Section 4.
- 5.4. The City has no obligation to relocate or otherwise move Licensee's Facilities, any City-owned facilities, Conduit, or Fiber Optic Cables, ROW Users' Facilities, or any other Facilities of persons or entities lawfully using the ROW. The City shall require that third parties be responsible for relocation work of Licensee's prior existing Licensee Facilities in the ROW not necessitated by the City.
- 5.5. Any relocation work performed by Licensee or its contractors shall be subject to and comply with this Agreement.

6. DAMAGE TO PUBLIC PROPERTY

- 6.1. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Licensee's Facilities is required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or any public improvement that may be located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in

accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Licensee does not repair the damage or disturbance as just described, then City shall have the option, upon ten (10) business days' prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual costs incurred by the City at City's standard rates.

- 6.2. Notwithstanding the notice provision above, in the event of a public emergency, the City shall have the right to immediately perform, without prior written notice to Licensee, such reasonable and necessary work on behalf of Licensee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Licensee of the repairs as soon as practicable after the work has begun. Licensee agrees that any damage to City fiber, conduit, or other property must be replaced or repaired and restored with new or like-new materials. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs and/or relocation and/or removal costs from Licensee and may draw upon the performance bond and/or letter or credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by Licensee as required by Section 6.3 below.
- 6.3. Upon the receipt of a demand for payment by the City, Licensee shall, within thirty (30) days, reimburse the City for such costs.
- 6.4. For any pavement cuts by Licensee, Licensee agrees to restore the pavement.

7. PENALTIES FOR VIOLATION OF TERMS

- 7.1. The City's Remedies. The City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Licensee complies with the terms of this Agreement or any applicable law. Such City remedies are cumulative and may be pursued in the alternative. The City's remedies set forth in this Agreement are not exclusive. Except as otherwise set forth in this Agreement, Election of one remedy by the City, including assessment of liquidated damages, does not preclude the use of other remedies.
- 7.2. Licensee's Remedies. Licensee sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for equitable or injunctive relief.

8. TERMINATION

- 8.1. The City Manager has the authority to terminate, subject to Licensee's right to notice and cure where provided, this Agreement consistent with this Section 8.
- 8.2. Immediate Termination. The City may terminate this Agreement upon thirty (30) days' notice and Licensee's failure to remedy any of the following to the reasonable satisfaction of the City:

- 8.2.1. Licensee ceases doing business in the City;
- 8.2.2. If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency");
- 8.2.3. Licensee fails to maintain the CC&N, once granted, in effect following any right of appeal or due process of the ACC;
- 8.2.4. Licensee fails to maintain any insurance required by this Agreement;
- 8.3. Cure of Defect; Termination. The following instances are defects in performance by Licensee shall be deemed instances of "Default" by Licensee:
 - 8.3.1. Licensee fails to comply with the material terms and conditions of this Agreement or applicable law, including, but not limited to, failing to maintain any insurance, security fund, or performance bond;
 - 8.3.2. Licensee fails to make payments to the City in the amounts and at the times specified in this Agreement;
 - 8.3.3. Licensee fails to comply with the Avondale Work Policy and any other construction, design, or other related requirement under this Agreement;
 - 8.3.4. Licensee fails to construct in the designated, approved path of the Route;
 - 8.3.5. Licensee fails to provide the current, accurate as-built plans and maps showing the Route, including all of Licensee's Facilities in the Route; and
 - 8.3.6. Licensee fails to obtain or maintain the required licenses, permits, or other approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.
- 8.4. Curing Default. The City may terminate this Agreement if Licensee does not cure the defect in performance, as listed as Section 8.3 as instances of Default, within sixty (60) days (or such longer period of time as the City determines is reasonably necessary to cure) following the City's written notice of Licensee's defective performance. Upon the occurrence of Default or at any time thereafter, the City may do any of the following:
 - 8.4.1. Pay or perform for Licensee's account, in Licensee's name, and at Licensee's expense, any and all payments or performances required to be paid or performed by Licensee;
 - 8.4.2. Require an additional security deposit adequate in the City's sole discretion to protect the City and the ROW in light of Licensee's history of performance under this Agreement;

- 8.4.3. Abate at Licensee's expense any violation of this Agreement; and/or
- 8.4.4. Be excused without any liability to Licensee from further performance of any and all obligations under this Agreement.
- 8.5. No Need to Cure. The City will not need to provide Licensee with a cure period prior to termination if the City finds the defect in performance is due to intentional misconduct, a violation of law, or is part of a pattern of repeated and persistent violations where Licensee has already had notice and an opportunity to cure.
- 8.6. Licensee's Termination. Licensee may terminate this Agreement by providing the City with ninety (90) days' written notice and only upon making arrangements satisfactory with the City Engineer to remove all Licensee's above ground Licensee's Facilities from public property and the ROW, unless the City Engineer agrees in writing to allow Licensee to abandon part or all of Licensee's Facilities in place. If the City Engineer agrees to allow Licensee to abandon Licensee's Facilities in place, the ownership of such Licensee's Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.
- 8.7. Restoring the Route. Upon termination or revocation of this Agreement, Licensee shall cease using the Route. Licensee shall return the Route and any affected portions of the ROW or surrounding property affected by Licensee's Facilities and/or work to the same condition or better condition prior to the commencement of this Agreement, reasonable wear and tear excepted. Licensee shall remove all of Licensee's Facilities if requested by the City upon termination of this Agreement and/or revocation of the license granted herein, including, but not limited to, all above ground and subsurface portions of Licensee's Facilities.

9. GOVERNING LAW

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance, without giving effect to its principles of conflicts of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located within or within the jurisdiction of Maricopa County, Arizona.

10. COMPLIANCE WITH LAWS

- 10.1. Compliance with ARIZ. REV. STAT § 38-511. Pursuant to ARIZ. REV. STAT § 38-511, the City may cancel this Agreement within three (3) years after execution of the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect an employee of or a consultant to Licensee with respect to the subject matter of this Agreement. The cancellation shall be effective when Licensee receives written notice of the cancellation, unless the notice specifies a later time.

- 10.2. The Parties shall comply with all federal, state and local laws, codes, rules and regulations.
- 10.3. Compliance with ARIZ. REV. STAT. § 35-393.01. Licensee hereby certifies that it does not, and will not, participate in during the term of this Agreement, a boycott of Israel in accordance with ARIZ. REV. STAT §35-393.01. Licensee hereby agrees to indemnify and hold harmless the City, its agents and employees from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such an action.
- 10.4. Compliance with Federal Immigration Laws and Regulations. Licensee warrants that it complies with all federal immigration laws and regulations that relate to its employees and that it complies with ARIZ. REV. STAT. § 23-214(A). Licensee acknowledges that pursuant to ARIZ. REV. STAT. § 41-4401, a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that the City retains the legal right to inspect the papers of any employee who works on the Agreement to ensure compliance with this warranty.

11. INDEMNIFICATION

- 11.1. Licensee acknowledges that it has liability for any and all of Licensee's Facilities installed in the public ROW and in the Route, its use and/or occupation of the ROW and the Route, for any work that is done in or adjacent to the ROW and/or the Route, for any loss or liability incurred by reason of any Toxic Substance (as defined in section 19) on or affecting the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s), the failure to comply with the request for information and laws pertaining to public records (as further described in section 20.9), and for its exercise of its rights under this Agreement directly or through its contractor(s), except for the intentional or solely negligent acts on the part of the City or its agents. To the fullest extent permitted by law, Licensee, shall defend, indemnify and hold harmless the City, and its officials, boards, commissions, agents, contractors, subcontractors, or employees, individually and collectively, from and against any and all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including but not limited to, reasonable attorney's fees incurred through all appeals ("Claims") arising out of or alleged to have resulted from or materially related to: (i) the acts, errors, mistakes, or omissions of Licensee, its employees, representatives, or any tier of contractors and/or subcontractors or any other person for whose acts, errors, mistakes, and/or omissions Licensee may be legally liable; (ii) for any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s); (iii) the failure to comply with the request for information and laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments assessed against the City; and/or (iv) the City entering into this Agreement, or the acts or omissions of the City or its officials, boards, commissions, agents, contractors, subcontractors, or employees acting pursuant to or in furtherance of this Agreement. This defense and indemnification requirement includes any Claims or amounts arising or recovered under worker's compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Licensee, its agents, employees or representatives to fulfill Licensee's obligations under this Agreement,

whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this Section shall survive termination of this Agreement. This Section applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

- 11.1.1. In the event that a notice of claim is served on the City or litigation is commenced against the City for which Licensee has a duty to indemnify and defend the City pursuant to this Agreement, the City must tender the defense of the litigation to Licensee. Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and, where such terms directly obligate or affect the City, acceptable to the City). City may retain counsel to assist in the defense, at City's sole cost and expense. Licensee must consult with the City while conducting its defense of the City and must keep the Avondale City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to Licensee or its insurance carrier.
- 11.1.2. The parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all accident reports, incident reports, statements or other documents that are relevant to the claims, demands or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, representatives, contractors, and/or others.
- 11.2. Subject to any privilege and/or confidentiality legal protections, both parties agree to make their employees, representatives, and contractors available to the other party to gather any relevant information relating to an incident from which any claim, demand, or lawsuit arises.
- 11.3. It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Licensee against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose either from City's sole negligence or intentional acts or that the City was comparatively at fault for the damages. Only in this event may Licensee then commence an action against the City for damages related to that portion judicially determined to be City's fault.
- 11.4. The provisions of this Section shall not be dependent or conditioned upon the validity of this Agreement, but shall be and remain a binding right and obligation of the City and Licensee, even if part or all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of Licensee and the City upon the effective date of this Agreement that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of Licensee and the City and their respective successors and assigns, if any.

- 11.5. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.
- 11.6. As a condition to City's executing this Agreement, Licensee specifically agrees that to the extent any provision of this Section is not fully enforceable against Licensee for any reason whatsoever, this Section shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

12. INSURANCE

- 12.1. Limits of Insurance. Licensee shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain commercial general liability insurance against claims for bodily injury (including death) or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Licensee or its officers, agents, representatives, or employees during all times that this Agreement is in effect. Limits may be attained by a combination of primary and umbrella liability coverage. Licensee shall maintain limits no less than those stated herein for each type of insurance.
- 12.2. General Requirements. Licensee's insurance of the types and amounts required in this Section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized or permitted to do business in the State of Arizona.
 - 12.2.1. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the City, constitute a material breach of this Agreement and may result in termination of this Agreement.
 - 12.2.2. The insurance coverage, except workers' compensation and employer's liability, and professional liability, required by this Agreement, shall include the City, its agents, representatives, directors, officials, and employees, as additional insureds as their interest may appear, and shall specify that insurance afforded Licensee shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by the City or its employees shall not contribute to the coverages provided by Licensee. This provision and the inclusion of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).
 - 12.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) for workers' compensation against the City, its representatives, officers, directors, officials and employees for any claims arising out of Licensee's acts, errors, mistakes, omissions, work or service.
 - 12.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Licensee who shall be solely responsible for the deductible and/or self-insured retention.

12.2.5. Upon receipt of notice from its insurer(s), Licensee shall use commercially reasonable efforts to provide the City with thirty (30) days' prior written notice of cancelation of any policy required herein.

12.2.6. Upon request, Licensee shall furnish separate certificates and additional insured endorsements for each of Licensee's contractors (and any subcontractors used thereunder). All coverages for Licensee's contractors (and any subcontractors used thereunder) shall be subject to the same limits as required for Licensee.

12.2.7. The City reserves the right to periodically review said insurance limits to ensure coverage is based on market and risk requirements throughout the effective term of this Agreement.

12.3. Proof of Insurance – Certificates of Insurance.

12.3.1. Upon execution of this Agreement, Licensee shall furnish to the City Certificates of Insurance issued by Licensee's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates. Such Certificate(s) shall include the blanket additional insured endorsement including the City as an Additional Insured pursuant to Section 12.2.2 and shall be attached as Exhibit C to this Agreement.

12.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City five (5) business days prior to the expiration date.

12.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of Licensee, their policy period(s), and limits of liability required herein. Coverage shown on the Certificate of Insurance must coincide with the requirements in this Agreement. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Avondale
Attn: Risk Manager
11465 W. Civic Center Drive
Avondale, AZ 85323

With copy to:
City of Avondale
Attn: City Engineer
11465 W. Civic Center Drive
Avondale, AZ 85323

12.3.4. The City reserves the right to review, within at least ten (10) business days, certified copies of any or all of the herein required insurance policies and/or endorsements. Such policies shall be made available for review in Maricopa County, Arizona. The City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.

- 12.4. Required Coverage. Such insurance shall protect Licensee from claims set forth below that may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by Licensee or by anyone directly employed by Licensee. Coverage under the policy will be at least as broad as ISO forms or equivalent thereof, including but not limited to: severability of interest and waiver of subrogation clauses; claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees; claims for damages insured by usual personal and advertising injury liability coverage; claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and claims involving contractual liability applicable to Licensee's obligations under the indemnification Section herein.
- 12.5. Commercial General Liability – Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written in the amount of \$2,000,000 limits per occurrence and \$6,000,000 general aggregate in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the ISO Additional Insured form, and shall include coverage for Licensee's completed operations and products.
- 12.6. Worker's Compensation and Employer's Liability. Licensee shall maintain Worker's Compensation insurance in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with a limit of \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit.
- 12.7. Automobile Liability. If Licensee owns and/or operates vehicles in Arizona, Licensee shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1 million each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of Licensee's work. Any combination between automobile liability and excess/umbrella liability amounting to a minimum of \$5 million per occurrence in coverage will be acceptable. Coverage shall be at least as broad as ISO policy form or equivalent.
- 12.8. The City reserves the right to require additional insurance coverages and/or increase any minimum coverages herein at any time with written notice to Licensee.

13. **LIMITATION OF LIABILITY**

- 13.1. The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operations of Licensee's Fiber Optic Network or the provision of services, or for any damages arising out of or materially related to Licensee's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.
- 13.2. Licensee also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or

damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.

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

14. WARRANTY

- 14.1. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.
- 14.2. LICENSEE ACKNOWLEDGES AND AGREES THAT CITY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY THE ROW SUBJECT TO THE PROVISIONS OF THIS AGREEMENT.

15. SURVIVAL OF LIABILITY

All obligations of Licensee and the City hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement.

16. PUBLIC EMERGENCY

- 16.1. The City shall have the right, because of a public emergency, to sever, disrupt, relocate, remove, tear out, dig-up or otherwise damage and/or destroy Licensee's Facilities of without any prior notice to Licensee, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, Public Works Director, or their designees. In such event, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), or Licensee's customers for any harm so caused to them or Licensee's Facilities. To the extent possible under the circumstances, City will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform Licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of Licensee's Facilities damaged pursuant to any such action taken by City related to the public emergency.
- 16.2. If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other City improvements or activities within or outside of the Route, or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety, and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the City's request to secure the route

area, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment.

- 16.3. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), Licensee's customers, or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in reasonably responding to such public emergency. Where possible, the City will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or Licensee's Facilities involved.

17. **NOTICE**

- 17.1. All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, addressed as follows:

THE CITY

City of Avondale
Attn: City Engineer
16000 N. Civic Center Plaza
Avondale, AZ 85374
Phone: (623) 222-6150
Fax: (623) 222-6001

LICENSEE

Teleport Communication America, LLC
Attn: Christopher Och, VP
One AT&T Way
Bedminster, NJ 07921
Tel: (908) 234-3722

With copy to:

Avondale City Attorney's Office
Attn: City Attorney
11465 W. Civic Center Drive
Avondale, AZ 85323
Phone: (623) 222-1120
Fax: (623)-222-1101

With copy to:

Teleport Communication America, LLC
Bobby Akhter, OSP Manager
One AT&T Way
Bedminster, NJ 07921
Tel: (630) 390-0089

- 17.2. Notices shall be deemed sufficiently given and served upon the other party the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.
- 17.3. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above. Licensee shall notify the City within ten (10) business days of any change in mailing address.

18. **TRANSFERABILITY OF LICENSE**

- 18.1. This Agreement is personal to Licensee and therefore the rights, privileges and license granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor

shall any of the rights or privileges herein granted or authorized be leased, assigned, sold, conveyed or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Licensee, either by act of Licensee or operation of law, without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, Licensee shall seek the consent of the City to the proposed transfer. Approval by the City to a transfer does not constitute a waiver or release of any of the rights of the City under the Avondale Municipal Code or this Agreement, whether arising before or after the date of transfer.

- 18.2. The assignee or transferee as approved by the City shall be equally subject to all the obligations and privileges of this Agreement, including any amendments, which will remain in full effect, as if the assignee or transferee were the original Licensee.
- 18.3. Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the lender may assume the rights and obligations of the Licensee. The lender may not transfer or change control of the Agreement without submitting the change to the City for consent under this Section. If the lender does continue operation on any basis at any time, it shall be subject to all provisions of the Agreement. No later than three (3) years after assumption of control by the lender, the lender shall apply to the City for the right to continue assumption of control or to transfer the Agreement. Application by the lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and approval shall not be unreasonably denied or delayed. A "lender" as discussed herein does not include a Licensee, person or corporation or other entity that operates cable television systems or Telecommunications Services as a principal or important business. This Section is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.
- 18.4. Any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. The City may, in its sole discretion and in addition to all other lawful remedies available to the City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive the City's consent. Notwithstanding, the above, transfer or assignment to Licensee's financially viable parent, subsidiary, successor (including the surviving entity in the event of a merger of Licensee), or affiliate under common control, shall not require consent and shall be effective upon written notice to the City.
- 18.5. A change in the direct or indirect ownership of Licensee, where the License remains with Licensee, is not a transfer or assignment under this Section 18.

19. HAZARDOUS SUBSTANCES

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

19.1.1. Licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

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

19.1.1.2. Electric backup batteries.

19.1.2. Licensee and/or its contractors shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by the City.

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

19.1.4. Licensee and/or its contractors shall immediately notify the City of any Toxic Substance at any time discovered or existing upon the ROW. Licensee is not responsible for Toxic Substances that may exist at the ROW if Licensee's contractors (and any subcontractors used thereunder) and/or any other persons using the ROW under this Agreement did not do any of the following:

19.1.4.1. Participate in the Toxic Substance coming to the ROW;

19.1.4.2. Fail to immediately report the Toxic Substance to the City;

19.1.4.3. Knowingly participate in spreading or otherwise disturbing the Toxic Substance; or

- 19.1.4.4. Knowingly exacerbate the effects of the Toxic Substance or the difficulty or cost of dealing with the Toxic Substance.
- 19.1.5. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic Substances containing materials.
- 19.1.6. Within twenty-four (24) hours after any violation by Licensee and/or by its contractors of this Agreement pertaining to Toxic Substances, Licensee shall give the City notice reporting such violation.
- 19.1.7. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of Licensee's Facilities. The City may contact by telephone the network control center operator at the following phone number 866-236-2824 regarding such problems or complaints, and may use that number in order to reach Licensee at any time for any emergency matter. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Licensee shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence. In addition, Licensee will immediately notify the City if there is a change in the telephone number listed in this Section.

20. MISCELLANEOUS

- 20.1. Complete Agreement. This Agreement, including all Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement cannot be modified or amended except in writing signed by both parties.
- 20.2. Validity. Licensee shall acknowledge that as a condition of acceptance of this Agreement, Licensee was required to be represented throughout the negotiations of the Agreement by its own attorneys and Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding this Agreement. Licensee has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, Licensee acknowledges and accepts the right and authority of the City to execute this Agreement and to enforce the terms herein.
- 20.3. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable, or preempted. Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have

the authority to issue a license to Licensee under ARIZ. REV. STAT § 9-581 to § 9-583, as amended or succeeded, then this Agreement shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this Agreement except for conditions relating to the term of the Agreement and the right of termination. If this Agreement shall be considered a revocable permit as provided herein, Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

- 20.4. Time of Essence. Time is of the essence in each and every provision of this Agreement.
- 20.5. Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement and the parties may agree in writing to amend this Agreement to address such invalid or unenforceable provisions; however, if the parties disagree as to the validity or enforceability of such provisions, the Agreement will not be affected to the extent of such disagreement until a court of competent jurisdiction determines otherwise or the parties later agree in writing. In the event either party seeks such judicial declaration or interpretation of any provision herein, neither party will be liable for the other party's attorney's fees, regardless of which party is deemed the successful party.
- 20.6. Headings. The headings contained herein are for convenience only and not intended to define or limit the scope of any provision of this Agreement.
- 20.7. No Partnership. Each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other under this Agreement.
- 20.8. No third-Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. The City shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.
- 20.9. Public Records. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, Licensee acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, Licensee understands that disclosure of some or all of the items subject to this Agreement may be required by law. In the event the City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Licensee, the City agrees to provide Licensee with notice of that request. Within ten (10) days of such notice (which shall reference the 10-day requirement), Licensee must inform the City in writing of any objection by Licensee to the disclosure of the requested information. Failure by Licensee to object timely will waive Licensee's

ability to object under this section and will waive any remedy against the City for disclosure. In the event Licensee objects to disclosure within the time specified, Licensee agrees to handle all aspects related to the request including properly communicating with the requestor and timely responding with information. This provision will survive the termination of this Agreement.

20.10. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Licensee, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God; war; terrorist attack; civil disturbance, strike or other labor unrest; plague; pandemics; epidemics; quarantine orders or directives by a governmental entity; outbreaks of infectious disease or other public health crisis, including without limitation, quarantine or other employee restrictions; or other events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.

20.10.1. Government Directives. Any delay or nonperformance of any provision of or obligation under this Agreement caused by a federal, state, and/or local directive, order, or similar requirement, including without limitation, the COVID-19 pandemic and related quarantine orders, shall not constitute a breach of this Agreement or any portion thereof, provided that one party has provided the other party with at least seventy-two (72) hours' written notice of such delay or nonperformance.

20.11. Attorneys' Fees. Except as described herein, in the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will accrue on the commencement of such action and will be enforced whether or not such action is prosecuted through judgment.

20.12. Non-Waiver. Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

20.13. Recitals. The Recitals set forth above are hereby incorporated by this reference, as if fully set forth herein.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last party signs.

City of Avondale

An Arizona municipal corporation

Licensee

Teleport Communication America, LLC

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A – The Route Map/Use Area

The map contained within this exhibit is considered confidential and proprietary by TCA. The map will be kept on file in the City's Development Services and Engineering Department and will be released publicly only pursuant to Section 20.9 of this Agreement.

CITY COUNCIL REPORT

SUBJECT: Reduction in Force for Department Reorganization

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Andrew Mesquita, Human Resources Director, (623) 333-2211

THROUGH: Ron Corbin, City Manager, (623) 333-1011

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

n/a

PURPOSE:

City Council will consider a request pursuant to Avondale Chapter Policy 17 section B to approve a reduction in force due to the Human Resource Department's reorganization resulting in the elimination of the Human Resource Manager position. The Council will take appropriate action.

BACKGROUND:

With the recent appointment of a new Human Resources (HR) Director, a comprehensive evaluation of the current HR service delivery model was conducted to ensure the HR Department is positioned to meet the current and future needs of departments and employees in providing critical public services to City residents.

DISCUSSION:

An internal evaluation was recently conducted regarding the organizational structure and service delivery model of the Human Resources (HR) Department. This evaluation determined that the position of HR Manager resulted in an additional layer of management oversight that is unnecessary and does not support the efficient delivery of services to customer departments and employees. As a result, it is recommended that the Human Resources Manager position be eliminated, and the available funding be utilized to support the creation of a Sr. Management Analyst position.

The Sr. Management Analyst role is necessary to support the department with professional-level analytical support to ensure a strategic and proactive approach to addressing HR needs. The position will be tasked with evaluating HR business processes and assisting with the oversight and implementation of process improvements; developing and providing timely reporting on various HR-related data and information (salary data, turnover, vacancies, leave management, etc.); developing a variety of surveys to evaluate and prioritize needs of customers; performing extensive research with IT to analyze and improve upon HR systems; assisting with policy research and development; working collaboratively with Finance/Budget staff to conduct regular audits of HR transactions to ensure accuracy and limit the potential for errors or corrections.

The HR Manager position is a single incumbent role. The affected incumbent will remain on the City payroll for 60 calendar days effective Tuesday, September 12, 2023 through Friday, November 10, 2023. The incumbent

will be available to finalize any pending projects and to transition this role to the Sr. Management role . The incumbent will continue to earn regular vacation and sick leave accruals until separation. Vacation and sick leave balances will be paid out upon separation according to policy. The incumbent's existing health benefits will continue through November 30, 2023.

BUDGET IMPACT:

The creation of the Sr. Management Analyst position will be supported by funding currently allocated to the Human Resources Manager position. No additional funding outside of the HR Department's current FY24 budget is necessary.

RECOMMENDATION:

Staff recommends City Council authorize the Reduction in Force within the Human Resources Department.

Contact person for document distribution: n/a

CITY COUNCIL REPORT

SUBJECT: Resolution 1053-0923 - Second Amendment to the Intergovernmental Agreement with the City of Phoenix for the Phoenix Fire Department Regional Dispatch System

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Larry Rooney, Fire Chief

THROUGH: Dale Nannenga, Public Safety Chief

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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 1053-0923, approving the second amendment to an Intergovernmental Agreement with the City of Phoenix for the Phoenix Fire Department Regional Dispatch System 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 Fire and Medical Department has been dispatched by the Phoenix Fire Department Regional Dispatch System for more than twenty-five years and has been a member of the Regional Automatic Aid Agreement for more than twenty years. The Avondale Fire and Medical Department provides fire, technical rescue, and emergency medical response. All 911 fire and medical emergency calls within the City of Avondale are routed to the Phoenix Fire Department for prioritization and dispatch. Phoenix Fire Dispatch assigns the closest appropriate Fire and Medical Unit for the response.

DISCUSSION:

This amendment incorporates the current fiscal year's dispatch fees.

BUDGET IMPACT:

The annual cost for Avondale Fire and Medical Dispatches from Phoenix Fire Department Regional Dispatch for the current fiscal year is a total of \$700,688.09 and is included in the approved FY2024 budget.

RECOMMENDATION:

City Council will consider a request to adopt a resolution approving the second amendment to the existing Intergovernmental Agreement (IGA) between the City of Phoenix and the City of Avondale for the Phoenix Fire Department Regional Dispatch System, which will provide for payment authority for FY 2023/2024 fees and

authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Contact person for document distribution: Marsha Chavez

RESOLUTION NO. 1053-0923

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX RELATING TO PARTICIPATION IN THE PHOENIX FIRE DEPARTMENT REGIONAL DISPATCH SYSTEM.

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

SECTION 1. The Second Amendment to the Intergovernmental Agreement with the City of Phoenix relating to participation in the Phoenix Fire Department Regional Dispatch System (the “Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Second Amendment 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, September 11, 2023.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1053-0923

[Second Amendment]

See following pages.

**SECOND AMENDMENT
TO THE
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND
THE CITY OF AVONDALE
FOR
THE PHOENIX FIRE DEPARTMENT REGIONAL DISPATCH SYSTEM**

AGREEMENT NO. 151263-2

This Amendment to the Intergovernmental Agreement (“IGA”) is entered into this 1ST day of July 2023, by and between the City of Phoenix, for and on behalf of the Phoenix Fire Department (“the City”), and the City of Avondale, for and on behalf of the Avondale Fire and Medical Department (“the Agency”). Throughout this Amendment, the City and the Agency individually may be referred to as “Party” and may be referred to collectively as “Parties” to this Agreement.

RECITALS

WHEREAS, The Parties entered into Intergovernmental Agreement, Contract No. 151263-0, dated June 5, 2019 (the “Agreement”) for Avondale to utilize and participate in the Phoenix Fire Department Regional Dispatch System (the “System”),

WHEREAS, Avondale’s fees and charges for the System are set forth in Exhibit C of the Agreement and pursuant to Article V, Section 2.1 of the Agreement the Parties shall annually revise Exhibit C to reflect the current fees and charges,

WHEREAS, The fees and charges for Fiscal Year 2023-2024 have increased and the Parties desire to amend the Agreement to provide for the additional costs.

WHEREAS, Ordinance No. S-49886 dated June 14, 2023, authorized the City to adopt Computer Aided Dispatch Service Fees and Charges for Fiscal Year 2023-2024.

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:

1. Fees and Charges. In accordance with Article V, Section 2.1 of the Agreement, Exhibit C, Fees and Charges, is hereby deleted and replaced with the Exhibit C,

Fees and Charges, attached hereto and incorporated herein by reference and shall become effective as of July 1, 2023.

2. Non-Default. By executing this Second Amendment, the Parties affirmatively assert that (i) neither party is currently in default, nor has been in default at any time prior to this Second Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this Second Amendment are forever waived.
3. Effect of the Amendment. The Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
4. Conflict of Interest. This Second Amendment and the Agreement may be canceled by either party pursuant to ARIZ. REV. STAT. § 38-511.
5. Counterparts. This Second Amendment may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument and each of said counterparts shall be deemed original hereof.

IN WITNESS WHEREOF, this Agreement is executed as provided below. Further, in signing this Agreement, the signatories below affirm and attest that they are authorized to execute this Agreement on behalf of their respective Party.

CITY OF PHOENIX, a municipal corporation

JEFFREY BARTON, City Manager

By: _____
Michael J. Duran
Fire Chief

ATTEST:

City Clerk

APPROVED AS TO FORM:

David Lavelle

Assistant Chief Counsel

CITY OF AVONDALE, a municipal corporation

By: _____
Ron Corbin
City Manager

ATTEST:

Avondale City Clerk

APPROVED AS TO FORM:

Avondale City Attorney

In accordance with A.R.S. §11-952 (D), this Agreement has been reviewed by the undersigned who determined that it is in appropriate form and is within the powers and authority of the respective parties.

CITY OF PHOENIX

By: _____
David Lavelle
Assistant Chief Counsel

Date: _____, 2023

CITY OF AVONDALE

By: _____
City Attorney

Date: _____, 2023

EXHIBIT C - FEES AND CHARGES

FINAL

Regional Dispatch Center Partners
Computer Aided Dispatch Consortium
Equipment Maintenance & Dispatch Cost Estimates
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INTERGOVERNMENTAL AGREEMENT
151263

City of Avondale

I. Dispatch Service Fee

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
\$26.86 - Avondale - FD	\$26.86	10,960	\$294,385.60
\$21.93 - Avondale - AMR	\$21.93	7,145	\$156,689.85
\$21.93 - Avondale - MAC	\$21.93	21	\$460.53
\$21.93 - Avondale - PMT	\$21.93	27	\$592.11
<u>Total Dispatch Service Fees:</u>			<u>\$452,128.09</u>

II. General Maintenance Service Fee

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
Station Pack Maint. - Avondale - FD	\$9,300	5	\$46,500.00
MCT Maint - Avondale - FD	\$4,100	21	\$86,100.00
MCT Maint - Avondale - AMR	\$4,100	3	\$12,300.00
Airmobile Maint - Avondale - FD	\$4,100	5	\$20,500.00
<u>Total Specific Maintenance Service Fees:</u>			<u>\$165,400.00</u>

III. Network System Fees

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
WAN/LAN System Fee - Avondale - FD	\$17,400	1	\$17,400.00
<u>Total Network System Fees:</u>			<u>\$17,400.00</u>

IV. CAD System Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
CAD Modernization Service Fee - Avondale - FD	\$5.00	10,960	\$54,800.00
CAD Maintenance Service Fee - Avondale - FD	\$1.00	10,960	\$10,960.00
<u>Total CAD System Fees:</u>			<u>\$65,760.00</u>

V. GIS & Data Analytics Fees

<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total GIS & Data Analytics Fees:</u>		<u>\$0.00</u>

Total Schedule A: \$700,688.09

The Dispatch Service, Specific Maintenance, Network System, and CAD System Fees for the City of Avondale are \$700,688.09. The City of Phoenix will invoice the City of Avondale on a quarterly basis in the amount of \$175,172.02.

Fees based on dispatch counts are calculated from the number of dispatches that have occurred from July 1, 2020 through June 30, 2021.

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City of Avondale City of Avondale - FD (subset)

I. Dispatch Service Fee

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
\$26.86 - Avondale - FD	\$26.86	10,960	\$294,385.60
<u>Total Dispatch Service Fees:</u>			<u>\$294,385.60</u>

II. General Maintenance Service Fee

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
Station Pack Maint. - Avondale - FD	\$9,300	5	\$46,500.00
MCT Maint - Avondale - FD	\$4,100	21	\$86,100.00
Airmobile Maint - Avondale - FD	\$4,100	5	\$20,500.00
<u>Total Specific Maintenance Service Fees:</u>			<u>\$153,100.00</u>

III. Network System Fees

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
WAN/LAN System Fee - Avondale - FD	\$17,400	1	\$17,400.00
<u>Total Network System Fees:</u>			<u>\$17,400.00</u>

IV. CAD System Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
CAD Modernization Service Fee - Avondale - FD	\$5.00	10,960	\$54,800.00
CAD Maintenance Service Fee - Avondale - FD	\$1.00	10,960	\$10,960.00
<u>Total CAD System Fees:</u>			<u>\$65,760.00</u>

V. GIS & Data Analytics Fees

<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total GIS & Data Analytics Fees:</u>		<u>\$0.00</u>

Total Schedule A: \$530,645.60

Fees based on dispatch counts are calculated from the number of dispatches that have occurred from July 1, 2020 through June 30, 2021.

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Equipment Maintenance & Dispatch Cost Estimates
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City of Avondale

City of Avondale - AMR Ambulance (subset)

I. Dispatch Service Fee

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
\$21.93 - Avondale - AMR	\$21.93	7,145	\$156,689.85
<u>Total Dispatch Service Fees:</u>			<u>\$156,689.85</u>

II. General Maintenance Service Fee

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
MCT Maint - Avondale - AMR	\$4,100	3	\$12,300.00
<u>Total Specific Maintenance Service Fees:</u>			<u>\$12,300.00</u>

III. Network System Fees

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
<u>Total Network System Fees:</u>			<u>\$0.00</u>

IV. CAD System Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total CAD System Fees:</u>			<u>\$0.00</u>

V. GIS & Data Analytics Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total GIS & Data Analytics Fees:</u>			<u>\$0.00</u>

Total Schedule A: \$168,989.85

Fees based on dispatch counts are calculated from the number of dispatches that have occurred from July 1, 2020 through June 30, 2021.

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City of Avondale
City of Avondale - Maricopa Ambulance (subset)

I. Dispatch Service Fee

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
\$21.93 - Avondale - MAC	\$21.93	21	\$460.53
Total Dispatch Service Fees:			<u>\$460.53</u>

II. General Maintenance Service Fee

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
Total Specific Maintenance Service Fees:			<u>\$0.00</u>

III. Network System Fees

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
Total Network System Fees:			<u>\$0.00</u>

IV. CAD System Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
Total CAD System Fees:			<u>\$0.00</u>

V. GIS & Data Analytics Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
Total GIS & Data Analytics Fees:			<u>\$0.00</u>

Total Schedule A: \$460.53

Fees based on dispatch counts are calculated from the number of dispatches that have occurred from July 1, 2020 through June 30, 2021.

FINAL

Regional Dispatch Center Partners
Computer Aided Dispatch Consortium
Equipment Maintenance & Dispatch Cost Estimates
Fiscal Year 2023/2024
EXHIBIT A
INTERGOVERNMENTAL AGREEMENT
151263

City of Avondale

City of Avondale - PMT Ambulance (subset)

I. Dispatch Service Fee

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
\$21.93 - Avondale - PMT	\$21.93	27	\$592.11
<u>Total Dispatch Service Fees:</u>			<u>\$592.11</u>

II. General Maintenance Service Fee

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
<u>Total Specific Maintenance Service Fees:</u>			<u>\$0.00</u>

III. Network System Fees

	<u>\$ / Unit</u>	<u># Units</u>	<u>Total</u>
<u>Total Network System Fees:</u>			<u>\$0.00</u>

IV. CAD System Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total CAD System Fees:</u>			<u>\$0.00</u>

V. GIS & Data Analytics Fees

	<u>\$ / Dispatch</u>	<u>Dispatch Count</u>	<u>Total</u>
<u>Total GIS & Data Analytics Fees:</u>			<u>\$0.00</u>

Total Schedule A: \$592.11

Fees based on dispatch counts are calculated from the number of dispatches that have occurred from July 1, 2020 through June 30, 2021.

CITY COUNCIL REPORT

SUBJECT: Resolution 1054-0923 - Intergovernmental Agreement with the State of Arizona
Department of Homeland Security - Cyber Readiness Program

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Jeff Scheetz, Chief Information Officer

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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
-

PURPOSE:

City Council will consider a request to adopt Resolution 1054-0923, approving an intergovernmental agreement with the State of Arizona Department of Homeland Security to use the statewide Cyber Readiness Program 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 Information Technology Department has been utilizing services from the State of Arizona Cyber Readiness Program since 2020. In 2023, the State of Arizona continues to expand its program and is asking for formal support from the organizations to continue to leverage shared purchasing, support, and a strengthened security posture for the State of Arizona and its constituents. To date, the City of Avondale utilizes solutions from this program at a savings of over \$200,000 annually.

DISCUSSION:

The City of Avondale Information Technology Department has been utilizing services from the State of Arizona Cyber Readiness Program since 2020. In 2023, the State of Arizona continues to expand its program and is asking for formal support from the organizations to continue to leverage shared purchasing, support, and a strengthened security posture for the State of Arizona and its constituents. To date, the City of Avondale utilizes solutions from this program at a savings of over \$200,000 annually.

BUDGET IMPACT:

Utilizing the State of AZ Department of Homeland Services Cyber-readiness program, the City of Avondale saves over \$200,000 annually for software and services related to cybersecurity.

RECOMMENDATION:

Staff recommends that City Council adopt the Resolution approving the Intergovernmental Agreement with the State of Arizona Department of Homeland Security for our continued use and support of the Cyber Readiness Program and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary agreements.

Contact person for document distribution: Jeff Scheetz

State of Arizona
Federal Fiscal Year 2022
State and Local Cybersecurity Grant Program Local
Consent Agreement



This Local Consent Agreement is made between the Arizona Department of Homeland Security ("AZDOHS") and City of Avondale ("Local Government Entity"), located at Address: 11465 W. Civic Center Dr City: Avondale County: Maricopa State: AZ Zip Code: 85323, and shall be effective on the date signed by the authorized official of the Local Government Entity.

By my signature below, I attest that I have the authority to sign on behalf of the Local Government Entity, and to bind the Local Government Entity to the selection below:

(Initial your selection:)

- ____ 1. The Local Government Entity does not consent to AZDOHS retaining the entity's portion of funding as part of the Federal Fiscal Year (FFY) 2022 SLCGP, and instead prefers to receive pass-through funding.
- ☒ 2. The Local Government Entity consents to AZDOHS, as Arizona's State Administrative Agency, undertaking the following acts in accordance with the State and Local Cybersecurity Grant Program (SLCGP) for Federal Fiscal Year (FFY) 2022, Funding Opportunity Number DHS-22-137- 000-01, as authorized by Section 2220A of the Homeland Security Act of 2002, as amended (Pub. L. No. 107-296) (6 U.S.C. § 665g):
- a. Retaining and passing through to local government entities at least 80% of the State of Arizona's FFY 2022 SLCGP grant award of \$3,335,310.00 in the form of services and related activities; and
 - b. Utilizing the \$3,168,545.00 in SLCGP funds for FFY 2022 as follows:
 - (1) \$500,000.00 for Project 1: Cybersecurity training for administrators
 - (2) \$1,500,000.00 for Project 2: 24x7x365 Centralized State Security Operations Center
 - (3) \$1,168,545.50 for Project 3: Professional/Managed Services to support the Statewide Cyber Readiness Program

By selecting item #2 above, I agree that Local Government Entity is receiving services and related activities in lieu of funds from the SLCGP. I also agree that this Local Consent Agreement is only effective for the Federal Fiscal Year (FFY) 2022 SLCGP Funds, and this Local Consent Agreement and receipt of funds, under either selection above, are contingent upon submission and approval of a project that aligns with the State's approved Cybersecurity Plan.

I can be contacted at (Daytime Phone Number): _____

I authorize receipt of notices at the address listed for the Local Government Entity or by email at:

LOCAL GOVERNMENT ENTITY NAME:

City of Avondale

ARIZONA DEPARTMENT OF HOMELAND SECURITY

Signature

Signature

Name

Name

Title

Title

Date

Date

RESOLUTION NO. 1054-0923

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF HOMELAND SECURITY RELATING TO THE DEPLOYMENT OF CYBER READINESS PRODUCTS.

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

SECTION 1. The Intergovernmental Agreement with the State of Arizona Department of Homeland Security relating to the deployment of cyber readiness products (the “Agreement”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, September 11, 2023.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1054-0923

[Agreement]

See following pages.

Agreement
Between
The State of Arizona Department of Homeland Security
And
City of Avondale (each, a "Party")

Recitals:

- a. State of Arizona Department of Homeland Security (hereinafter "AZDOHS") is an agency of the State of Arizona and operating pursuant to Title 41 of the Arizona Revised Statutes.
- b. City of Avondale (hereinafter "Avondale") is a political subdivision of the State of Arizona.
- c. AZDOHS, pursuant to Arizona Revised Statutes (hereinafter "ARS") 41-4282, is responsible for the State of Arizona's enterprise cyber security strategy, manages the Statewide Cyber Readiness Program (hereinafter "Program"), and possesses certain skills, tactics, techniques and procedures and other Confidential Information pertaining to certain cyber readiness operations and the administration thereof as further defined in this Agreement (hereinafter, "Agreement"), which AZDOHS desires to share with Avondale and/or use to aid Avondale and its cyber operations, pursuant to the direction of the Governor of the State of Arizona. AZDOHS selects, procures, and funds one or more cyber readiness products which may change over time depending on the evolution of cyber security requirements (hereinafter "Products") offered through the Program. AZDOHS desires to assist Avondale in Avondale's use of one or more of the Products, as outlined in this Agreement, which will benefit Avondale's cyber operations.
- d. Avondale has opted to participate in the Program, to deploy and operationalize one or more of the Products, and desires to work with AZDOHS and is seeking assistance from AZDOHS regarding skills, tactics, techniques, and procedures pertaining to the Products, as outlined in this Agreement, which also will benefit AZDOHS.

Based upon the mutual promises contained in this Agreement, the Parties hereby agree to be bound as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby made terms of this Agreement.

2. Definitions.

- a. Disclosing Party. A Party to this Agreement, including directors, officers, employees, agents or representatives (collectively, "Representatives"), that discloses Confidential Information to the Receiving Party.
- b. Receiving Party. A Party to this Agreement, including its Representatives, that receives Confidential Information from the Disclosing Party.
- c. Transaction. Any interaction between the Parties undertaken pursuant to this Agreement regarding a specific cybersecurity event or incident, or the sharing of information about those events.
- d. Confidential Information. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. Confidential Information is any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including but not limited to:
 - i. Information relating to the Program, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or penetrate any of the

Parties' cyber security measures whether or not such cyber security measures are a part of the Program, including but not limited to the skills, tactics, techniques and procedures associated with the Program;

ii. Information relating to the Products, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or any of the Parties' cyber security measures whether or not such cyber security measures are a part of the Program, including but not limited to information obtained from or through a governmental or private entity providing one or more Products to the Parties to this Agreement and including but not limited to proprietary information belonging to such governmental or private entity.

iii. Any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or penetrate any of the Parties' cyber security measures whether or not such cyber security measures are a part of the Program;

iv. Any concepts, reports, data, know-how, tactics, techniques, procedures, works-in progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or penetrate any of the Parties' cyber security measures whether or not such cyber security measures are a part of the Program;

v. Any internal data, user id's, passwords, configuration settings, infrastructure design, non-public employee information, personal identifiable information, or any other data maintained by a Disclosing Party to fulfill any of its functions, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or penetrate any of the Parties' cyber security measures whether or not such cyber security measures are a part of the Program; and

vi. Any other information that should reasonably be recognized as confidential information of the Disclosing Party, which if made available to a third-party, would have the potential to enable persons or entities who are not parties to this Agreement to weaken, undermine or penetrate any of the Parties' cyber security measures whether or not such cyber security measures are a part of the Program.

3. Purpose. The purpose of this Agreement is to establish policies and procedures under which AZDOHS will provide Products to Avondale and assist Avondale with its participation in the Program. In furtherance of this purpose, the Parties further agree:

a. That the Products will be provided to Avondale as a hosted solution in a multi-customer environment. AZDOHS personnel will have administrative access to the Product(s) to provide deployment and operational support to Avondale.

b. That AZDOHS personnel with administrative access to the Product(s) will protect administrative credentials against unauthorized use and access by employing protection measures in compliance with State of Arizona Statewide Information Security Policies, Standards, and Procedures (available at <https://azdohs.gov/information-security-policies-standards-and-procedures>). Documentation of this will be provided by AZDOHS to Avondale upon request.

c. That any Products and Product licenses and support provided by AZDOHS other than in response to a request under the Arizona Mutual Aid Compact will be funded by AZDOHS and shall be provided to Avondale at no cost to Avondale and with no requirement for reimbursement from Avondale.

4. Scope of Products and Assistance. Avondale and AZDOHS intend to work together, and AZDOHS will provide Products, Product licenses, and related assistance to Avondale as set forth in Exhibit A to this Agreement. The Parties further agree that:

a. Additional exhibits or modifications and amendments to Exhibit A may be executed in the future. Any such changes will be made in accordance with Section 13 of this Agreement.

b. Avondale shall not request, and AZDOHS shall not provide, any services not in compliance with all State and Federal laws regulating the access to, and utilization of, cyber information.

c. Avondale and AZDOHS understand that AZDOHS will only access and/or make changes to the Products offered to Avondale and/or Product modifications which impact Avondale with prior notification.

d. The Parties acknowledge that both Parties' records are subject to Arizona public records law and agree that in the event that either Party receives a public records request, subpoena, or other request or demand for records relating to the matters addressed in this Agreement, (1) the Party receiving the public records request, subpoena, or other request or demand for such records shall immediately notify the other Party and provide the other Party with a copy of the public records request, subpoena, or other request or demand for such records; and (2) the Parties shall communicate and cooperate with each other in responding to and/or resisting the public records request, subpoena, or other request or demand for such records, except that each Party shall retain the right to assert its own independent position on whether a record or portion of a record should or should not be produced. The Parties further agree:

i. AZDOHS may review alerts, statistical data, and other data collected to support the Program.

ii. Avondale agrees that AZDOHS may report summary Program metric data to State executive leadership for the purposes of demonstrating the effectiveness and completeness of implementation of the Program.

iii. Avondale agrees that AZDOHS may report aggregated and anonymized information (including but not limited to threat intelligence and technical indicators) to other AZDOHS strategic partners for the purposes of information sharing and furthering the mission of AZDOHS and the Program.

e. Avondale will permit AZDOHS personnel access to Avondale's systems and information as AZDOHS deems necessary. AZDOHS agrees to access Avondale's systems only with prior notification to Avondale and solely for serving the purposes of the Program.

5. Obligations Specific to Avondale. Avondale understands and acknowledges that participation in the Program is voluntary. The Parties agree that Avondale will:

a. Assign primary technical and executive Points of Contacts ("POCs") for coordination with AZDOHS regarding all Products, Product licenses, and related assistance as set forth in this Agreement. The Avondale's technical POCs will coordinate with AZDOHS for Avondale's participation in the Program including but not limited to deployment and operation of the Products. Avondale shall report to AZDOHS any change in the POCs' identity or the POCs' contact information in a timely manner.

- b. Utilize Products and the Program to reduce Avondale’s cybersecurity risk, and reasonably collaborate with AZDOHS and other participating agencies to improve the Program.
- c. Make consistent progress with deployment of the Products and licenses and will maintain regular and open communications with AZDOHS as appropriate. Failure to communicate with AZDOHS is grounds for AZDOHS to reallocate Avondale’s Product licenses to other Program participants.
- d. Participate in surveys and provide feedback to AZDOHS to improve the Program.
- e. Comply with all end user license agreements required by the Product manufacturers.
- f. Agree that any additional add-on options for Products, not already available under the Product portfolio, must be approved by the Arizona State and Local Cybersecurity Program Planning Committee (hereinafter “Committee”). The Committee will include representatives from Arizona local governments, tribal governments, and K-12 public school districts. The mission of the Committee will be to ensure greatest value for the Program participating agencies, approve annual purchases, authorize changes to the portfolio of services offered, oversee operations, and suggest improvements to the Program. Avondale is solely responsible for the funding, procurement, and implementation of all such add-on options.
- g. Be permitted to disclose the following items to any person at any time:
 - i. The fact that Avondale has entered into this Agreement and the details of this Agreement.
 - ii. A description of Avondale’s participation in the Program as stated in this Agreement.

6. Obligations Specific to AZDOHS. AZDOHS, under direction of the Governor of the State of Arizona, has the mission to assist Arizona local governments, tribal governments, and K12 public school districts to reduce cybersecurity risk and to reduce the impact of cyber-attacks. AZDOHS accomplishes this mission, in part, through the Program. Accordingly, the Parties agree that AZDOHS will:

- a. Establish a governance program for the Program, to be overseen by the Committee.
- b. Make efforts to maintain current, and identify future, funding sources to continue purchasing and maintaining the Program and Products.
- c. If funding is discontinued, AZDOHS will make efforts to ensure Avondale has time to plan for a transition of cybersecurity services.
- d. Conduct all procurements relating to the subject matter of this Agreement unless otherwise provided in Section 5(f).
- e. Communicate to Avondale all significant changes to the Program that could affect Avondale.
- f. Acknowledge that data created by or transferred to Avondale’s Product environment is owned by Avondale. AZDOHS will provide Avondale’s data to Avondale upon termination of this Agreement and participation in the Program as feasible.
- g. Communicate system changes to the Product to the Committee and to Avondale 48 hours prior to the change being made, with exception that in the event of an emergency, AZDOHS will make efforts to communicate, but will make emergency changes without prior communication if AZDOHS determines this is necessary.

h. Communicate changes to Avondale's Product environment and related information to Avondale 48 hours prior to the change being made, with exception that in the event of an emergency, AZDOHS will make efforts to communicate, but will make emergency changes without prior communication if AZDOHS determines this is necessary.

i. Notify Avondale in writing promptly upon the discovery of a system breach or other unauthorized access and/or change to Avondale's Products, but in no case later than 48 hours after discovery of a breach or other unauthorized access.

j. Make efforts to assist Avondale with its regulatory compliance requirements in relation to the Products.

7. Use of Confidential Information. A Receiving Party agrees to use Confidential Information solely in connection with the Program and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party.

8. Disclosure of Confidential Information. A Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will:

a. Except as provided in Sections 4(d) and 5(g) of this Agreement, limit disclosure of any Confidential Information to only those within its control (i) who have executed a Non-Disclosure Agreement protecting Confidential Information to at least the same extent as this Agreement and (ii) who have a need to know such Confidential Information in connection with the relationship between the Parties under this Agreement. Each Non-Disclosure Agreement between a Party to this Agreement and a third-party shall include language providing that (a) the Party to this Agreement signing a Non-Disclosure Agreement with a third-party shall immediately provide a copy of that Non-Disclosure Agreement to the other Party to this Agreement, and (b) either Party to this Agreement shall have the right to enforce that Non-Disclosure Agreement with that third-party.

b. Advise its personnel and representatives of the confidential nature of Confidential Information and of the obligations set forth in this Agreement.

c. Be under no obligation with respect to any information:

i. Which is, at the time of disclosure, available to the general public; or which at a later date becomes available to the general public through no fault of Receiving Party, but only after that later date;

ii. Which Receiving Party can demonstrate was in its possession before receipt of the information from Disclosing Party, which can be proven by written records or other competent evidence;

iii. Which was developed independently by Receiving Party without reference to the information provided by Disclosing Party;

iv. Which is disclosed to Receiving Party without restriction on disclosure by a third-party who has the lawful right to disclose such information;

v. Which is required to be disclosed pursuant to any applicable law or regulation, or pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, or similar method, except as provided in Section 4(d) of this Agreement.

9. Return of Confidential Information. Receiving Party shall immediately return and redeliver to the other Party all tangible material embodying Confidential Information received hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of:

- a. The completion or termination of the dealings between the Parties contemplated hereunder;
- b. The termination of this Agreement; or,
- c. At such time as the Disclosing Party may so request.

Provided however that the Receiving Party may retain such of its records as is necessary to enable it to comply with its record retention obligations and policies.

10. Notice of Breach. Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

11. Limitation of Agreement. The Parties agree that neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement, except for the matters specifically agreed to herein. This Agreement does not create a joint venture or partnership between the Parties.

12. Term. This Agreement shall commence on the date of the last signature herein below, and shall end ten (10) years from such date, unless terminated or extended as set forth in Section 14 of this Agreement.

13. Modifications to this Agreement. Any amendments or changes to this Agreement, including but not limited to amendments or changes to Exhibit A hereto, must be in writing and signed by authorized representatives of both Parties.

14. Termination. Either Party may terminate this Agreement by giving 30 days written notice to the other Party. Such termination notice period shall not commence until receipt of the written notice by the other Party. Access to systems will not be terminated by either Party without prior agreement of both Parties.

15. Disclaimer of Liability. In no event shall the State of Arizona, AZDOHS, the Program or their employees, members, agents, servants, independent contractors or suppliers be liable to Avondale or any third parties affected by the actions taken by AZDOHS pursuant to this Agreement for any damages of any kind whatsoever, including, but without limitation, damages for loss of profits, business interruption, loss of information, disclosure of confidential or private information, or other losses, including pecuniary loss arising out of training conducted pursuant to this Agreement or for special, indirect, consequential, incidental, or punitive damages however caused, and regardless of the theory of liability.

16. Warranty. Each Party warrants that it has the right to make the disclosures called for under this Agreement. NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The Parties acknowledge that although they shall each endeavor to include in Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the Parties understand that no representation or warranty as to the accuracy or completeness of Confidential Information is being made by either Party as the Disclosing Party. Neither Party hereto shall have any liability to the other Party or to the other Party's Representatives resulting from any use of

Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

17. Severability. In the event that any provision or Section herein is held invalid or unenforceable, the remaining provisions and Sections shall remain in full force and effect.

18. No Indemnification. Neither Party shall indemnify or hold harmless the other Party.

19. Funding. Every obligation of AZDOHS under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the Legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by AZDOHS or Avondale at the end of the period for which funds are available. No liability shall accrue to AZDOHS or any other agency of the State of Arizona in the event this provision is exercised, and neither AZDOHS nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

20. Conflict of Interest. The requirements of ARS § 38-511 apply to this Agreement. Either Party 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 that Party is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of the other Party with respect to the subject matter of this Agreement.

21. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws provisions.

22. Dispute Resolution. The Parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by ARS § 12-1518, except as may be required by other applicable statutes.

23. Forum. The forum for any dispute arising out of this Agreement shall be Maricopa County, Arizona.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any other written or oral agreement between the Parties with respect to the subject matter of this Agreement.

25. Rule of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

26. Further Actions. Each Party hereby agrees to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

27. Compliance with All Applicable Law. The Parties agree to comply with all federal, state or local laws, rules or regulations applicable to the subject matter of this Agreement.

28. Independent Status. The Parties are independent contractors, and nothing contained in this Agreement creates a relationship of partnership, joint venture, agency, or employment between the Parties or any of their employees, officers, agents, or contractors.

29. Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute a single instrument. A signature on a counterpart may be made by facsimile or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature. Further, this Agreement may be retained in any electronic format, and all electronic copies thereof shall likewise be deemed to be an original and shall have the same force and effect as an original copy of this Agreement.

30. No Third-party Beneficiaries. This Agreement will inure exclusively to the benefit of and be binding upon AZDOHS and Avondale as the only parties to this Agreement, and to their respective successors, assigns, executors and legal representatives. Except as expressly provided in this Agreement, nothing in this Agreement confers on any person other than the Parties hereto or their respective successors and assigns, any rights, remedies, obligations, or liabilities.

31. Separate Responsibility. Except as expressly provided in this Agreement, each Party agrees that, to the extent authorized by law, it will be responsible for its own acts or omissions and the results thereof and will not be responsible for the acts or omissions of the other Party and the results thereof. In the event that either Party becomes aware of any claim made by or expected from a claimant against a Party to this Agreement, which claim relates to the subject matter of this Agreement, that Party will immediately notify the other Party, and the Parties will share all information regarding such matter and cooperate with each other in addressing the matter.

32. Waiver. Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. It is expressly agreed that in the execution of this Agreement, no Party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

33. Assignment. Neither Party may directly or indirectly assign or transfer its rights and/or obligations under this Agreement by operation of law or otherwise without the prior written consent of the other Party.

34. Force majeure. The Parties shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

35. Publicity. No Party shall use or mention in any publicity, advertising, promotional materials or news release the name or service mark(s) of the other Party without the prior written consent of that Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the _____ day of _____, 20____.

Arizona Department of Homeland Security

City of Avondale

Signature

Signature

_____ Name

_____ Title

_____ Date

10966925.2

_____ Name

_____ Title

_____ Date

Agreement
Between
The State of Arizona Department of Homeland Security
And
City of Avondale (also referred to as “Avondale”)

EXHIBIT A

Products provided by AZDOHS to Avondale under this Exhibit A are as follows:

Products	Description
Advanced Endpoint Protection / Endpoint Detection & Response	Advanced Endpoint Protection (AEP) is next-generation antivirus protection that leverages artificial intelligence and machine learning to identify malware before it executes. Endpoint Detection and Response (EDR), also referred to as endpoint detection and threat response (EDTR), is an endpoint security solution that continuously monitors end-user devices to detect and respond to cyber threats like ransomware and malware.
Anti-Phishing / Security Awareness Training	Anti-phishing training provides employees with examples of how to spot phishing attempts and suspicious emails requesting sensitive information from users or infecting systems with malware. This includes sending emails to employees with fake links, mimicking real phishing attempts from outside threats. Employees who click on simulated links will be prompted to complete security awareness training. Security Awareness Training (SAT) features user-friendly online training courses that cover the latest cybersecurity best practices to educate employees on how to keep data and devices safe.
Converged Endpoint Management	Converged Endpoint Management (XEM) platforms provide unrivaled access to real-time asset visibility and the ability to patch at scale with certainty (including devices that are on or off-network or VPN). XEM brings IT Operations, Security, and Risk Management teams together – with a single platform for complete visibility, control, and trust in IT decision-making.
Multi-Factor Authentication	Multi-Factor Authentication (MFA) is a security system that requires more than one method of authentication to verify a user's identity for a login or other transaction. Categories for authentication may include knowledge (something a user knows), possession (something a user has), and inherence (something a user is). MFA provides an extra layer of security to prevent unauthorized access to systems.
Web Application Firewall	Web Application Firewall (WAF) is an application firewall for HTTP applications. It applies a set of policies to help protect web applications from common web exploits that could affect an application's availability and compromise data.

10724554.2

CITY COUNCIL REPORT

SUBJECT: Resolution 1055-0923 - Authorizing the Mayor to sign on behalf of the City for the Sisterhood Agreement Between the City of Avondale, Arizona and Rocky Point, Sonora

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Kenneth Chapa, Director of Economic Development and Tourism

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1055-0923, authorizing the Mayor to sign on behalf of the City for the Sisterhood Agreement between the City of Rocky Point of the State of Sonora of the United Mexican States and the City of Avondale of the State of Arizona of the United States of America 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 partnership with the General Consul of Mexico, Avondale is pursuing a Sister Cities Agreement with the city of Rocky Point (Puerto Peñasco), Sonora. The agreement provides a framework for Rocky Point and Avondale to collaborate and exchange best practices in business, commerce, culture, and cross-promotional opportunities for up to five (5) years. The agreement may be renewed for equal periods if both parties agree.

DISCUSSION:

The areas of cooperation include the following:

- Avondale and Rocky Point may exchange strategies to promote their healthcare destinations and tourism attractions due to our rich historical culture and many business and overall commerce similarities.
- Avondale and Rocky Point may collaborate on ways to cross-promote events and commerce that attracts tourists and business to the area. Both communities have hidden gems with vibrant events and diverse cultural offerings.
- Avondale and Rocky Point may commit to exchanging marketing materials and/or collateral used in

tourism to include major events, such as NASCAR and Tres Rios in Avondale.

- Avondale and Rocky Point may commit to cross-promoting community assets such as educational institutions, a vibrant tourism scene, and unique healthcare offerings through medical tourism and workforce development.

A Signing Ceremony between the Mayor of Rocky Point and the Mayor of Avondale will occur on September 28, 2023.

BUDGET IMPACT:

The city's operating budget can absorb costs associated with this agreement.

RECOMMENDATION:

Staff recommends that City Council adopt a Resolution authorizing the Mayor to sign on behalf of the City for the Sisterhood Agreement between Rocky Point, Sonora and Avondale, Arizona to facilitate an international relationship for the benefit of both communities.

Contact person for document distribution:

RESOLUTION 1055-0923

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, FORMALIZING A SISTERHOOD AGREEMENT WITH THE CITY OF PUERTO PEÑASCO OF THE STATE OF SONORA OF THE UNITED MEXICAN STATES TO DEVELOP AND FOSTER COLLABORATIVE ACTIONS RELATED TO BUSINESS EXCHANGE, COMMERCE, CULTURE AND CRAFTMANSHIP AND AUTHORIZING THE EXECUTION OF THE RESULTING AGREEMENT.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale ("City") to enter into this agreement; and

WHEREAS, Sister Cities International was created by President Dwight D. Eisenhower in 1956 to promote citizen diplomacy around the world through people-to-people exchanges that develop understanding and relationships between nations; and

WHEREAS, a sisterhood relationship is a broad-based, long-term partnership approved by the top-elected officials of the two communities in two nations; and

WHEREAS, the City recognizes the need to foster goodwill and build bridges of understanding between Avondale's residents and the people of other nations, and

WHEREAS, the City wishes to broaden its relationship with the City of Puerto Peñasco of the State of Sonora of the United Mexican States to generate tourism and investment, as well as trade, educational and cultural exchanges; and

WHEREAS, the City Council desires to formally establish a lasting and meaningful friendship between the City of Puerto Peñasco of the State of Sonora of the United Mexican States and the City of Avondale through this Sisterhood Agreement.

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 Sisterhood Agreement with the City of Puerto Peñasco of the State of Sonora of the United Mexican States formalizing the relationship between the two cities (the "Agreement") for the purpose of fostering business exchange, commerce, culture and

craftsmanship is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 3. The Mayor, the City Manager, the City Attorney and the City Clerk are hereby authorized and directed to cause the execution of the Agreement, and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, September 11, 2023.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION 1055-0923

[Agreement]

See following pages.

**SISTERHOOD AGREEMENT BETWEEN THE CITY OF PUERTO PEÑASCO OF THE
STATE OF SONORA OF THE UNITED MEXICAN STATES AND THE CITY
OF AVONDALE OF THE STATE OF ARIZONA OF THE
UNITED STATES OF AMERICA**

The City of Rocky Point of the State of Sonora of the United Mexican States and the City of Avondale of the State of Arizona of the United States of America; hereinafter referred to as “the Parties”;

CONSIDERING their interest to strengthen the friendship ties and cooperation that join both Parties;

ACKNOWLEDGING that the cities have the intention to develop collaborative activities, under the law provisions of the United States of America and the United Mexican States, with particular attention to the terms related to business exchange, commerce, culture and craftsmanship;

DECLARING their decision to strengthen their relationship of collaboration through the proper legal channels;

CONVINCED of the importance of establishing mechanisms that contribute to the development and strengthening of bilateral cooperation, as well as the necessity to execute projects and actions that are effective in the commercial and social development of both Parties;

Have agreed to the following:

ARTICLE I

Objective

The objective of the present Agreement is to formalize the sisterhood between the City of Rocky Point from the State of Sonora of the United Mexican States and the City of Avondale from the State of Arizona of the United States of America, to foster agreement and understanding between them and the institutions in their respective territorial areas, to intensify common efforts, and to promote the exchange of experiences and execution of common activities.

ARTICLE II

Areas of Cooperation

To reach the objective of the present Agreement, the Parties commit themselves to develop cooperative projects, specifically directed, but not limited to the following areas:

- a) In the shared collaboration in terms of commerce, Avondale and Rocky Point may exchange strategies to promote their healthcare destinations and tourism attractions.
- b) In cultural offerings, both Rocky Point and Avondale may collaborate on ways to cross promote events and commerce that attracts tourists and businesses to the area.
- c) Exchange marketing materials and/or collateral used in tourism promotion. Both Avondale and Rocky Point may commit to cross-promote major events such as NASCAR and Tres Rios in Avondale and Rocky Point.
- d) Avondale and Rocky Point may commit to cross promoting assets such as educative institutions and unique medical services for ideas such as medical tourism and workforce development.

ARTICLE III

Modalities of Cooperation

The Parties agree that the actions of cooperation which are referred to in the present Agreement shall be carried out through the following modalities:

- a) exchange of significant economic data;
- b) collaboration in the search of partners and in the execution of joined promotional initiatives, as well as expositions, with the purpose to strengthen projects already determined;
- c) business participation and promotion of respective cities in fairs, expositions and conferences in both cities;
- d) cooperation between public and private companies;
- e) mutual comprehension and support, based on either city's available cultural resources, of tours, music performances, co-productions, and other artistic programs;
- f) joint collaboration between universities and research centers, and
- g) any other modalities that the Parties may agree upon.

ARTICLE IV

Competence

The Parties commit themselves to carry out the modalities of cooperation, referred to in Article III of the present Agreement, in accordance to their respective faculties, subject to the political and economic laws and regulations of their respective Governments.

ARTICLE V

Annual Action Programs

In order to achieve the objectives of the present Agreement, the Parties agree to formulate, through prior discussion, Annual Action Programs (AAP's), which shall become an integral part of the present Agreement once they are formalized.

The AAP's shall be integrated with specific projects or activities, which must reference each of the following aspects:

- a) objectives and activities to develop;
- b) work agenda;
- c) profile, quantity and duration of the assigned personnel to objectives and activities;
- d) responsibility of each Party;
- e) assignment of materials, personnel and financial resources;
- f) evaluation mechanism and criteria, and
- g) any other appropriate information.

The operation of this Agreement shall not be conditioned to the signing Parties to establish projects in all the modalities of cooperation, nor are they obligated to collaborate in those activities where internal prohibitions exists or derived by law, institutional normatives, or customs.

The Parties shall meet annually in order to evaluate the results derived from the present Agreement and to propose new guidelines for the development of projects of mutual interest.

The Parties shall produce progress reports of achievements based on the present Agreement and shall communicate them to their respective Chancellery, as well as the bilateral departments determined by mutual agreement.

Both Parties agree to formulate the first Action Program within sixty (60) days after the signing date of the present Agreement.

ARTICLE VI

Collaboration of Additional Proposals

Notwithstanding the Annual Action Program referred to in Article V of the present Agreement, each Party may formulate additional proposals, as they may arise during the implementation of activities predetermined through the AAP.

ARTICLE VII

Coordination and Follow-Up Mechanism

In order to establish a mechanism and criteria for the coordination, supervision and evaluation of the activities carried out under the present Agreement, as well as to assure the best conditions for its execution, a Working Group, integrated by representatives of both Parties, shall be established, and coordinating each parties activities the following areas:

On behalf of the City of Puerto Peñasco, of the State of Sonora of the United Mexican States, is designated the secretary of the city of Puerto Peñasco

The City of Avondale of the State of Arizona of the United States of America has designated the Office of Economic Development and Tourism for the City of Avondale.

The Working Group shall meet periodically in a location agreed upon by the Parties, in order to evaluate the activities derived from the application of the present Agreement. The Working Group shall have the following functions:

- a) Make the necessary decisions in order to carry out the objectives of the present Agreement;
- b) identify the areas of common interest in order to elaborate and formulate specific projects;
- c) orientate, organize and formulate relevant recommendations in order to fulfill the activities of the present Agreement;
- d) receive, examine and approve the progress reports in the areas of cooperation within the present Agreement, and
- e) any other functions that the Parties may agree upon.

ARTICLE VIII

Financing

The Parties shall finance the activities referred to in the present Agreement with the assigned resources in their respective budgets according to the availability and terms of their legislation. Each Party shall pay the expenses related to its participation, except in the case that alternate financial mechanisms may be used for specific activities, if considered appropriate.

ARTICLE IX

Information, Material and Protected Equipment

The Parties agree that information, material and protected equipment deemed classified by national legislation for national security or foreign relation purposes of either Party, shall not be subject to transfer within the present Agreement.

When undertaking activities pursuant to this Agreement, any information, material and equipment which require or could require protection and classification is identified, the Parties shall inform the adequate authorities and establish in writing, the corresponding measures.

The transference of information, material and equipment, which is not protected or classified, but which exportation is regulated by one of the Parties, shall be done according to the applicable national legislation and should be identified, along with its intended use or subsequent transference. If any of the Parties consider it necessary, measures shall be taken to prevent the non-authorized transference or re-transference of such property.

ARTICLE X

International Instruments

The cooperation referred to in the present Agreement shall not affect the rights and duties which the Parties have acquired regarding other international instruments.

ARTICLE XI

Intellectual Property

If as a result of actions carried out in accordance with this Agreement, products of commercial value and/or rights of intellectual property are generated, these shall be determined by the applicable national legislation, as well as the International Conventions, which are binding for both Parties.

ARTICLE XII

Employment Relationship

The personnel assigned by each Party for the execution of activities derived from the present Agreement, shall continue under the direction and dependence of the institution to which he/she pertains, and shall not create any labor relation with the other Party, which in no case shall be considered as a substitute employer.

The Parties shall carry out the necessary procedures under their respective authorities in order to facilitate the entry and departure of participants who are officially involved in the projects derived from the present Agreement. Such participants shall be subject to the immigration, tax, customs, sanitary and national security laws of the receiving country and may not partake in any activity other than those pertaining to their functions, without the previous authorization of the competent authorities in this field.

The Parties shall encourage that the personnel involved in such activities have medical, personal damage and life insurance, so that, if a damage results from such activities derived from the present Agreement, repair or indemnification shall be covered by the corresponding insurance company.

ARTICLE XIII

Disputes Settlement

Any difference or divergence derived from the interpretation or application of the present Instrument shall be resolved by both Parties in common agreement.

ARTICLE XIV

Final Provisions

The present Agreement shall go into effect upon the date of its signature and shall remain in effect for up to a five (5) year period, and may be renewed for equal periods, by evaluation and acceptance by both Parties through written communication.

The present Agreement may be modified by mutual consent of the Parties, by formalizing it through written communications and specifying the date of its enforcement.

Either of the Parties may, at any moment, terminate the present Agreement by a written notification given to the other Party sixty (60) days in advance.

The anticipated termination of the present Agreement shall not affect the completion of the activities, formalized while it was in force.

Signed in the City of Scottsdale, Arizona, the twenty-eight of September of two thousand twenty-three , in two original and official copies in the Spanish and English languages, all texts being equally authentic.

**ON BEHALF OF THE CITY OF PUERTO
PEÑASCO,
OF THE STATE OF SONORA
OF THE UNITED MEXICAN STATES**

**ON BEHALF OF THE CITY OF
AVONDALE,
OF THE STATE OF ARIZONA
OF THE UNITED STATES OF AMERICA**

**JORGE IVÁN PIVAC CARRILLO
Mayor**

**KENNETH WEISE
Mayor**

CITY COUNCIL REPORT

SUBJECT: Resolution 1056-0923 - Amendment No. 1 to the Intergovernmental Agreement with Maricopa County Human Services Department - Community Action Program (CAP) Services

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Chris Lopez, Neighborhood Family Services Director

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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. The Avondale CAP office is a reputable service provider in the Central West area. For many years, the CAP office has been dedicated to assisting residents with rental, utility, and mortgage needs. Moreover, they go beyond mere financial aid by offering valuable referrals and linking residents to various support services.

PURPOSE:

City Council will consider a request to adopt Resolution 1056-0923, approving Amendment No. 1 of the Intergovernmental Agreement (IGA) with the Maricopa County Human Services Department for the provision of the Community Action Program (CAP) services, 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 Community Action Program (CAP) has been providing assistance to the residents of Avondale since 1964. Services cater to individuals and families who require support for various reasons. Often, families living below the poverty line struggle to save money for unexpected crises. Consequently, they rely on assistance during significant household changes including shifts in employment, medical emergencies, divorces, caring for elderly family members, or unexpected vehicle expenses.

In 2021 and 2022, the Avondale CAP office provided assistance to a total of 3,189 households in the total amount of \$11.9M. In 2023 to date, the Avondale CAP office has provided assistance to a total of 692 households in the total amount of \$2.3M.

DISCUSSION:

The Community Action Program (CAP) offers assistance to households and families experiencing financial hardship by providing support for utility payments, rent and mortgage. The specified service area covered by the contract encompasses Avondale, Goodyear and Litchfield Park, as well as unincorporated areas extending

north to Glendale Avenue, including Litchfield Park, and east/south to Laveen, excluding the unincorporated areas surrounding Laveen. This particular area is referred to as the Central West CAP region in Maricopa County. The grant agreement includes funding in the amount of \$297,000. The funding is provided as cost reimbursement to the City. The grant term begins July 1, 2023 and the City's Intergovernmental Agreement with Maricopa County Human Services Department (MCHSD) will be in effect until June 30, 2024.

BUDGET IMPACT:

The total funding provided by Maricopa County Human Services Department is \$297,000 for the administration of the Avondale Community Action Program. All funds will be utilized for the following purposes; personnel, employee related expenses, professional & outside services (temporary employees through Compunnel contract), travel, materials & supplies, and operating services.

Maricopa County Human Services Department requires a 25% cash match of the total award amount, which is equal to or greater than \$74,250. The City's cash match contribution exceeds the required 25% match and is included in the FY2024 adopted budget.

RECOMMENDATION:

Staff recommends City Council adopt a resolution and approve an Intergovernmental Agreement with MCHSD to receive \$297,000 in funding.

Contact person for document distribution: Jerie Guajardo

RESOLUTION NO. 1056-0923

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY TO PROVIDE FUNDING TO OPERATE THE COMMUNITY ACTION PROGRAM

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

SECTION 1. Amendment No. 1 to the Intergovernmental Agreement between the City of Avondale (the “City”) and Maricopa County, Arizona for a grant award to operate the City’s Community Action Program for fiscal year 2023-2024 (the “Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to cause the execution of the Amendment 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, September 11, 2023.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO.
1056-0923

[Amendment]

See following pages.

AMENDMENT NO. 1 TO THE
INTERGOVERNMENTAL AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
CITY OF AVONDALE

- I. Maricopa County ("County"), administered by its Human Services Department, and the City of Avondale, ("Contractor") entered into a financial Intergovernmental Agreement ("Agreement"), which was fully executed on or about July 21, 2022. The purpose of the Agreement is for the Contractor to provide Community Action Program (CAP) services to include Crisis Case Management, coordination of services to assist low-income households in crisis situations, and assistance to move closer to economic self-sufficiency. The Contractor shall provide services in Avondale and surrounding areas. The Agreement term is the term of July 1, 2022, through June 30, 2023. The County provided the Contractor with \$391,875 for the CAP service activities. The County and the Contractor collectively are referred to as the "Parties."
- II. The Parties agree to enter into this Amendment No. 1 to amend the Agreement as follows:
- A. Extend the Agreement term from June 30, 2023, through June 30, 2024.
- B. Revise Section 3 (Work Statement), by removing in its entirety and replacing with the following:

1.0 PROGRAM GOALS

Maricopa County is a designated Community Action Agency, authorized under the federal Community Services Block Grant (CSBG) Act to address the causes and conditions of poverty in local areas. The Maricopa County Human Services Department/Community Services Division (MCHSD/CSD) administers the Community Action Program activities, the primary purpose of the CSD is to provide a range of programs or services that are intended to:

- pursue the reduction of poverty,
- the revitalization of low-income communities; and
- the empowerment of low-income families and individuals to become fully self-supportive.

Through partnerships with local municipalities or private, non-profit organizations, community action programs and services are provided to residents in the local area.

2.0 Scope of Work

Community Action Program Services shall include the delivery of crisis services, internal/ external program navigation, and program referrals intended to assist in the stabilization of immediate/ emergent needs for families that are facing eviction, disruption in utilities, experiencing insufficient food and/or nutrition, and/or are unemployed/ underemployed.

Services shall be delivered in a wrap around, comprehensive manner to address the needs of the household and to move families closer to economic stability.

2.1 MCHSD Crisis Financial Assistance Services

Eligibility for financial assistance is determined and benefit payments made on behalf of program participants, these include but are not limited to, temporary emergency shelter, emergency rent, move-in assistance, utility payments or deposits, and emergency utility payments.

2.1.1 Clients seeking assistance will apply via HSD Dynamics client portal and will be placed in a queue based on an assigned priority level.

2.1.2 Eligibility criteria for financial assistance funds is defined in the MCHSD/CSD Policy & Procedure Program Manual.

2.1.3 Financial assistance funds are managed and allocated by MCHSD. Funds will be made available to the Contractor through the HSD Dynamics.

2.1.4 MCHSD/CSD will make payment directly to vendors upon authorization by County.

2.1.5 Available Financial Assistance Services shall include the following:

2.1.5.1 Utility Assistance

2.1.5.1.1 Utility payments and deposits for heating and cooling;

2.1.5.1.2 Rental assistance where utility payment is included in rent.

2.1.5.2 Rental Assistance

2.1.5.2.1 Rental assistance to prevent eviction; and

2.1.5.2.2 Move in assistance to include rental deposits and first month rent.

2.2 Navigation Services

Navigation services are offered to clients following the completion of the HSD Dynamics application. This is a staff assisted function that includes the collection of eligibility documents and completion/ submission of program application for both contractor's internal program (non-County funded) along with external program services.

2.2.1 Navigation to Low-Income Energy Assistance Program (LIHEAP) and Low-Income Household Water Assistance Program (LIHWAP) Services:

2.2.1.1 Contractor shall provide application assistance which may include the following:

- 2.2.1.1.1 Answering questions about program eligibility and the application process.
- 2.2.1.1.2 Entering application data directly into the DES portal on behalf of the Client.
- 2.2.1.1.3 Scanning and uploading required documents, if needed.
- 2.2.1.1.4 Provide paper applications to clients, upon request, and enter information directly into the DES portal on Client's behalf.
- 2.2.1.1.5 Provide assistance in completing the ID.me identity verification process to include scanning required documents and uploading to the ID.me website (www.ID.me.com)
- 2.2.1.2 LIHEAP Life-Threatening Crisis Requirements
 - 2.2.1.2.1 Contractor shall provide the following assistance:
 - 2.2.1.2.1.1 Upon phone/email notification from ADES, initiate a wellness call or check within eighteen (18) hours.
 - 2.2.1.2.1.2 Confirm that the Client is facing Life-Threatening Crisis
 - 2.2.1.2.1.3 Refer Clients to weatherization services for items such as portable heaters, air conditioners, or other necessities if it is determined action is needed.
 - 2.2.1.2.1.4 Assists clients with application and indicate on Client's application the Life-Threatening Crisis needed
- 2.2.2 Navigation to Maricopa Human Services (MCHSD) Programs
 - 2.2.2.1 Contractor shall navigate to the Community Services Division (CSD) Empowerment Pathway Program.
 - 2.2.2.2 CSD Client Service Specialist shall assess the needs of the household and connect the Client to the following MCHSD divisional (neighborhood) program services:
 - 2.2.2.2.1 Early Education Division (EED) nutritionist, childcare, and early education services
 - 2.2.2.2.2 Senior Adult Services Division (SASD) case management services
 - 2.2.2.2.3 Workforce Development Division (WDD) employment and occupational skills training related services

2.2.2.2.4 Homeless Services

2.2.2.3 Navigation to Internal Program Services

2.2.2.3.1 Contractor shall identify a minimum of two (2) internal program based on the most recent MCHSD Community Needs Assessment. Contractor will submit a logic model (Exhibit 1) by July 31, 2023, to be approved by MCHSD. The logic model shall provide the following information for each program service:

2.2.2.3.1.1 Community need

2.2.2.3.1.2 Anticipated program outcome(s)

2.2.2.3.1.3 Description of program service

2.2.2.3.1.4 Projected number of individuals/ households to be served

2.2.2.3.1.5 Projected number of individuals/ households who will achieve anticipated program outcome(s);

2.2.2.3.1.6 Data collection methodology

2.2.2.4 Contractor shall conduct follow up contact with clients to assess for additional needs and to track program outcomes as it relates to the outcomes identified in the Contractor's logic model.

2.2.2.4.1 Follow up services shall be conducted at intervals of 3 months, 6 months, and 9 months following the receipt of program services.

2.3 Information and Referrals

2.3.1 Contractor shall provide information and referrals to include but not limited to the following:

2.3.1.1 SOLARI (formerly known as AZ 211) crisis case management services

2.3.1.2 Community Legal Services (CLS) for households who are facing immediate eviction for non-payment of rent or who receive assistance and have a judgement that is not satisfied.

2.3.1.3 Child support enforcement services for clients who are custodial parents in single parent households.

2.3.1.4 Assistance completing application for SNAP, AHCCCS, and Unemployment Insurance;

2.3.1.5 Food and nutrition services to counteract the impacts of starvation or malnutrition.

2.3.1.6 ADOH Mortgage Assistance Program

2.4 Service Requirements

2.4.1 MCHSD Crisis Financial Assistance Services

2.4.1.1 Contractor shall conduct application intake for financial assistance services to clients that apply in person with a paper application or needing assistance applying online.

- 2.4.1.2 On-site application process shall include the following:
 - 2.4.1.2.1 Provide paper applications, or assist clients with completing the online application process;
 - 2.4.1.2.2 Collect client eligibility documents for identified services, as required in the MCHSD/CSD Policy & Procedure Program Manual;
 - 2.4.1.2.3 Information from the paper application shall be entered into HSD Dynamics within 24 hours;
 - 2.4.1.2.4 Upload a copy of the paper application in HSD Dynamics;
 - 2.4.1.2.5 Create an application in HSD Dynamics, as well as the program applications that the client is eligible for;
 - 2.4.1.2.6 Upload eligibility documents in HSD Dynamics;
 - 2.4.1.2.7 Research and enter vendor/provider information in Dynamics.
- 2.4.1.3 The Contractor will also process applications submitted through the HSD Dynamics portal and shall follow the process outlined below:
 - 2.4.1.3.1 Contractor shall review agency's queue and will assign twenty (20) applications per week, to Client Services Specialist;
 - 2.4.1.3.2 Upload eligibility documents in HSD Dynamics;
 - 2.4.1.3.3 Research and enter provider information within twenty-four (24) hours from receiving provider documentation;
 - 2.4.1.3.4 Contractor will disposition ten (10) applications per week, which may include a combination of a rent and utility program application;
- 2.4.1.4 Contractor shall adhere to the following:
 - 2.4.1.4.1 Use the MCHSD/CSD Policy & Procedure Program Manual, as amended, in the provision of services;
 - 2.4.1.4.2 Document all services provided and supported by County funds in HSD Dynamics;
 - 2.4.1.4.3 Manage and monitor application queue in HSD Dynamics based on application submission date and assigned priority level;
 - 2.4.1.4.4 Document client's program involvement and progress in the required case note section of HSD Dynamics per the

MCHSD/CSD Policy and Procedure Program Manual;

- 2.4.1.4.5 Research provider profile and submit vendor information related to the County vendor registration process, if applicable;
- 2.4.1.4.6 Conduct quality assurance review on all submitted service authorizations;
- 2.4.1.4.7 Resolve rejected service authorizations and data entry errors within seven (7) calendar days from the rejection date;
- 2.4.1.4.8 Maintain funds depletion patterns as required by MCHSD/CSD.

2.4.2 Navigation Services

- 2.4.2.1 Clients shall have a completed application in HSD Dynamics prior to receiving navigation services to DES portal for LIHEAP/ LIHWAP services or internal program services.
- 2.4.2.2 Contractor shall ensure that all eligible clients seeking crisis services will be navigated to the Arizona Department Economic Security (DES) portal for LIHEAP and LIHWAP services.
- 2.4.2.3 Contractor shall provide navigation services as it relates to MCHSD and Internal Program services, to a minimum of 50% of the clients that have been dispositioned in the HSD Dynamic queue.
- 2.4.2.4 Contractor shall document all navigation services in HSD Dynamics, in accordance with the MCHSD/CSD Policy and Procedure Manual.
- 2.4.2.5 Navigation services shall be reported in the MCHSD/CSD quarterly ROMA reports.
- 2.4.2.6 Contractor shall use the MCHSD approved logic model template for internal program navigation.

2.4.3 Information and Referrals

- 2.4.3.1 Clients shall have a completed program application in HSD Dynamics prior to the delivery of information and referral services.
- 2.4.3.2 Contractor shall document all referrals in HSD Dynamics, in accordance with the MCHSD/CSD Policy and Procedure Manual.
- 2.4.3.3 Information regarding program referrals shall be reported in the MCHSD/CSD quarterly ROMA reports.

2.5 Facility Requirements

- 2.5.1 Contractor shall ensure staff on-site are able to navigate to websites and provide generalized assistance to clients. Staff shall provide access to through self-maintaining or partnership agreements, a computer lab to include multiple computers with internet access, fax machines, copier,

phones, and basic office supplies to allow individuals access to the following:

2.5.1.1 AZDES LIHEAP Application Portal;

2.5.1.2 HSD Client Portal;

2.5.1.3 ADOH Mortgage Assistance Portal;

2.5.1.4 Online applications for AZDES Unemployment Insurance, Supplemental Nutrition Assistance Program (SNAP), and AHCCCS Health Insurance;

2.5.1.5 Online job search and submission of application/resume; and/or

2.5.1.6 Information regarding scholarships and federal financial aid.

2.5.2 Contractor shall ensure adequate space for the following:

2.5.2.1 On-site workshops and training classes;

2.5.2.2 Local job/career fairs; and

2.5.2.3 Eligibility determination where confidential information cannot be overheard.

2.6 Reporting Requirements

2.6.1 Contractor shall submit programmatic and financial reports to MCHSD as listed below:

2.6.1.1 Results Oriented Management and Accountability (ROMA/ROMA Next Gen) data and/or reports no later than the 10th business day after the end of each quarter of the fiscal year.

2.6.1.2 Monthly invoices/claims with supporting documentation no later than the 10th business day, following the end of the month.

2.6.1.3 The County reserves the right to add, remove, or revise reporting requirements to meet program goals.

2.6.1.4 Failure to submit required reports in the designated timeframe listed may result:

2.6.1.4.1 in a forfeiture of payment, if not submitted by the forty-fifth (45th) calendar days following the end of a month.

2.6.1.4.2 in a forfeiture of final payment, if final program and fiscal reports is not submitted within the designated time period, determined by MCHSD following the Contract term.

2.7 HSD Dynamics Access

2.7.1 Access to HSD Dynamics will be provided by MCHSD/CSD upon request from Contractor.

2.7.2 Contractor shall provide MCHSD/CSD information regarding staffs' name, position title, contact information, and confirmation of successful completion of background check.

- 2.7.3 MCHSD reserves the right to immediately remove access if it is determined Contractor's personnel is a risk to the County operations for any of the following reasons but not limited to:
 - 2.7.3.1 Approving clients for services they are not eligible for;
 - 2.7.3.2 Denying eligible clients services; and
 - 2.7.3.3 Accessing the HSD Dynamics for any purpose other than areas of responsibility.
 - 2.7.4 MCHSD will provide Contractor programmatic ad hoc reports, as requested.
 - 2.7.5 MCHSD reserves the right to deny Contractor's access to program data.
- 2.8 Staff Requirements
- 2.8.1 Contractor shall:
 - 2.8.1.1 Ensure staff and/or volunteers do not provide direct services to clients until all appropriate Background Checks and Fingerprint clearance have been completed with satisfactory results and procedures are in place if results are unsatisfactory;
 - 2.8.1.2 Maintain documentation that key staff have received appropriate training or hold appropriate certification/licensure in accordance with roles, responsibilities and job descriptions;
 - 2.8.1.3 Ensure that staff and volunteers do not have any conflicts of interest in the provision of services and management of programs;
 - 2.8.1.4 Provide staff and volunteers with supervision, equipment, materials and supplies necessary to perform contracted services;
 - 2.8.1.5 Provide training to all new employees and volunteers providing services under this Agreement, to include but not limited to the following:
 - 2.8.1.5.1 An overview of the MCHSD/CSD Policy and Procedure Manual; and
 - 2.8.1.5.2 Requirements of ARS §46-140.01 and ARS §1-501 and ARS § 1-502 regarding eligibility for state and local benefits.
 - 2.8.1.6 Maintain documentation that verifies case management staff have received relevant training and provide documentation upon request to MCHSD;
 - 2.8.1.7 The Contractor shall be required to notify MCHSD of staff changes and vacant positions within two (2) business days of staff changes. The Contractor shall open the recruitment to fill case worker vacancies, no later than thirty (30) days after the vacancy occurs, to ensure service availability and clients are not turned away due to lack of staff. MCHSD may assist in the selection of the replacement candidate.

2.8.2 Code of Conduct:

2.8.2.1 The Contractor shall avoid any action that might create or result in the appearance of:

2.8.2.1.1 Inappropriate use or divulging of information gathered or discovered pursuant to the performance of its duties under the Contract.

2.8.2.1.2 Actions on behalf of the County without appropriate authorization.

2.8.2.1.3 Providing favorable or unfavorable treatment to anyone.

2.8.2.1.4 Making a decision on behalf of the County that exceeds their authority, displaying preferential treatment or actions that would have unfavorable consequences for the County.

2.8.2.1.5 Misrepresenting or otherwise impeding the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the County.

2.8.2.1.6 Loss of impartiality when advising the County.

2.9 Community Action Program Meetings

2.9.1 MCHSD will facilitate quarterly meetings with CAP contractors to communicate new developments, discuss problems, address barriers to services, share ideas for improvements, and to address other identified topic areas.

2.9.2 Contractor shall be required to ensure that a designated staff member participates in CAP meetings, as scheduled.

2.9.3 Cooperation in Strategic Planning and Community Needs Assessment:

2.9.4 Contractor shall participate in strategic planning initiatives which lead to the development of the five (5) year strategic plan and the annual Community Action Plan and provide information regarding the causes/condition of poverty within the designated geographic service area.

2.10 Training and Technical Assistance

2.10.1 To ensure successful program service delivery, MCHSD will provide/conduct training and technical assistance on:

2.10.1.1 MCHSD/CSD Policy & Procedure Program Manual;

2.10.1.2 MCHSD funded financial assistance services;

2.10.1.3 Use of HSD Dynamics;

2.10.1.4 Reports and forms, as required;

2.10.1.5 Results Oriented Management and Accountability (ROMA)/ROMA Next Gen;

2.10.1.6 Trauma Informed Care

2.10.1.7 Motivational Interviewing

- 2.10.1.8 Review of all applicable federal, state, and county regulations, laws, and rules related to specific funding sources used;
 - 2.10.1.9 Review of program monitoring findings; and
 - 2.10.1.10 Other training and technical assistance as needed/required.
- 2.11 Limited English Proficiency
- 2.11.1 The Contractor shall ensure that all services provided are culturally relevant and linguistically appropriate to the population to be served.
 - 2.11.2 Applicable Program Rules and Regulations:
 - 2.11.2.1 Contractor shall comply with all applicable federal, state, and county regulations, laws, and rules as amended, including but not limited to the following:
 - 2.11.2.2 COATS Human Services Reauthorization Act of 1998;
 - 2.11.2.3 2 CFR 200 Uniform Administrative Requirements;
 - 2.11.2.4 Personal Responsibilities and Work Opportunity Reconciliation Act of 1996;
 - 2.11.2.5 Stewart B. McKinney Homeless Assistance Act;
 - 2.11.2.6 ARS §46-241-State Short Term Crisis Services;
 - 2.11.2.7 ARS §46-731–Utility Assistance;
 - 2.11.2.8 ARS §46-741–Neighbors Helping Neighbors;
 - 2.11.2.9 ARS §46-140.01-Verification of identity and citizenship and/or immigration status; and
 - 2.11.2.10 ARS§§1-501-1-502, regarding eligibility for federal, state, or local public benefits.
 - 2.11.2.11 The requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. §13-3620 as may be amended.
 - 2.11.2.12 P.L. 101-121, Section 319 (31 U.S.C. section 1352) as may be amended, and 29 C.F.R. Part 93 as may be amended which prohibit the use of federal funds for lobbying and which state, in part: Except with the express authorization of Congress, the Contractor, its employees or agents, shall not utilize any federal funds under the terms of this contract to solicit or influence, or to attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation. Indian tribes, tribal organizations and any other Indian organizations are exempt from these lobbying restrictions with respect to expenditures that are specifically permitted by other federal law.
 - 2.11.2.13 A.R.S. § 23-722.01 as may be amended relating to new hire reporting,

- 2.11.2.14 A.R.S. § 23-722.02 as may be amended relating to wage assignment orders to provide child support, and A.R.S. § 25-535 as may be amended relating to administrative or court-ordered health insurance coverage for children.
 - 2.11.3 Administrative Simplification rules in Title II of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and all Federal regulations that are applicable to the operations of the Contractor by the dates required by the implementing Federal regulations as well as all subsequent requirements and regulations as published.
- 2.12 MCHSD Grievance Procedures
 - 2.12.1 Contractor shall advise all applicants for and recipients of contract services of their right, at any time and for any reason, to present to the Contractor and the County any grievances arising from the delivery of contract services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services.
 - 2.12.2 Individuals seeking/receiving County funded assistance who feel that they have not been treated fairly may submit a written grievance to the MCHSD/CSD.
 - 2.12.3 Contractor shall follow MCHSD grievance procedures as outlined in the MCHSD/CSD Policy & Procedure Program Manual
- 2.13 Pandemic Award Performance
 - 2.13.1 The Contractor shall establish a written plan that illustrates how the services and contract performance standards will be met in the event of a pandemic occurrence.
 - 2.13.2 The pandemic performance plan shall include:
 - 2.13.2.1 Key succession and performance planning if a sudden significant decrease in Contractor's workforce should occur.
 - 2.13.2.2 Alternative methods to ensure services are available.
 - 2.13.2.3 An up-to-date list of Contractor contacts and organizational chart.
 - 2.13.2.4 In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government, or the World Health Organization, which makes performance of any term under this Award impossible or impracticable, the MCHSD shall have the following rights:
 - 2.13.2.5 After the official declaration of a pandemic, MCHSD may temporarily void the Award in whole or specific sections if the Awardee cannot perform to the standards agreed upon in the initial terms.

- 2.13.2.6 MCHSD shall not incur any liability if a pandemic is declared, and emergency procurements are authorized by the Director of the Arizona Department of Administration per A.R.S. § 41-2537 as may be amended by the Arizona Procurement Code.
 - 2.13.2.7 Once the pandemic is officially declared over and/or the Contractor can demonstrate the ability to perform, MCHSD, at its sole discretion may reinstate the temporarily voided Award.
- C. Revise Section 4 (Budget and Compensation), paragraph 1.5 (Operating Budget) by removing in its entirety and replacing with the following Operating Budgets. The County shall provide the Contractor with a not to exceed amount of \$297,000 for the period of July 1, 2023, through June 30, 2024, fiscal year 2024. Unexpended funds from fiscal year 2023 shall not be available for expenditures in the fiscal year 2024.
- III. Section II above contains all the changes made by this Amendment No. 1. All other terms and conditions of the Agreement remain in full force and effect as amended by previous amendments.
- IV. The Parties have authorized the undersigned to execute this Amendment No. 1 on their behalf.
- V. This Amendment No. 1 shall be effective upon approval and signature by both Parties.

[Signatures contained on following page]

IN WITNESS, the Parties have approved and signed this Amendment No. 1:

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

Mayor Date

Chairman, Board of Supervisors Date

Attested To:

Attested To:

City Clerk Date

Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §§ 9-240, 9-500.11, 11-952, AND 46-241, ET SEQ., THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO THE CITY OF AVONDALE UNDER THE LAWS OF THE STATE OF ARIZONA.

IN ACCORDANCE WITH A.R.S. §§ 11-201, 11-251, AND 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO MARICOPA COUNTY UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: _____
Attorney for the City Date

BY: _____
Deputy County Attorney Date

City of Avondale
Operating Budget
FY2024

City of Avondale Operating Budget - CAP Services

Contract Period	July 1st, 2023, through December 31st, 2023,
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Funding

County Funds	\$165,000
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Cash Match Contributions	\$308,848
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	\$473,848
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Budget Category	Direct Cost	Administration Cost	Total Cost
Personnel	\$175,051	\$170,653	\$345,704
ERE	\$19,000	\$0	\$19,000
P & O Services	\$92,259	\$0	\$92,259
Travel	\$6,200	\$0	\$6,200
Materials & Supplies	\$2,000	\$0	\$2,000
Operating Services	\$8,685	\$0	\$8,685
Total Expenses	\$303,195	\$170,653	\$473,848

City of Avondale
Operating Budget
FY2024

City of Avondale Operating Budget - CAP Services

Contract Period	January 1st, 2024, through June 30th, 2024,
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Funding

County Funds	\$132,000
Cash Match Contributions	<u>\$339,601</u>
	\$471,601

Budget Category	<u>Direct Cost</u>	<u>Administration Cost</u>	<u>Total Cost</u>
Personnel	\$174,916	\$169,445	\$344,361
ERE	\$19,000	\$0	\$19,000
P & O Services	\$92,259	\$0	\$92,259
Travel	\$7,200	\$0	\$6,200
Materials & Supplies	\$2,000	\$0	\$2,000
Operating Services	<u>\$6,781</u>	<u>\$0</u>	<u>\$8,685</u>
Total Expenses	\$302,156	\$169,445.00	\$471,601

EXHIBIT 1

MCHSD Logic Model Template



ROMA Logic Model – Family Level

National Community Action Network Theory of Change

Community Action Goal 1: Individuals and families with low incomes are stable and achieve economic security.

Agency: _____

Need	Outcome <i>General statement of results expected</i>	Service	Projected Indicator <i># to achieve/ # to be served; time frame</i>	Measurement Tool	Data Procedures	Frequency <i>Data collection and reporting</i>
				Output Tool:	Who does it?	Data Collection:
				Outcome Tool:	What is the process?	Data Reporting
					Where is data stored?	
Mission:						

CITY COUNCIL REPORT

SUBJECT: Resolution 1057-0923 Amendment No. 2 to the Intergovernmental Agreement with Maricopa County Human Services Department - Community Action Program (CAP) Services

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Chris Lopez, Neighborhood Family Services Director

THROUGH: Cherlene Penilla, Assistant City Manager, (623) 333-1015

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

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. The Avondale CAP office is a reputable service provider in the Central West area. For many years, the CAP office has been dedicated to assisting residents with rental, utility, and mortgage needs. Moreover, they go beyond mere financial aid by offering valuable referrals and linking residents to various support services.

PURPOSE:

City Council will consider a request to adopt Resolution 1057-0923, approving Amendment No. 2 of the Intergovernmental Agreement (IGA) with the Maricopa County Human Services Department for the provision of the Community Action Program (CAP) services, 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 Community Action Program (CAP) has been providing assistance to the residents of Avondale since 1964. Services cater to individuals and families who require support for various reasons. Often, families living below the poverty line struggle to save money for unexpected crises. Consequently, they rely on assistance during significant household changes including shifts in employment, medical emergencies, divorces, caring for elderly family members, or unexpected vehicle expenses. In 2021 and 2022, the Avondale CAP office provided assistance to a total of 3,189 households in the total amount of \$11.9M. In 2023 to date, the Avondale CAP office has provided assistance to a total of 692 households in the total amount of \$2.3M.

DISCUSSION:

The Community Action Program (CAP) offers assistance to households and families experiencing financial hardship by providing support for utility payments, rent and mortgage. The specified service area covered by the contract encompasses Avondale, Goodyear and Litchfield Park, as well as unincorporated areas extending north to Glendale Avenue, including Litchfield Park, and east/south to Laveen, excluding the unincorporated areas surrounding Laveen. This particular area is referred to as the Central West CAP region in Maricopa County. The grant agreement includes funding in the amount of \$297,000. The funding is provided as cost

reimbursement to the City. The grant term begins July 1, 2023 and the City's Intergovernmental Agreement with Maricopa County Human Services Department (MCHSD) will be in effect until June 30, 2024.

Due to a clerical error, Maricopa County Human Services Department amended the IGA to correct the error. Amendment No. 2 references this error and the corrections made.

BUDGET IMPACT:

The total funding provided by Maricopa County Human Services Department is \$297,000 for the administration of the Avondale Community Action Program. All funds will be utilized for the following purposes; personnel, employee related expenses, professional & outside services (contracted temporary staff), travel, materials & supplies, and operating services. Maricopa County Human Services Department requires a 25% cash match of the total award amount, which is equal to or greater than \$74,250. The City's cash match contribution exceeds the required 25% match and the match is included in the FY2024 adopted budget.

RECOMMENDATION:

Staff recommends City Council adopt a resolution and approve an Intergovernmental Agreement with MCHSD to receive \$297,000 in funding.

Contact person for document distribution: Jerie Guajardo

RESOLUTION NO. 1057-0923

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AMENDMENT NO. 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY TO PROVIDE FUNDING TO OPERATE THE COMMUNITY ACTION PROGRAM

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

SECTION 1. Amendment No. 2 to the Intergovernmental Agreement between the City of Avondale (the “City”) and Maricopa County, Arizona for a grant award to operate the City’s Community Action Program for fiscal year 2023-2024 (the “Second Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to cause the execution of this Second Amendment 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, September 11, 2023.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1057-0923

[Second Amendment]

See following pages.

AMENDMENT NO. 2 TO THE
INTERGOVERNMENTAL AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
CITY OF AVONDALE

- I. Maricopa County ("County"), administered by its Human Services Department, and the City of Avondale, ("Contractor") entered into a financial Intergovernmental Agreement ("Agreement"), which was fully executed on or about June 22, 2022. The purpose of the Agreement is for the Contractor to provide Community Action Program (CAP) services to include Crisis Case Management, coordination of services to assist low-income households in crisis situations, and assistance to move closer to economic self-sufficiency. The Contractor shall provide services in Avondale and surrounding areas. The Agreement term is July 1, 2022, through June 30, 2023. The County provided the Contractor with \$391,875 for CAP service activities. The County and the Contractor collectively are referred to as the "Parties."

The Parties entered into Amendment No. 1 on or about July 26, 2023. The Amendment extends the term of the Agreement from July 1, 2023, through June 30, 2024. Amendment No. 1 replaces section 3 (Work Statement) in its entirety; and Section 4 (Budget and Compensation), paragraph 1.5 (Operating Budget) by removing in its entirety and replacing with a new Operating Budget. The County approved a not to exceed amount of \$297,000 for the funding period July 1, 2023, through June 30, 2024. Unexpended funds from fiscal year 2023 shall not be available for expenditures in the fiscal year 2024.

- II. The Parties agree to enter into this Amendment No. 2 to amend the Agreement as follows:
- A. Revise Section 4 (Budget and Compensation), paragraph 1.5 (Operating Budget) by removing in its entirety and replacing with a revised Operating Budget. The County shall provide the Contractor with a not to exceed amount of \$297,000 for the period of July 1, 2023, through June 30, 2024, fiscal year 2024.
 - B. The total funding amount in this Amendment No. 2 is not revised or increased. This amendment corrects the line-item budget cost allocations for the Budget period January 1, 2024, through June 30, 2024 in Amendment No. 1.
- III. Section II above contains all the changes made by this Amendment No. 2. All other terms and conditions of the Agreement remain in full force and effect as amended by previous amendments.
- IV. The Parties have authorized the undersigned to execute this Amendment No. 2 on their behalf.
- V. This Amendment No. 2 shall be effective upon approval and signature by both Parties.

[Signatures contained on following page]

IN WITNESS, the Parties have approved and signed this Amendment No. 2:

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

Mayor Date

Clint Hickman, Chairman,
Board of Supervisors Date

Attested To:

Attested To:

City Clerk Date

Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §§ 9-240, 9-500.11, 11-952, AND 46-241, ET SEQ., THIS AMENDMENT NO. 2 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO THE CITY OF AVONDALE UNDER THE LAWS OF THE STATE OF ARIZONA.

IN ACCORDANCE WITH A.R.S. §§ 11-201, 11-251, AND 11-952, THIS AMENDMENT NO. 2 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED IT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO MARICOPA COUNTY UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: _____
Attorney for the City Date

BY: _____
Deputy County Attorney Date

City of Avondale
Revised
Operating Budget
FY2024

City of Avondale Operating Budget - CAP Services

Contract Period	July 1st, 2023, through December 31st, 2023,
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City of Avondale
Revised
Operating Budget
FY2024

City of Avondale Operating Budget - CAP Services

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MCHSD Logic Model Template



ROMA Logic Model – Family Level

National Community Action Network Theory of Change

Community Action Goal 1: Individuals and families with low incomes are stable and achieve economic security.

Agency: _____

Need	Outcome <i>General statement of results expected</i>	Service	Projected Indicator <i># to achieve/ # to be served; time frame</i>	Measurement Tool	Data Procedures	Frequency <i>Data collection and reporting</i>
				Output Tool:	Who does it?	Data Collection:
				Outcome Tool:	What is the process?	Data Reporting
					Where is data stored?	
Mission:						

CITY COUNCIL REPORT

SUBJECT: General Plan Progress Update

MEETING DATE: 9/11/2023

TO: Mayor and Council

FROM: Jodie Novak, Director of Development Services

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

REVIEWED: Ron Corbin, City Manager, (623) 333-1011

STRATEGIC PLAN:

STRATEGY: Creative and Sustainable Community Development

STRATEGIES: Plan for development south of the Estrella Mountains; Develop diverse housing options, to include workforce housing; Increase sustainability initiatives; and Maintain and expand quality infrastructure and improve connectivity to city amenities

PURPOSE:

City staff, in partnership with the consultant Michael Baker International, are preparing the General Plan update and conducting this City Council Work Session to present what has transpired since the last General Plan presentation to the City Council and Planning Commission at a Work Session held on November 7, 2022. This item is for information and discussion only. No action will be taken.

BACKGROUND:

On November 7, 2022, Staff and consultant Michael Baker International conducted a City Council and Planning Commission Work Session as part of the General Plan Update. The Work Session provided the City Council and the Planning Commission with an opportunity to provide guidance and direction for updates to the General Plan 2030 document reflecting the City's vision and goals for future growth.

This meeting provided valuable feedback for staff highlighting key areas of interest to consider with the General Plan update including land uses, residential housing, employment, and development along the future State Route 30 (SR30) freeway and the Gila River Corridor. The discussion included development south of the Estrella Mountains requiring extensive infrastructure that would need to be in partnership with the adjacent communities; considering the community's needs for single-family and multi-family residential housing, requesting more lower-density residential housing developments and commercial development, maintaining opportunities for medical and industrial development; and continuing to promote key economic development corridors, a connected community, and water conservation.

Following the above-mentioned Work Session meeting, staff and the consultant reviewed planned land uses on the Land Use Map considering areas in the southern portion of the community where lower density residential areas could be provided, providing more Gila River Scenic District land use, and maintaining employment opportunities. There are no land use changes to the area south of the Estrella Mountains as those uses were approved in a separate major General Plan amendment in 2021.

On January 24, 2023, a Technical Advisory Committee meeting was held with representatives from several departments in the City to discuss the General Plan update and areas of focus for the update. The feedback was valuable with discussions about infrastructure, recreation, economic development, housing, water, transit, and sustainability.

On February 2, 2023, a Stakeholder Committee Meeting was held with representatives from school districts, development firms, utility companies, the Planning Commission, City Council, and city staff. The discussion was focused on growth and development, schools impacted by more density, a desire for broader land use categories to be more flexible with densities, future employment along the SR30 freeway, the balance of single-family and multi-family residential densities, and providing more low density housing.

Following these meetings, staff and the consultant considered land use updates on the General Plan's Land Use Map. The latest proposed updates are summarized below. An updated version of the Draft General Plan Land Use Map with proposed changes is attached as Exhibit A. The proposed land use changes are also reflected in Exhibit B, which includes two maps to show a comparison of the existing and proposed uses. Staff is notifying the associated parcel property owners of the proposed changes.

The parcels proposed with a lower density include land surrounding the northeast and southeast corners at the Avondale Boulevard and Broadway Road intersection; the northwest corner of the Avondale Boulevard and State Route 30 intersection; and property north of Van Buren Street and east of El Mirage Road/Fairway Drive as indicated below, keeping the higher densities in THE BLVD which has been designed and adopted as a more urban setting.

- Commercial land use is being maintained at the northeast corner of Avondale Boulevard and Broadway Road. Surrounding the commercial land use is Medium Density Residential, formerly High Density Residential.
- Commercial land use is being maintained at the southeast corner of Avondale Boulevard and Broadway Road. Surrounding the commercial land use is Medium Density Residential, formerly High Density Residential.
- Along the Gila River corridor south of Southern Avenue/SR30 freeway and west of El Mirage Road, the Corporate Park land use is replaced with additional Gila River Scenic District land use while maintaining Freeway Commercial along the SR30 freeway frontage. Nearby, on the west side of Dysart Road and the south side of SR30, additional Gila River Scenic District land use replaces Rural/Low Density land use.
- The Mixed Use land use at the intersection of Avondale Boulevard and the SR30 freeway is replaced with Medium/High Density Residential and Medium Density Residential land uses. This change provides compatible residential densities adjacent to the Alamar subdivision while maintaining commercial use on the other four corners of the freeway.
- The Office/Professional property west of the northwest corner of SR30 and 107th Avenue, located in between two Freeway Commercial land use designations, is Corporate Park land use, replacing an Office/Professional land use.
- Property in the Las Ligas neighborhood south of Lower Buckeye Road and west of El Mirage Road is updated to reflect Medium Density Residential in place of Estate/Low Density Residential so that the land use aligns with the property's zoning district which allows medium density.
- Property north of Van Buren Street and east of El Mirage Road/Fairway Drive. This property is Business Park replacing Urban Residential land use. This change brings the property in alignment with other Business Park land use in the immediate area. There is also a small portion of land along the Fairway Drive right-of-way that is being replaced with Business Park to clarify the land use along this street frontage, formerly Urban Residential. Nearby, a map correction is occurring for a portion of a property that was previously amended and approved for High Density Residential as part of a multi-family residential development project. The map is being corrected to reflect High Density Residential, replacing Urban Residential.

In addition to the above, staff and the consultant continue to make updates, including adding land uses where

there are new City parks, public schools, and City facilities. The land use map will include Council approved land use changes following the August 2022 readoption of the General Plan. Also, the map will be updated regarding land uses along the west side of Avondale Boulevard at Broadway Road in Alamar that were not reflected correctly due to the re-configuration of Broadway Road. This includes reflecting the commercial use on the northwest corner of this intersection versus the southwest corner and designating residential at the southwest corner.

Regarding the document's progress, various city departments provided updates to the General Plan's elements to include current information such as references to adopted plans, data, and goals. These updates are underway as staff and the consultant prepare the draft General Plan document.

PUBLIC PARTICIPATION

A Community Workshop Meeting was held on April 18, 2023, providing an open house format for community members to view maps and ask questions about the General Plan update. The meeting was hosted by the consultant and staff. The attendees included two Council members and staff; no members of the public attended. The meeting was noticed online through Avondale Connect and social media.

At this meeting, staff reviewed key corridors and land uses that are proposed for updates, as discussed above, to provide lower density housing and employment opportunities.

A second Community Workshop Meeting was held on August 23, 2023, providing an open house format for community members to view maps and ask questions about the General Plan update. The meeting was hosted by the consultant and staff. The attendees included the consultant and staff; no members of the public attended. The meeting was noticed online through Avondale Connect and social media as well as a newspaper posting.

DISCUSSION:

In accordance with the State statutes, the 60-day review period began at the end of July. The draft document was provided to the Planning Commission and City Council as well as other agencies for review in accordance with notice requirements. Many of the agencies were represented at the General Plan Stakeholders Committee meeting, such as school districts, utility companies, and County Flood Control. In addition to the required notice, the staff is notifying other Committee members, such as development industry representatives, of the draft plan for their feedback.

Staff is receiving feedback from city departments and outside agencies during this 60-day review period. The City of Phoenix Aviation Department provided comments related to references to the Phoenix Goodyear Airport that the City of Phoenix owns and operates. The requests are to update references and maps to be current as well as include greater discussion about the airport's activities and growth plans that benefit the larger area.

Staff received feedback from a development industry representative requesting to change the land use categories, making them broader to allow more uses in each category, which would reduce the number of General Plan amendment applications; modify the required acreage that initiates a major General Plan amendment to a greater acreage, allowing for minor General Plan amendments instead of major ones. These comments were shared at the Stakeholder's Committee meeting. The staff considered these comments, and the proposed draft General Plan maintains the various land use categories and acreage for major amendments, a land-use category affecting 40 acres or more. Maintaining the land use to be more defined than broad maintains the characteristics and intensity the City desires for future growth. Criteria for a major General Plan amendment at 40 acres or more is maintained given the City's growth and land availability. It is important to evaluate properties greater than 40 acres or more for annexation and/or proposed General Plan amendments as a major change to the City's plan.

The staff intends for the General Plan Update to be presented before the Planning Commission and City Council before the end of the year. The General Plan amendment is being processed as a Major General Plan Amendment due to the nature of this update, which does not require being on a ballot for a public vote.

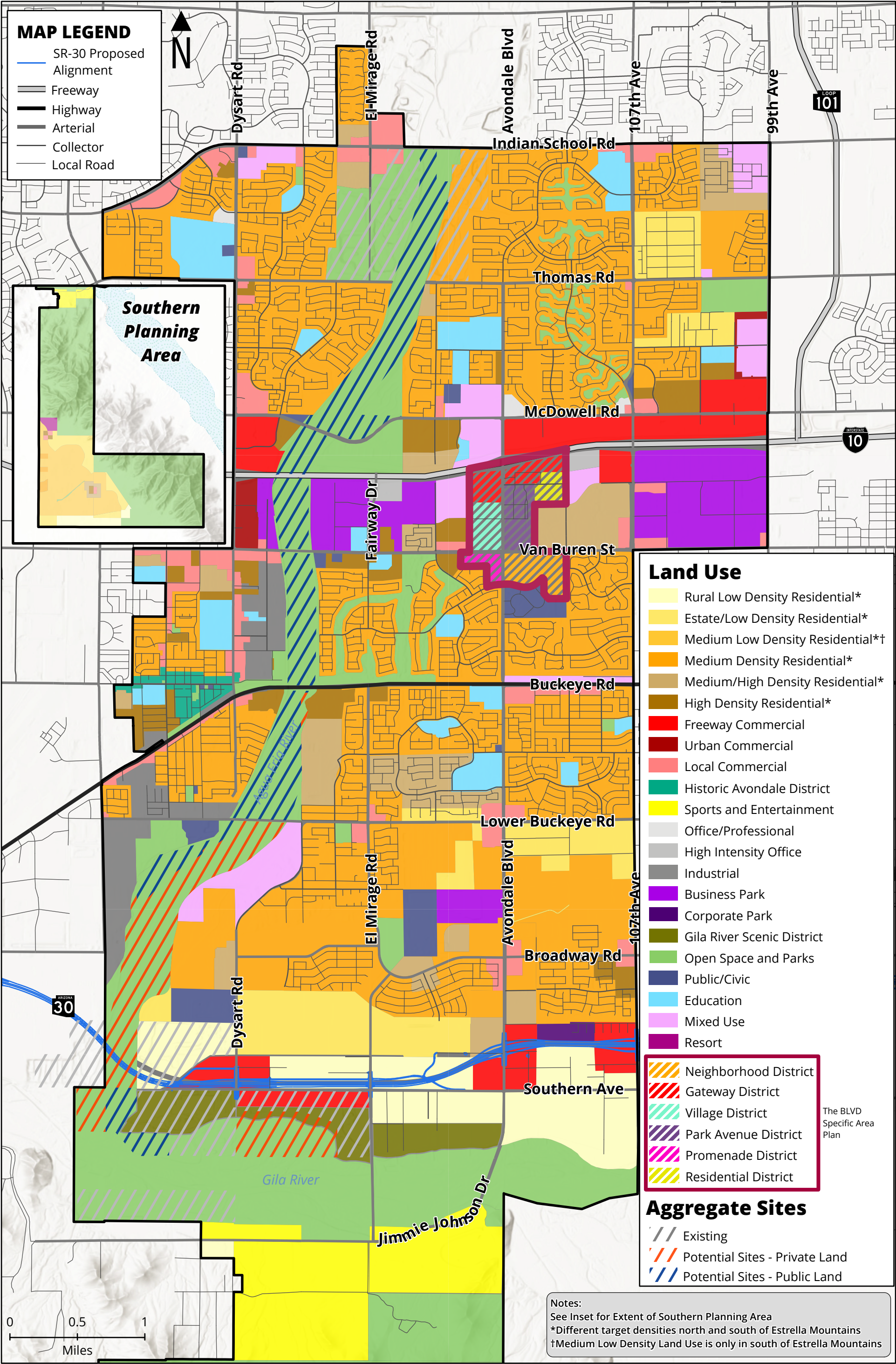
BUDGET IMPACT:

No budget impact.

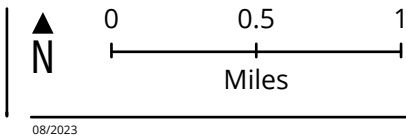
RECOMMENDATION:

This item is for discussion only. No action will be taken.

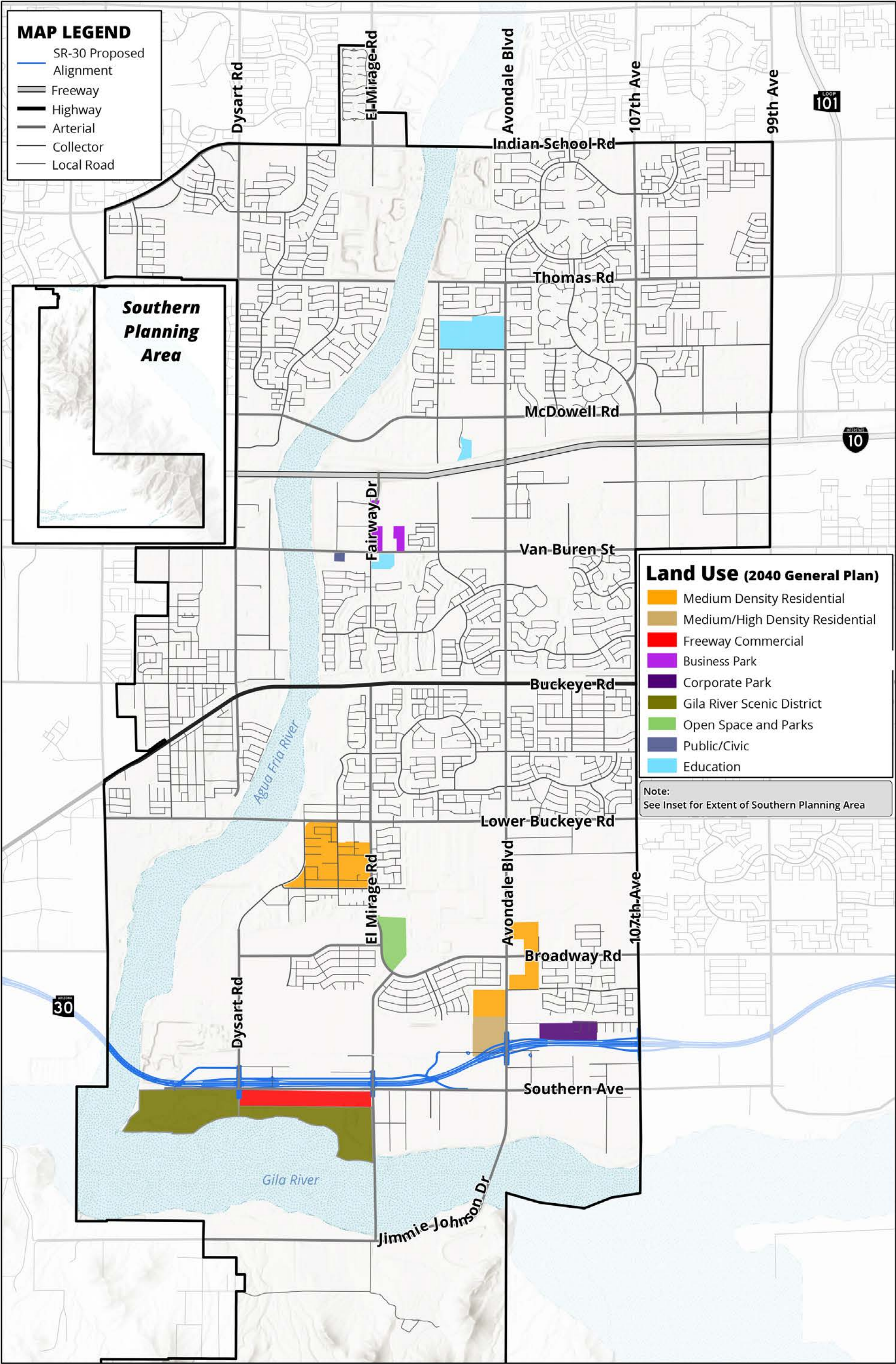
Contact person for document distribution: Jodie Novak, Catherine Lorbeer



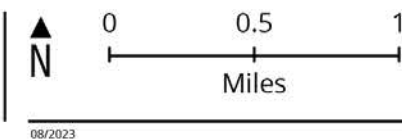
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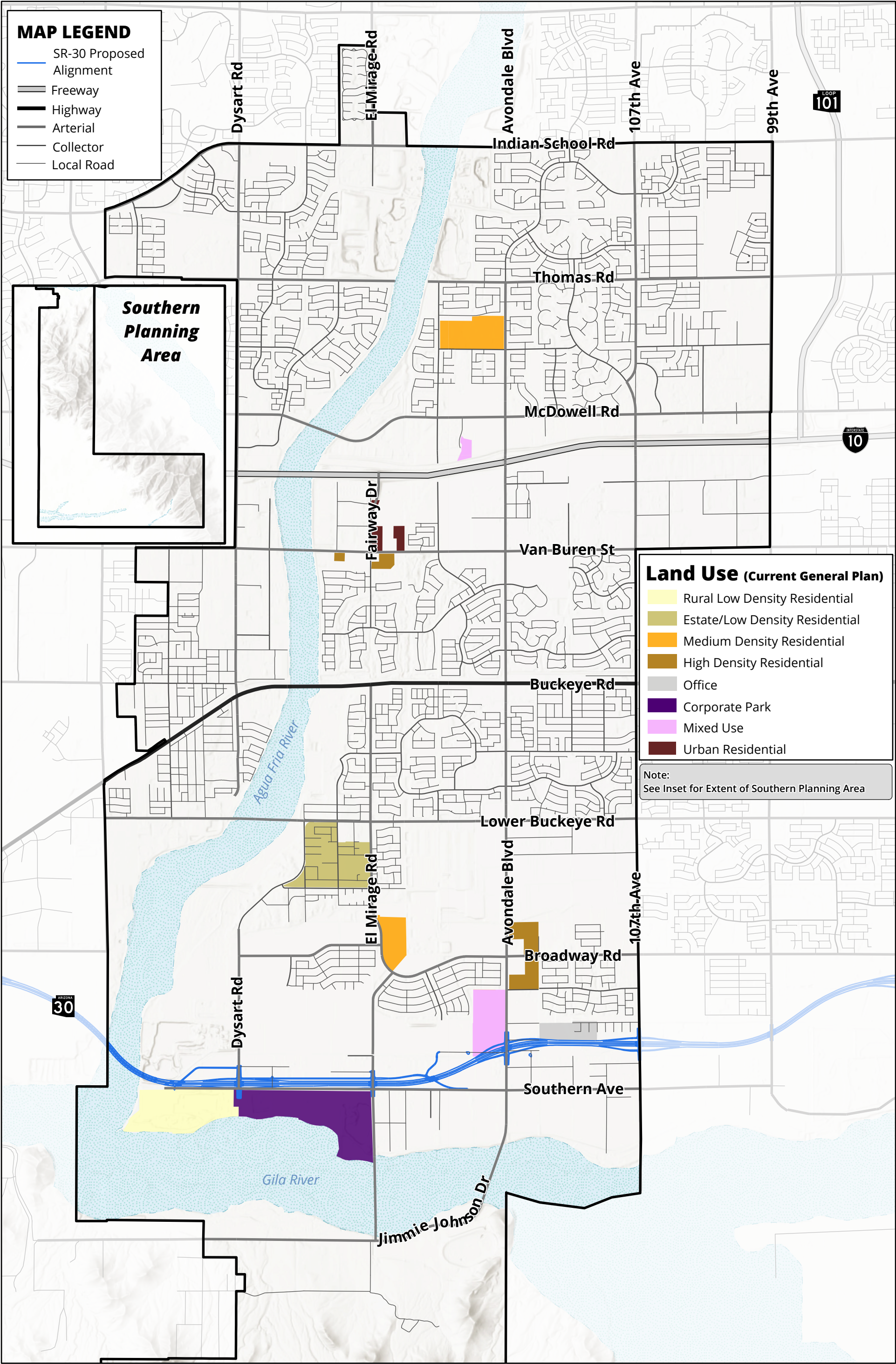
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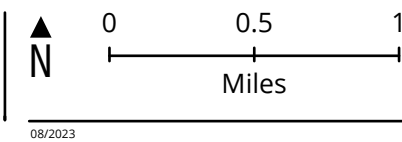
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