



City of Avondale

City Council Meeting

Monday, February 5, 2024

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 Sarmiento, City Clerk

City Council Chamber

11465 West Civic Center Drive

Avondale, AZ 85323

Watch a City Council Meeting Online

Visit the link below to watch a City Council meeting live online:

<https://www.avondaleaz.new.swagit.com/views/540/>

Please note, the live stream will not be monitored by staff; therefore, anyone wishing to address City Council shall appear in person to speak.



City Council Meeting Notice & Agenda Monday, February 5, 2024

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

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

5:30 PM

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

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

1. ROLL CALL BY THE CITY CLERK

2. PRESENTATION ITEMS

a. NEW EMPLOYEE INTRODUCTIONS

Karen Reed, Accounting Specialist with the Finance and Budget Department will be introduced to City Council. This item is for discussion only.

b. PROCLAMATION - ENGINEERS WEEK

City Council will present a proclamation recognizing February 18 through February 24, 2024, as Engineers Week. This item is for discussion only.

c. PROCLAMATION - GOVERNMENT COMMUNICATORS DAY

City Council will present a proclamation recognizing February 24, 2024 as Government Communicators Day. This item is for discussion only.

d. CITY MANAGER'S EXCELLENCE AWARDS PROGRAM

City Council will recognize the employees who were awarded the 2023 City Manager's Excellence Awards. This item is for discussion only.

e. RECOGNITION FOR DEPUTY CHIEF AARON GLASS

City Council will recognize Deputy Chief Glass for his service in providing life-saving medical assistance to a resident in the City of Goodyear while off duty. This item is for discussion only.

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

4. CONSENT AGENDA

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

a. AMEND AWARD AUTHORITY FOR NEW ARMORED VEHICLE

City Council will consider a request to authorize the purchase of an armored vehicle utilizing funds from the Racketeer Influenced and Corrupt Organizations Act (RICO), amend the awarding authority necessary to facilitate the purchase, and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

b. WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT WITH ZOOM TECH ARIZONA LIMITED

City Council will consider a request to approve a Wired Telecommunications License and Right-of-Way Use Agreement with Zoom Tech Arizona Limited, 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.

c. RESOLUTION 1015-0224 AMENDMENTS TO THE PERSONNEL POLICIES AND PROCEDURES, CHAPTER 7, DRUG & ALCOHOL POLICY

City Council will consider a request to adopt Resolution 1015-0224, amending the Personnel Policies and Procedures, Chapter 7, Drug & Alcohol Policy to add additional job titles that may be subject to unannounced random screening for illegal drug use and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. RESOLUTION 1016-0224 – ADOPTING THE CITY OF AVONDALE PARKS AND RECREATION DEPARTMENT AMERICANS WITH DISABILITIES ACT ACCESS AUDIT AND TRANSITION PLAN

City Council will consider a request to adopt Resolution 1016-0224, adopting the City of Avondale Parks and Recreation Department Americans with Disabilities Act Access Audit and Transition Plan and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. RESOLUTION 1017-0224 - AMENDMENT NO. 2 OF THE INTERGOVERNMENTAL AGREEMENT WITH THE SALT RIVER VALLEY WATER USERS ASSOCIATION FOR THE NEW RIVER AND AGUA FRIA UNDERGROUND STORAGE PROJECT

City Council will consider a request to adopt Resolution 1017-0224 approving Amendment No. 2 of the Intergovernmental Agreement with the Salt River Valley Water Users Association for the New River and Agua Fria Underground Storage Project and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

5. REGULAR AGENDA

a. PUBLIC HEARING AND ORDINANCE 2002-0224 - TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 – APPLICATION PL-23-0266

City Council will hold a public hearing and consider a request to adopt Ordinance 2002-0224, approving a request by Sandy Hayden of HILGARTWILSON, LLC, on behalf of the property owners Tolleson Union High School District No. 214, to annex approximately 54.73 acres of land located at the southeast corner of Alamar Boulevard and Dysart Road (Assessor Parcel Numbers 500- 72-001L and 500-72-001C) and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

b. UPDATE ON PARKS AND RECREATION MASTER PLAN 2024

City Council will receive an update regarding the Parks and Recreation master planning process and engagement strategy. This item is for discussion and feedback only.

6. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCIL MEMBER

(5 minutes)

7. ADJOURNMENT

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

ITEM NUMBER: 2.b.

SUBJECT: Proclamation - Engineers Week

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Kim Moon, Engineering 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: 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 present a proclamation recognizing February 18 through February 24, 2024, as Engineers Week. This item is for discussion only.

BACKGROUND:

Founded by the National Society of Professional Engineers (NSPE) in 1951, Engineers Week (February 18–24, 2024) is dedicated to ensuring a diverse and well-educated future engineering workforce by increasing understanding of and interest in engineering and technology careers.

DISCUSSION:

The City of Avondale recognizes the week of February 18 through February 24, 2024, as Engineers Week.

BUDGET IMPACT:

This item does not have a budget impact.

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution: Kim Moon, PE



PROCLAMATION

Engineers Week

February 18 through February 24, 2024

WHEREAS, engineers provide the talents and skills necessary to analyze and solve complex problems and create the infrastructure essential for the high quality of life which our citizens enjoy; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient planning, design, construction, and operation of the public infrastructure, which includes water, sanitary and storm sewers, streets and highways, bridges, public buildings, communications, and electricity and natural gas distribution; and

WHEREAS, the health, safety, welfare, comfort and economic vitality of this community as well as the success of Project Renewal greatly depends on sound public infrastructure; and

WHEREAS, engineers address the major technological challenges of our time from rebuilding towns devastated by natural disasters to designing infrastructure that will take our country through the 21st century; and

WHEREAS, the quality and effectiveness of the public infrastructure is vitally dependent upon the effort, talent and skill of public and private sector engineers; and

WHEREAS, the City of Avondale is fortunate to have highly qualified and dedicated engineers whose professionalism materially influences the people's attitude and understanding of the importance of the work they perform; and

NOW, THEREFORE, BE IT RESOLVED THAT the week of February 18 through February 24, 2024 is hereby designated as Engineers Week the City of Avondale.

Proclaimed this 5th day of February 2024.

Mayor

Attest:

City Clerk

ITEM NUMBER: 2.c.

SUBJECT: Proclamation - Government Communicators Day

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Pier Simeri, Marketing & Public Relations Director

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

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

STRATEGIC PLAN:

n/a

PURPOSE:

City Council will present a proclamation recognizing February 24, 2024 as Government Communicators Day. This item is for discussion only.

BACKGROUND:

The role of government communications professionals is to inform, educate and engage their communities. Robust communication in government creates trust and inspires residents to take action and be involved. Whether it's spearheading public outreach and education campaigns, crafting media advisories, producing creative reels and video for social media, or formulating strategic responses during a crises, government communicators are at the helm of ensuring transparent and effective communication

DISCUSSION:

February 24, 2024 marks the first time that a day has been set aside to recognize communications professionals working in government. Government Communicators Day is dedicated to recognizing and celebrating the invaluable contributions of public communicators across the nation. This special day serves as an opportunity to spotlight the tireless efforts of government communicators who work diligently behind the scenes.

The City of Avondale's Marketing and Public Relations (MPR) Department serves as the communications hub for the organization. MPR's team of seven professionals bring a wide range of experience and qualifications to their roles, taking pride in showcasing all that is exceptional about the City of Avondale. Over the past two decades, the department has won numerous awards for marketing and communications.

MPR department oversees public information and media relations, digital marketing, graphic design, videography, photography, website administration, social media, broadcast media, and more. MPR staff serve all City departments by developing educational, marketing materials and public outreach campaigns. It also develops and shapes a comprehensive image of the City brand. The popular "Avi" symbol can be found throughout the city landscape, and serves as an iconic representation of a City that is Aspiring, Achieving and

Accelerating.

In 2023, the MPR team completed 1,565 projects for City departments, a rise from 1,321 completed in the previous year. So far in FY 2023 - 2024, 775 projects have been completed.

Highlights of the department's work:

- Developed the branding and marketing for the launch of WeRide, the region's new micro-transit program
- Developed comprehensive marketing campaigns utilizing the various marketing tools and channels available
- Created custom items for the Avondale Visitor Center Gift Store, including the new Discover Avondale-opoly
- Hosted several Marketing 101 trainings and workshops for City departments
- Published award winning collateral such as the RAVE Review, Uniquely Avondale Visitor Guide, the Annual Report, the Water Quality Report/Calendar, and monthly City Page/Council Corner.
- Led the Public Art Masterplan update, which won an award in 2022
- Staffed the Public Information section at the Emergency Operations Center (EOC) during NASCAR races

BUDGET IMPACT:

This item does not impact the city's budget.

RECOMMENDATION:

For Information Only – No Action Required

Contact person for document distribution: n/a



PROCLAMATION
Government Communicators Day
February 24, 2024

WHEREAS, the role of government communications professions is to inform, educate and engage their communities; and

WHEREAS, robust communication in government creates trust and inspires residents to take action and be involved; and

WHEREAS, government communications create relationships and calls to action; build awareness and understanding through storytelling; engage and foster engagement on civic issues, and use all channels to include people in critical decisions; and

WHEREAS, it is essential to have strong communications in government because it is a foundational element of living in a democracy where citizens have the freedom to make their voice heard; and

WHEREAS, Avondale's Marketing and Public Relations Department serves as the hub for the City's external communications to residents, visitors and the business community; and

WHEREAS, the City of Avondale is proud and has deep gratitude and recognition for government communicators' professionalism, dedication, hard work, commitment, enthusiasm and sacrifice;

NOW, THEREFORE, the Mayor and City Council do hereby proclaim February 24, 2024 as

GOVERNMENT COMMUNICATORS DAY

in the City of Avondale and encourage all residents to recognize the members of the Marketing and Public Relations Department, along with other City staff, including Public Safety personnel, who have dedicated their careers to ensure the City of Avondale has effective, impactful, and successful communication strategies that resonate and are relevant.

Dated this 5th day of February 2024.

Mayor

ATTEST:

City Clerk

ITEM NUMBER: 2.d.

SUBJECT: City Manager's Excellence Awards Program

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Torin Sadow, Senior Management Analyst

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:

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

PURPOSE:

City Council will recognize the employees who were awarded the 2023 City Manager's Excellence Awards. This item is for discussion only.

BACKGROUND:

The City Manager's Excellence Awards Program recognizes Avondale employees who work hard to improve and support the City's culture and serve the community at the highest level to meet our core purpose of making lives better.

DISCUSSION:

The City Manager's Excellence Award program encourages Avondale employees to nominate high-achieving staff members for the following award categories:

- **City Manager Star Performer Award:** The highest award given to an employee that exemplifies all core values of the City to an extraordinary degree and is an excellent role model to their team, the organization, and the community in "Making Lives Better."
- **The Victory Lane Award:** The second highest award given to an employee who exemplifies the Core Values of the City and who continually goes above and beyond carrying out the Core Purpose of the City.
- **The Guiding Leader Award:** This award is given to an employee who creates a work environment that is team oriented, fair, and transparent.
- **The Frontrunner Award:** This award is given to an employee who continually works to resolve issues quickly, streamlines processes, provides excellent customer service, and works efficiently and

effectively to make Avondale the best it can be.

- **The Pit Crew Award:** This award is given to a team of individuals excelling in at least one of the Core Values of the City who work as a team to achieve the City's Core Purpose of Making Lives Better.
- **Rookie of the Year Award:** This award is given to an employee who has exceeded expectations in going above and beyond to achieve excellence in service delivery and customer satisfaction within their first year of employment with the City.
- **2023 Special Recognition Award:** This award is given to an employee who exemplifies the Avi Way through their tireless commitment to making lives better in Avondale, supporting a culture of professionalism and teamwork, and conveying their passion for service delivery every day.

The winners from each category will be introduced to and recognized by Council.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution: Torin Sadow, Cherlene Penilla, Tracy Stevens, Ron Corbin

ITEM NUMBER: 2.e.

SUBJECT: Recognition for Deputy Chief Aaron Glass

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Larry Rooney, Fire Chief

THROUGH: Ron Corbin, City Manager (623) 333-1016

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 recognize Deputy Chief Glass for his service in providing life-saving medical assistance to a resident in the City of Goodyear while off duty. This item is for discussion only.

BACKGROUND:

On December 15, 2023, the City of Goodyear's Fire Engine 183 was dispatched to a car accident in Goodyear, where a single car went off the road, and the patient was unconscious behind the wheel. While en route to the call, Engine 183 was given updated information that an off-duty Avondale firefighter was providing medical assistance. When Engine 183 arrived on the scene, they found the patient lying on her side in a recovery position while Deputy Chief Glass kept her stable. There was little to no damage to her vehicle or physical signs of injury to the patient. The patient was then transported to the hospital, where she remained stable.

DISCUSSION:

On December 15, 2023, Deputy Chief Aaron Glass was driving off duty with his wife and daughter at the intersection of Fillmore and Estrella Parkway in Goodyear. He noticed a car drive through the intersection and into the roadway landscaping. Deputy Chief Glass approached the car and immediately recognized the elderly female driver was in a medical crisis. Deputy Chief Glass determined the driver was pulseless and not breathing. With assistance from other citizens, the driver was removed from the car, and he immediately started chest compressions. After a short time, the driver regained her pulse and started breathing. Deputy Chief Glass moved her into a stabilizing position until Goodyear Fire and Medical arrived. The driver was transported to the hospital, where she received medical treatment and was subsequently discharged. The City of Goodyear commended Deputy Chief Glass for his swift, decisive action at the immediate onset of this emergency. Chief Rooney and Chief Nannenga would like to recognize Deputy Chief Aaron Glass for his

lifesaving actions in the field, having no tools or equipment other than the emergency medical knowledge he has learned over the years in the fire service. Deputy Chief Glass will receive the Avondale Fire and Medical Life Safety Award for his actions.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

This item is for information only.

Contact person for document distribution:

ITEM NUMBER: 4.a.

SUBJECT: Amend award authority for new armored vehicle

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Memo Espinoza, Chief of Police

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:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources.
 - A modern with a less aggressive appearance armored vehicle will replace our existing two armored vehicles. Our Tactical Operations Unit (SWAT) utilizes these armored vehicles to respond to and address dangerous and high-risk situations safely.
-

PURPOSE:

City Council will consider a request to authorize the purchase of an armored vehicle utilizing funds from the Racketeer Influenced and Corrupt Organizations Act (RICO), amend the awarding authority necessary to facilitate the purchase, 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 Avondale Police Department currently has two (2) armored vehicles that were provided by the Federal Government's Defense Reutilization Marketing Office (DRMO), also known as the 1033 program. These armored vehicles have proven to be a strong asset in serving high-risk search warrants or dealing with critical incidents. However, the vehicles are outdated and not suited for local law enforcement. The cost to repair and replace items on these vehicles has increased to the point that it has become difficult to maintain them financially.

DISCUSSION:

The Avondale Police Department is looking to replace both of our current armored vehicles with a new, modern, less military-appearance armored vehicle. This vehicle would be utilized to respond to and address high-risk situations that require specialized equipment and training that is beyond what is typically handled by patrol officers. The current armored vehicles would then be returned to DRMO upon receipt of the new

armored vehicle.

BUDGET IMPACT:

The estimated cost of the new armored vehicle is approximately \$360,000, and the police department will use RICO funds for the purchase. Staff requests authorization to process a budget transfer from the grant contingency fund to provide the necessary appropriation to make the purchase. The cost of fuel and maintenance is already budgeted since it supports two current SWAT vehicles that we will be taking out of service.

RECOMMENDATION:

Staff recommends that the City Council amend the awarding authority necessary to facilitate the purchase and authorize the Mayor, or City Manager, City Attorney, and City Clerk to execute the necessary documents. Staff also requests authorization to process the necessary budget transfer from the grant contingency fund to allow use of the RICO funds.

Contact person for document distribution: Memo Espinoza, Chief of Police

ITEM NUMBER: 4.b.

SUBJECT: Wired Telecommunications License and Right-of-Way Use Agreement with Zoom Tech Arizona Limited

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Kimberly Moon, Director, Engineering 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 Zoom Tech Arizona Limited, 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:

Zoom Tech Arizona Limited, (Zoom) installs, operates and maintains its own fiber to the home network (FTTH) and offers unlimited broadband internet services over its networks with speeds ranging from 500 Mbps to 10Gbps. Zoom desires to install and construct broadband fiber infrastructure within the City's right-of-way to provide unlimited internet service to residential homes within the region.

DISCUSSION:

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

- Allow Zoom 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 (unused fiber optic cable) from Zoom for City purposes upon submittal and approval of supplemental agreement(s) with the City's Information Technology Department.
- Require Zoom 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.

Zoom shall be responsible for maintenance and repair of all fiber installed. The Agreement requires security funding that must be met by Zoom 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 Zoom Tech Arizona Limited, 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: Natalie Railey, Yulonda Moore

WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT

This Wired Telecommunications License and Right-of-Way Use Agreement (“Agreement”) is entered into this 1st day of January, 2024 by and between the City of Avondale, an Arizona municipal corporation (“City”) and Zoom Tech Arizona Limited, an Arizona corporation (“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"). 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.

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- 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 its Facilities located within the ROW and shall furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form on an annual basis or upon reasonable request by the City. Licensee shall create and maintain maps of any of its Conduit System

and/or Fiber Optic Network routes, new routes, and any above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City. 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 or their designee, 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.

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- 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.

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- 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

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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.

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- 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 \$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.

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- 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, Licensor and Licensee may make an in-kind exchange in connection with the Annual Fee Payment, with the Licensor installing City Conduit or fiber at specific locations at the City's election. The in-kind exchange shall be memorialized by a separate written agreement.
- 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. 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 Licenser 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 Licenser 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 or performance bond 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.
- 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

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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 Manager
11465 W. Civic Center Drive
Avondale, AZ 85323

LICENSEE

Zoom Tech Arizona Limited
Suite 400C
112 N. Central Avenue
Phoenix, Arizona 85004

With copy to:

Avondale City Attorney's Office
Attn: City Attorney
11465 W. Civic Center Drive
Avondale, AZ 85323

With copy to:

Zoom Tech Arizona Limited
Suite 400C
112 N. Central Avenue
Phoenix, Arizona 85004

- 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**

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- 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]

AT

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

City

City of Avondale,
an Arizona municipal corporation.

Licensee

Zoom Tech Arizona Limited,
an Arizona corporation.

By: _____

Its: _____

Date: _____

By:  _____

Its: Arnold Nicolaas Maria Turk - Vice President

Date: 01-16-2024

ITEM NUMBER: 4.c.

SUBJECT: Resolution 1015-0224 Amendments to the Personnel Policies and Procedures, Chapter 7, Drug & Alcohol Policy

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Andrew Mesquita, Human Resources Director

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

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

STRATEGIC PLAN:

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

PURPOSE:

City Council will consider a request to adopt Resolution 1015-0224, amending the Personnel Policies and Procedures, Chapter 7, Drug & Alcohol Policy to add additional job titles that may be subject to unannounced random screening for illegal drug use and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

With the addition of the new Aquatics Center, the Parks & Recreation Department will be hiring a significant number of temporary staff that will be responsible for monitoring the safety of patrons and providing life-saving rescues for patrons in distress.

DISCUSSION:

Given the safety sensitive nature of the temporary positions assigned to the Aquatics Center, it is necessary for the City to have the option to require unannounced random screening for illegal drug use of Aquatics Center staff given the aforementioned responsibilities. The following job titles are being proposed for inclusion in Chapter 7, Section E.(3): Lifeguards (including Lead Lifeguards and Shallow Water Lifeguards), Head Coaches (Aquatics), Swim Lesson Instructors and Pool Managers.

BUDGET IMPACT:

Costs associated with random drug testing are anticipated to be minimal and will be absorbed within the current budget allocation, as necessary.

RECOMMENDATION:

Staff recommends Council adopt the proposed revisions to Avondale Chapter Policy 7, Drug & Alcohol Policy.

Contact person for document distribution: Andrew Mesquita

CHAPTER 7

Drug and Alcohol Policy

A. Provisions Covered by the Rules

These policies and procedures will apply to all positions, in all departments of the City of Avondale (the “City”) and to such positions in the exempt and temporary service as may be provided herein.

B. Drug and Alcohol Testing Policy

1. The City believes that substance abuse is a serious threat to the welfare of employees, citizens, and the public. To address this problem, the City has introduced this policy with respect to the use, possession, or sale of drugs and alcohol. The expectation of the drug and alcohol testing policy is to:
 - a. Maintain a safe, healthy, and productive working environment for its employees.
 - b. Ensure the good reputation of the City and its employees.
 - c. Reduce accidents, tardiness, absenteeism, and indifferent job performance.

C. Substance Abuse Policy

This policy requires all employees of the City to refrain from being involved in any way with illegal drugs or from abusing alcohol, on or off the job.

D. Grounds for Termination or Discipline

The following are grounds for discipline up to and including termination, even for a first offense.

1. **Illegal Drug Use Prohibited**

Illegal drug use includes possessing, using, purchasing, distributing, or selling illegal drugs, or reporting to work impaired by illegal drugs. Under this policy, “illegal drugs” include any drug or drug-like substance which:

- a. Is not legally obtainable.
- b. May be legally obtainable but has not been legally obtained.
- c. Is being used in a manner or for a purpose other than as prescribed.

2. Alcohol Use Prohibited

Alcohol use includes possessing, using, purchasing, distributing, or selling alcohol beverages at any time during the hours between the beginning and ending of the employee's workday, or reporting to work or working while impaired by alcohol in any way.

3. Recreational Marijuana and Marijuana-Based Product Use Prohibited

Use includes possessing, using, purchasing, distributing, or selling marijuana or marijuana-based products at any time during the hours between the beginning and ending of the employee's work day, or reporting to work or working while impaired by marijuana or marijuana-based products in any way.

4. Failure to Participate

- a. The following will be considered a failure to participate in the City's drug and alcohol testing policy:
 - 1) Failure to submit to drug or alcohol testing.
 - 2) Failure to immediately report for drug or alcohol testing when requested to do so.
 - 3) Refusal to sign all appropriate consent forms.
 - 4) Any other failure to cooperate to the City's complete satisfaction.

5. Use of Legal Drugs

- a. In recognition of privacy concerns, the City will not solicit information from an employee regarding medications that an employee may be taking absent an indication that the employee is impaired or poses a safety hazard. The exception to this section of the policy is Police Officers and Detention Officers.
- b. It is the responsibility of any employee who is taking any medication, including those sold without a prescription, which may interfere with the safe and effective performance of duties to notify their supervisor before beginning work.
 - 1) Disclosure of the specific medical condition or the specific medication to the supervisor is not required (it may ultimately be required to be made to City Human Resources or a City-contracted Physician).
 - 2) The employee shall provide documentation from the treating physician of any limitations this may impose on the employee.
 - 3) If the limitations are such that the employee cannot safely and effectively perform his/her job duties, the employee may be placed on sick leave and referred to the Human Resources Department for discussion of reasonable accommodation.

- c. It is the employee's responsibility to advise the City when the employee is no longer using the medication in question.
- d. Any medical documentation shall be sent to City Human Resources for filing in the employee's confidential medical file.

E. Testing

1. Pre-Employment Drug Abuse Screening

The City will test all applicants who, as required by AZ Peace Officers Standards and Training Board and Federal/state law, receive an offer of employment prior to commencing employment, in an effort to detect individuals who currently use illegal drugs.

2. Reasonable Suspicion Testing

- a. The City will require an employee to submit to alcohol and/or drug testing when there is reasonable suspicion to believe that the employee is under the influence of illegal and legal drug or alcohol use.
- b. For purposes of this policy, "reasonable suspicion" will be based on specific observations concerning the appearance, behavior, speech or body odors of the employee, including, without limitation, slurred speech, red eyes, dilated pupils, incoherence, unsteadiness, unexplained carelessness or accidents, erratic behavior, inability to perform the job and other unexplained behavioral changes.
- c. These observations must be made by a supervisor or other City official who has been trained to recognize signs of alcohol and/or drug use.

3. Random Testing

- a. The following employees are subject to unannounced random screening for illegal drug use
 - 1) Certified police officers
 - 2) Police reserve officers
 - 3) Firefighters
 - 4) Firefighter reserve employees
 - 5) Lifeguards (including Lead Lifeguards and Shallow Water Lifeguards)
 - 6) Head Coaches (Aquatics)
 - 7) Swim Lesson Instructors
 - 8) Pool Managers.

4. See Section G.4.c of this policy for Department of Transportation (DOT) requirements.

5. Post-Accident

- a. Employees who have an at-fault accident with a City-owned vehicle must first notify the appropriate law enforcement agency and then their supervisors or department directors. All accidents, no matter how minor, require law enforcement notification so that a traffic report can be generated.
- b. Employees will be tested for drugs and alcohol following any at-fault accident involving a City vehicle.
- c. If fault cannot be determined, the employee will be drug and alcohol tested.
- d. While the City is waiting for the results of the drug test to be received, the employee shall be assigned work duties that do not involve driving or safety-sensitive equipment, such as a clerical/administrative position. If no position is available, the employee shall be placed on administrative-leave until the employee has been authorized to return to work by the Human Resources Department.

F. Consequences of Violating This Policy

1. An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to participate in this policy to the City's complete satisfaction, may be subject to discipline up to, and including, immediate termination.
2. The appropriate level of discipline will be determined on a case-by-case basis at the City's discretion and may include treatment or rehabilitation under terms established by the City in consultation with a substance abuse professional.
3. This policy shall be construed in accordance with federal and state laws, including the Americans with Disabilities Act, the Family and Medical Leave Act, and the OMNIBUS Transportation Employee Testing Act of 1991.
4. Rehabilitation is the responsibility of the individual employee. An employee with a drug or alcohol abuse problem is encouraged to use whatever treatment or rehabilitative services are available under the City's group and health plan in effect at that time.
5. The City may not keep an employee in any particular job classification or position after the employee, either voluntarily or as a result of a positive drug test, seeks treatment or rehabilitation, unless otherwise required by law.

G. Federal Highway Administration Controlled Substances and Alcohol Use Testing Requirements

The United States Department of Transportation (DOT) has adopted mandatory rules which require employers to adopt and maintain substance abuse prevention programs, including drug and alcohol testing.

1. DOT Definitions

- a. ***Alcohol use*** means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- b. ***Controlled substances*** are marijuana, cocaine, opiates, amphetamines and phencyclidine.
- c. A ***commercial motor vehicle*** is any motor vehicle used to transport passengers or property if it has a gross vehicle or combination weight of 26,001 or more pounds, is designed to transport 16 or more passengers, including the driver, or is used to transport placarded hazardous materials.
- d. A ***driver*** is considered to be performing a safety sensitive function during any period in which he or she is doing any of the following with respect to a CMV; waiting to be dispatched, inspecting, servicing, conditioning, driving, loading or unloading (whether supervising, assisting or merely attending), repairing, obtaining assistance, waiting for held while the vehicle and all other time in or upon the vehicle.
- e. A ***refusal to submit to alcohol or controlled substance testing*** includes any of the following:
 - a. Failure to provide adequate breath for alcohol testing without a valid medical explanation.
 - b. Failure to provide an adequate urine sample for controlled substances testing without a genuine inability to provide such a sample.
 - c. Or any other conduct that obstructs the testing process.

2. Rules

These rules apply to every person who performs a safety sensitive function on a commercial motor vehicle (CMV) and is required to hold a commercial driver's license (CDL) to perform his or her job duties.

- a. All employees required to hold a CDL as part of their job with the City must always be immediately available to perform any safety sensitive function and must comply with these rules at all times while on duty.

- b. Any questions concerning the DOT drug and alcohol testing rules should be directed to the Human Resources Department.

3. Prohibitions

The City will not permit any driver to operate or continue to perform safety sensitive functions if he or she:

- a. Has an alcohol concentration of 0.04 or greater.
- b. Is using alcohol while performing any safety sensitive function.
- c. Has used alcohol within 4 hours of performing any safety sensitive function.
- d. Has used a controlled substance.
- e. Or has tested positive for any controlled substance.
- f. If a driver has an alcohol concentration of 0.02 – 0.039, he or she will not be allowed to perform any safety sensitive function for the City for at least 24 hours.
- g. The City also will not permit a driver to operate a commercial motor vehicle if the driver possesses alcohol or if the driver refuses to submit to required alcohol or controlled substance testing.

4. Required Testing

a. Pre-Employment Testing

- 1) The City will not permit any driver to perform safety sensitive functions unless that driver has received a controlled substances test result from the medical review officer (MRO) indicating a verified negative result.
- 2) The only exception to this rule is if the driver is excused from the pre-employment testing requirement pursuant to 49 CFR 381.301 (c).

b. Post-Accident Testing

- 1) As soon as practicable following an accident, the City will test each driver for alcohol and controlled substances if:
 - a) The driver was performing a safety sensitive function with respect to the vehicle, and the accident involved the loss of a human life.
 - b) Or the driver receives a citation for a moving traffic violation arising from the accident, and the accident resulted in bodily harm to any person requiring medical treatment away from scene of the accident.
 - c) Or there is disabling damages to any of the vehicles involved in the accident.

- 2) An alcohol test will be administered within 8 hours and a drug test will be administered within 32 hours of the accident. If these tests are not performed within these periods, the City will cease its testing efforts and prepare to record identifying the reason(s) why one or both of these tests were not administered.
- 3) A driver who is subject to post accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.
- 4) A driver may not consume any alcohol for 8 hours following an accident, or until tested, whichever occurs first.
- 5) A driver must contact his or her supervisor immediately after an accident so that the need for alcohol and drug testing can be assessed and to ensure that the driver will be able to comply with the DOT rules.
- 6) Failure to report an accident involving a commercial motor vehicle may be grounds for disciplinary action.

c. Random Testing

The City uses a third-party vendor to randomly select a number of drivers each calendar year for drug and alcohol testing at an annual percentage rate determined by the Federal Motor Carriers Safety Association (FMCSA). ([49 CFR Part 40](#))

d. Reasonable Suspicion Testing

- 1) The City will require drivers to submit to alcohol and/or controlled substances testing when there is reasonable suspicion to believe that the driver has violated the DOT rules concerning alcohol use or controlled substances.
- 2) The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the driver.
 - a) These observations may include indications of the chronic and withdrawal effects of controlled substances.
 - b) The chronic and withdrawal effects of controlled substances may not be the sole indicator for reasonable suspicion but may be used in conjunction with other indicators.
- 3) Reasonable suspicion testing is designed as a tool to identify affected drivers who, through alcohol or controlled substances misuse, may pose a danger to themselves and others in their performance of safety-sensitive functions.
 - a) Drivers may be at work in a condition that raises concern regarding their safety or productivity.

- b) A supervisor must then make a decision as to whether reasonable suspicion exists that a controlled substance and/or alcohol may be causing the behavior.
 - 4) These observations will be made by a supervisor or City official who has been trained to recognize signs of alcohol and/or controlled substance abuse.
 - 5) When the City reasonably believes a driver is impaired, that driver will not be allowed to perform any safety sensitive function until:
 - a) An alcohol test is administered, and the alcohol concentration is less than 0.02;
 - b) Or 24 hours have elapsed since the reasonable suspicion determination.
 - e. Return to Duty Testing
 - 1) Before returning to duty requiring the performance of any safety sensitive function following alcohol-related conduct prohibited by the DOT rules, a driver must undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
 - 2) Before returning to duty requiring the performance of any safety sensitive function following controlled substances related conduct prohibited by the DOT rules, a driver must undergo return to duty-controlled substances testing with a result indicating a verified negative result for controlled substances.
 - f. Follow Up Testing
 - 1) A driver who has been determined to need assistance in resolving problems associated with alcohol misuse and/or controlled substances is subject to unannounced follow up testing as directed by a substance abuse professional.
 - 2) There must be at least 6 follow up tests within the first 12 months after a driver returns to duty, follow up testing will not exceed 60 months from the date of the driver's return to duty.

Testing under paragraphs c, d, and f will occur while the driver is performing safety sensitive functions, or just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.

5. Testing Procedures

a. Controlled Substances

- 1) Precautions will be taken to ensure that a urine specimen is not adulterated or diluted during the collection procedure, and that information on the urine bottle and on the urine custody and control form identifies the driver from whom the specimen was collected.

- a) These precautions will include placing a bluing agent in toilets when possible, securing and monitoring water sources and positively identifying the driver as the employee selected for testing.
 - b) Additionally, drivers will be required to remove any outer garments and personal belongings (such as purses or briefcases) in which items may be concealed, and to wash and dry their hands prior to testing.
- 2) Under normal circumstances, the actual collection of the urine specimen will not be observed unless:
- a) The urine specimen falls outside the normal temperature range and the driver either declines to allow measurement of his or her body temperature or his or her oral body temperature varies by more than 1.8 degrees Fahrenheit from the specimen;
 - b) The driver's previous specimen did not register a normal measurement of specific gravity and creatinine;
 - c) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen; or
 - d) The driver has previously been determined to have used a controlled substance and the particular test was being conducted under DOT agency regulation providing for follow up testing upon or after the driver's return to duty.
- 3) If the temperature of the specimen falls outside of the normal range, the assumption will be that it has been altered or substituted.
- a) The driver may volunteer to have his or her oral temperature taken to counter this presumption.
 - b) In all circumstances, the collection site person will inspect the specimen to determine if it has been contaminated and will note any unusual findings on the custody and control form.
 - c) All specimens suspected of being adulterated will still be forwarded for testing.
 - d) Whenever there is reason to believe that a specimen has been altered or substituted, a second observed specimen will be obtained from the driver as soon as possible.
- 4) Both the driver and the collection site person must be present when:
- a) The specimen is labeled;
 - b) The driver initials the label to confirm that it is his or her specimen;

- c) The collection site person enters the information to identify the specimen and
 - d) Signs the custody and control form;
 - e) The driver reads and signs the statement of the form certifying that the specimen is the one he or she provided; and
 - f) The driver signs a consent or release form if specified by DOT rules or is required by the collection site or laboratory.
- 5) The collection site person will note any refusal to cooperate with the testing process on the custody and control form and will notify the City.
 - 6) The City will use a “split sample” method of testing performed by laboratories certified under the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.”
 - a) If the initial screening test is positive, the driver may request that the MRO send the split specimen to another HHS certified laboratory to test for the presence of the drugs for which a positive result was initially obtained.
 - b) This request must be made within 72 hours of the driver’s notification of the test results.
 - 7) The MRO will review the final confirmed test results before they are transmitted to the City. However, the MRO will first contact a driver to discuss a confirmed positive test result.
 - a) If the MRO is unable to contact the driver directly, he or she will attempt to do so through a designated City official.
 - 8) The MRO may verify a test result as positive without communicating with the driver if:
 - a) The driver declines to discuss the test with the MRO;
 - b) More than 5 days pass since the time the designated City official informs the driver that he or she should contact the MRO; or
 - c) Other circumstances provided for in DOT agency rules.
 - 9) Following verification of a positive test result, the MRO will refer the case to the City’s Human Resources Department.
- b. Alcohol Testing
- 1) The City will conduct a screening test for alcohol use using either an evidentiary breath testing device (EBT) or a non-evidential screening device approved by the National Highway Traffic Safety Administration.

- a) If the screening test yields an alcohol concentration of 0.02 or greater, a confirmation test will be performed between 15 and 30 minutes after the first test using an EBT.
 - b) If the two tests yield different results, the confirmation test will be deemed to be the final result upon which any action is based.
- 2) The City will comply with the quality assurance plan and the manufacturer's instructions for each screening device used, and shall maintain records relating to the inspection, maintenance, compliance with the quality assurance plan, calibration and qualifications of individuals using each screening device.
- c. Handling of Test Results
 - 1) Test results will be kept confidential except as required by law or expressly authorized by the DOT rules.
 - 2) The City will notify driver applicants of pre-employment test results if the driver requests such results within 60 days of being notified of the disposition of his or her application.
 - 3) The City will notify a driver of the results of random, reasonable, suspicion, and post-accident test results verified as positive for controlled substances and identify for the driver the controlled substances that were detected and verified.

6. Consequences for Engaging in Prohibited Conduct

- a. A driver who engages in conduct prohibited under the DOT rules must be evaluated by a substance abuse professional who will determine what assistance, if any, the driver needs in resolving problems associated with alcohol or controlled substances use.
- b. Additionally, the driver will not be allowed to perform any safety sensitive function for the City until meeting the requirements for referral, evaluation and treatment, and has taken and passed a return to duty test.

H. Drug Free Awareness Program

- 1. To educate employees about the dangers of substance abuse, the City has established a drug free awareness program along with the availability of counseling, and the City's policy regarding substance abuse.
- 2. The City has also established a training program for all Commercial Motor Vehicle operators and supervisory employees, which includes information on the effects and consequences of controlled substances and training to detect controlled substance abuse.

3. Treatment

- a. The City encourages employees with substance abuse problems to avail themselves of any available treatment or rehabilitative services available under the City's group health plan.
- b. Information regarding these services can be obtained from the Human Resources Department.

4. Discipline

- a. An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to comply with this policy to the City's complete satisfaction may be subject to discipline up to, and including, immediate termination.
- b. The appropriate level of discipline will be determined on a case by case basis at the City's discretion and may include treatment or rehabilitation under terms established by the City.
- c. The City is entitled to rely on the results of its drug or alcohol test to determine whether the employee has violated the policy prohibiting drug or alcohol.

I. Other Laws

This policy will be construed in accordance with federal, state, and local laws, including the Americans with Disabilities Act the Family Medical Leave Act, and the OMNIBUS Transportation Employee Testing Act of 1991.

RESOLUTION NO. 1015-0224

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING CHAPTER 7 OF THE PERSONNEL POLICIES AND PROCEDURES RELATING TO DRUG AND ALCOHOL.

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

SECTION 1. Chapter 7 – Drug and Alcohol Policy of the City of Avondale Personnel Policies and Procedures (“Chapter 7”) is hereby adopted in substantially the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of Chapter 7 adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, February 5, 2024.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1015-0224
[Chapter 7]
See following pages.

CHAPTER 7

Drug and Alcohol Policy

A. Provisions Covered by the Rules

These policies and procedures will apply to all positions, in all departments of the City of Avondale (the “City”) and to such positions in the exempt and temporary service as may be provided herein.

B. Drug and Alcohol Testing Policy

1. The City believes that substance abuse is a serious threat to the welfare of employees, citizens, and the public. To address this problem, the City has introduced this policy with respect to the use, possession, or sale of drugs and alcohol. The expectation of the drug and alcohol testing policy is to:
 - a. Maintain a safe, healthy, and productive working environment for its employees.
 - b. Ensure the good reputation of the City and its employees.
 - c. Reduce accidents, tardiness, absenteeism, and indifferent job performance.

C. Substance Abuse Policy

This policy requires all employees of the City to refrain from being involved in any way with illegal drugs or from abusing alcohol, on or off the job.

D. Grounds for Termination or Discipline

The following are grounds for discipline up to and including termination, even for a first offense.

1. **Illegal Drug Use Prohibited**

Illegal drug use includes possessing, using, purchasing, distributing, or selling illegal drugs, or reporting to work impaired by illegal drugs. Under this policy, “illegal drugs” include any drug or drug-like substance which:

- a. Is not legally obtainable.
- b. May be legally obtainable but has not been legally obtained.
- c. Is being used in a manner or for a purpose other than as prescribed.

2. Alcohol Use Prohibited

Alcohol use includes possessing, using, purchasing, distributing, or selling alcohol beverages at any time during the hours between the beginning and ending of the employee's workday, or reporting to work or working while impaired by alcohol in any way.

3. Recreational Marijuana and Marijuana-Based Product Use Prohibited

Use includes possessing, using, purchasing, distributing, or selling marijuana or marijuana-based products at any time during the hours between the beginning and ending of the employee's work day, or reporting to work or working while impaired by marijuana or marijuana-based products in any way.

4. Failure to Participate

- a. The following will be considered a failure to participate in the City's drug and alcohol testing policy:
 - 1) Failure to submit to drug or alcohol testing.
 - 2) Failure to immediately report for drug or alcohol testing when requested to do so.
 - 3) Refusal to sign all appropriate consent forms.
 - 4) Any other failure to cooperate to the City's complete satisfaction.

5. Use of Legal Drugs

- a. In recognition of privacy concerns, the City will not solicit information from an employee regarding medications that an employee may be taking absent an indication that the employee is impaired or poses a safety hazard. The exception to this section of the policy is Police Officers and Detention Officers.
- b. It is the responsibility of any employee who is taking any medication, including those sold without a prescription, which may interfere with the safe and effective performance of duties to notify their supervisor before beginning work.
 - 1) Disclosure of the specific medical condition or the specific medication to the supervisor is not required (it may ultimately be required to be made to City Human Resources or a City-contracted Physician).
 - 2) The employee shall provide documentation from the treating physician of any limitations this may impose on the employee.
 - 3) If the limitations are such that the employee cannot safely and effectively perform his/her job duties, the employee may be placed on sick leave and referred to the Human Resources Department for discussion of reasonable accommodation.

- c. It is the employee's responsibility to advise the City when the employee is no longer using the medication in question.
- d. Any medical documentation shall be sent to City Human Resources for filing in the employee's confidential medical file.

E. Testing

1. Pre-Employment Drug Abuse Screening

The City will test all applicants who, as required by AZ Peace Officers Standards and Training Board and Federal/state law, receive an offer of employment prior to commencing employment, in an effort to detect individuals who currently use illegal drugs.

2. Reasonable Suspicion Testing

- a. The City will require an employee to submit to alcohol and/or drug testing when there is reasonable suspicion to believe that the employee is under the influence of illegal and legal drug or alcohol use.
- b. For purposes of this policy, "reasonable suspicion" will be based on specific observations concerning the appearance, behavior, speech or body odors of the employee, including, without limitation, slurred speech, red eyes, dilated pupils, incoherence, unsteadiness, unexplained carelessness or accidents, erratic behavior, inability to perform the job and other unexplained behavioral changes.
- c. These observations must be made by a supervisor or other City official who has been trained to recognize signs of alcohol and/or drug use.

3. Random Testing

- a. The following employees are subject to unannounced random screening for illegal drug use
 - 1) Certified police officers
 - 2) Police reserve officers
 - 3) Firefighters
 - 4) Firefighter reserve employees
 - 5) Lifeguards (including Lead Lifeguards and Shallow Water Lifeguards)
 - 6) Head Coaches (Aquatics)
 - 7) Swim Lesson Instructors
 - 8) Pool Managers.
- b. See Section G.4.c of this policy for Department of Transportation (DOT) requirements.

4. Post-Accident

- a. Employees who have an at-fault accident with a City-owned vehicle must first notify the appropriate law enforcement agency and then their supervisors or department directors. All accidents, no matter how minor, require law enforcement notification so that a traffic report can be generated.
- b. Employees will be tested for drugs and alcohol following any at-fault accident involving a City vehicle.
- c. If fault cannot be determined, the employee will be drug and alcohol tested.
- d. While the City is waiting for the results of the drug test to be received, the employee shall be assigned work duties that do not involve driving or safety-sensitive equipment, such as a clerical/administrative position. If no position is available, the employee shall be placed on administrative-leave until the employee has been authorized to return to work by the Human Resources Department.

F. Consequences of Violating This Policy

1. An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to participate in this policy to the City's complete satisfaction, may be subject to discipline up to, and including, immediate termination.
2. The appropriate level of discipline will be determined on a case-by-case basis at the City's discretion and may include treatment or rehabilitation under terms established by the City in consultation with a substance abuse professional.
3. This policy shall be construed in accordance with federal and state laws, including the Americans with Disabilities Act, the Family and Medical Leave Act, and the OMNIBUS Transportation Employee Testing Act of 1991.
4. Rehabilitation is the responsibility of the individual employee. An employee with a drug or alcohol abuse problem is encouraged to use whatever treatment or rehabilitative services are available under the City's group and health plan in effect at that time.
5. The City may not keep an employee in any particular job classification or position after the employee, either voluntarily or as a result of a positive drug test, seeks treatment or rehabilitation, unless otherwise required by law.

G. Federal Highway Administration Controlled Substances and Alcohol Use Testing Requirements

The United States Department of Transportation (DOT) has adopted mandatory rules which require employers to adopt and maintain substance abuse prevention programs, including drug and alcohol testing.

1. DOT Definitions

- a. ***Alcohol use*** means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- b. ***Controlled substances*** are marijuana, cocaine, opiates, amphetamines and phencyclidine.
- c. A ***commercial motor vehicle*** is any motor vehicle used to transport passengers or property if it has a gross vehicle or combination weight of 26,001 or more pounds, is designed to transport 16 or more passengers, including the driver, or is used to transport placarded hazardous materials.
- d. A ***driver*** is considered to be performing a safety sensitive function during any period in which he or she is doing any of the following with respect to a CMV; waiting to be dispatched, inspecting, servicing, conditioning, driving, loading or unloading (whether supervising, assisting or merely attending), repairing, obtaining assistance, waiting for held while the vehicle and all other time in or upon the vehicle.
- e. A ***refusal to submit to alcohol or controlled substance testing*** includes any of the following:
 - a. Failure to provide adequate breath for alcohol testing without a valid medical explanation.
 - b. Failure to provide an adequate urine sample for controlled substances testing without a genuine inability to provide such a sample.
 - c. Or any other conduct that obstructs the testing process.

2. Rules

These rules apply to every person who performs a safety sensitive function on a commercial motor vehicle (CMV) and is required to hold a commercial driver's license (CDL) to perform his or her job duties.

- a. All employees required to hold a CDL as part of their job with the City must always be immediately available to perform any safety sensitive function and must comply with these rules at all times while on duty.

- b. Any questions concerning the DOT drug and alcohol testing rules should be directed to the Human Resources Department.

3. Prohibitions

The City will not permit any driver to operate or continue to perform safety sensitive functions if he or she:

- a. Has an alcohol concentration of 0.04 or greater.
- b. Is using alcohol while performing any safety sensitive function.
- c. Has used alcohol within 4 hours of performing any safety sensitive function.
- d. Has used a controlled substance.
- e. Or has tested positive for any controlled substance.
- f. If a driver has an alcohol concentration of 0.02 – 0.039, he or she will not be allowed to perform any safety sensitive function for the City for at least 24 hours.
- g. The City also will not permit a driver to operate a commercial motor vehicle if the driver possesses alcohol or if the driver refuses to submit to required alcohol or controlled substance testing.

4. Required Testing

a. Pre-Employment Testing

- 1) The City will not permit any driver to perform safety sensitive functions unless that driver has received a controlled substances test result from the medical review officer (MRO) indicating a verified negative result.
- 2) The only exception to this rule is if the driver is excused from the pre-employment testing requirement pursuant to 49 CFR 381.301 (c).

b. Post-Accident Testing

- 1) As soon as practicable following an accident, the City will test each driver for alcohol and controlled substances if:
 - a) The driver was performing a safety sensitive function with respect to the vehicle, and the accident involved the loss of a human life.
 - b) Or the driver receives a citation for a moving traffic violation arising from the accident, and the accident resulted in bodily harm to any person requiring medical treatment away from scene of the accident.
 - c) Or there is disabling damages to any of the vehicles involved in the accident.

- 2) An alcohol test will be administered within 8 hours and a drug test will be administered within 32 hours of the accident. If these tests are not performed within these periods, the City will cease its testing efforts and prepare to record identifying the reason(s) why one or both of these tests were not administered.
- 3) A driver who is subject to post accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.
- 4) A driver may not consume any alcohol for 8 hours following an accident, or until tested, whichever occurs first.
- 5) A driver must contact his or her supervisor immediately after an accident so that the need for alcohol and drug testing can be assessed and to ensure that the driver will be able to comply with the DOT rules.
- 6) Failure to report an accident involving a commercial motor vehicle may be grounds for disciplinary action.

c. Random Testing

The City uses a third-party vendor to randomly select a number of drivers each calendar year for drug and alcohol testing at an annual percentage rate determined by the Federal Motor Carriers Safety Association (FMCSA). ([49 CFR Part 40](#))

d. Reasonable Suspicion Testing

- 1) The City will require drivers to submit to alcohol and/or controlled substances testing when there is reasonable suspicion to believe that the driver has violated the DOT rules concerning alcohol use or controlled substances.
- 2) The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the driver.
 - a) These observations may include indications of the chronic and withdrawal effects of controlled substances.
 - b) The chronic and withdrawal effects of controlled substances may not be the sole indicator for reasonable suspicion but may be used in conjunction with other indicators.
- 3) Reasonable suspicion testing is designed as a tool to identify affected drivers who, through alcohol or controlled substances misuse, may pose a danger to themselves and others in their performance of safety-sensitive functions.
 - a) Drivers may be at work in a condition that raises concern regarding their safety or productivity.

- b) A supervisor must then make a decision as to whether reasonable suspicion exists that a controlled substance and/or alcohol may be causing the behavior.
 - 4) These observations will be made by a supervisor or City official who has been trained to recognize signs of alcohol and/or controlled substance abuse.
 - 5) When the City reasonably believes a driver is impaired, that driver will not be allowed to perform any safety sensitive function until:
 - a) An alcohol test is administered, and the alcohol concentration is less than 0.02;
 - b) Or 24 hours have elapsed since the reasonable suspicion determination.
 - e. Return to Duty Testing
 - 1) Before returning to duty requiring the performance of any safety sensitive function following alcohol-related conduct prohibited by the DOT rules, a driver must undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
 - 2) Before returning to duty requiring the performance of any safety sensitive function following controlled substances related conduct prohibited by the DOT rules, a driver must undergo return to duty-controlled substances testing with a result indicating a verified negative result for controlled substances.
 - f. Follow Up Testing
 - 1) A driver who has been determined to need assistance in resolving problems associated with alcohol misuse and/or controlled substances is subject to unannounced follow up testing as directed by a substance abuse professional.
 - 2) There must be at least 6 follow up tests within the first 12 months after a driver returns to duty, follow up testing will not exceed 60 months from the date of the driver's return to duty.

Testing under paragraphs c, d, and f will occur while the driver is performing safety sensitive functions, or just before the driver is to perform safety sensitive functions, or just after the driver has ceased performing such functions.

5. Testing Procedures

a. Controlled Substances

- 1) Precautions will be taken to ensure that a urine specimen is not adulterated or diluted during the collection procedure, and that information on the urine bottle and on the urine custody and control form identifies the driver from whom the specimen was collected.

- a) These precautions will include placing a bluing agent in toilets when possible, securing and monitoring water sources and positively identifying the driver as the employee selected for testing.
 - b) Additionally, drivers will be required to remove any outer garments and personal belongings (such as purses or briefcases) in which items may be concealed, and to wash and dry their hands prior to testing.
- 2) Under normal circumstances, the actual collection of the urine specimen will not be observed unless:
- a) The urine specimen falls outside the normal temperature range and the driver either declines to allow measurement of his or her body temperature or his or her oral body temperature varies by more than 1.8 degrees Fahrenheit from the specimen;
 - b) The driver's previous specimen did not register a normal measurement of specific gravity and creatinine;
 - c) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen; or
 - d) The driver has previously been determined to have used a controlled substance and the particular test was being conducted under DOT agency regulation providing for follow up testing upon or after the driver's return to duty.
- 3) If the temperature of the specimen falls outside of the normal range, the assumption will be that it has been altered or substituted.
- a) The driver may volunteer to have his or her oral temperature taken to counter this presumption.
 - b) In all circumstances, the collection site person will inspect the specimen to determine if it has been contaminated and will note any unusual findings on the custody and control form.
 - c) All specimens suspected of being adulterated will still be forwarded for testing.
 - d) Whenever there is reason to believe that a specimen has been altered or substituted, a second observed specimen will be obtained from the driver as soon as possible.
- 4) Both the driver and the collection site person must be present when:
- a) The specimen is labeled;
 - b) The driver initials the label to confirm that it is his or her specimen;

- c) The collection site person enters the information to identify the specimen and
 - d) Signs the custody and control form;
 - e) The driver reads and signs the statement of the form certifying that the specimen is the one he or she provided; and
 - f) The driver signs a consent or release form if specified by DOT rules or is required by the collection site or laboratory.
- 5) The collection site person will note any refusal to cooperate with the testing process on the custody and control form and will notify the City.
 - 6) The City will use a “split sample” method of testing performed by laboratories certified under the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.”
 - a) If the initial screening test is positive, the driver may request that the MRO send the split specimen to another HHS certified laboratory to test for the presence of the drugs for which a positive result was initially obtained.
 - b) This request must be made within 72 hours of the driver’s notification of the test results.
 - 7) The MRO will review the final confirmed test results before they are transmitted to the City. However, the MRO will first contact a driver to discuss a confirmed positive test result.
 - a) If the MRO is unable to contact the driver directly, he or she will attempt to do so through a designated City official.
 - 8) The MRO may verify a test result as positive without communicating with the driver if:
 - a) The driver declines to discuss the test with the MRO;
 - b) More than 5 days pass since the time the designated City official informs the driver that he or she should contact the MRO; or
 - c) Other circumstances provided for in DOT agency rules.
 - 9) Following verification of a positive test result, the MRO will refer the case to the City’s Human Resources Department.
- b. Alcohol Testing
- 1) The City will conduct a screening test for alcohol use using either an evidentiary breath testing device (EBT) or a non-evidential screening device approved by the National Highway Traffic Safety Administration.

- a) If the screening test yields an alcohol concentration of 0.02 or greater, a confirmation test will be performed between 15 and 30 minutes after the first test using an EBT.
 - b) If the two tests yield different results, the confirmation test will be deemed to be the final result upon which any action is based.
- 2) The City will comply with the quality assurance plan and the manufacturer's instructions for each screening device used, and shall maintain records relating to the inspection, maintenance, compliance with the quality assurance plan, calibration and qualifications of individuals using each screening device.
- c. Handling of Test Results
 - 1) Test results will be kept confidential except as required by law or expressly authorized by the DOT rules.
 - 2) The City will notify driver applicants of pre-employment test results if the driver requests such results within 60 days of being notified of the disposition of his or her application.
 - 3) The City will notify a driver of the results of random, reasonable, suspicion, and post-accident test results verified as positive for controlled substances and identify for the driver the controlled substances that were detected and verified.

6. Consequences for Engaging in Prohibited Conduct

- a. A driver who engages in conduct prohibited under the DOT rules must be evaluated by a substance abuse professional who will determine what assistance, if any, the driver needs in resolving problems associated with alcohol or controlled substances use.
- b. Additionally, the driver will not be allowed to perform any safety sensitive function for the City until meeting the requirements for referral, evaluation and treatment, and has taken and passed a return to duty test.

H. Drug Free Awareness Program

- 1. To educate employees about the dangers of substance abuse, the City has established a drug free awareness program along with the availability of counseling, and the City's policy regarding substance abuse.
- 2. The City has also established a training program for all Commercial Motor Vehicle operators and supervisory employees, which includes information on the effects and consequences of controlled substances and training to detect controlled substance abuse.

3. Treatment

- a. The City encourages employees with substance abuse problems to avail themselves of any available treatment or rehabilitative services available under the City's group health plan.
- b. Information regarding these services can be obtained from the Human Resources Department.

4. Discipline

- a. An employee who tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate consent forms, or otherwise fails to comply with this policy to the City's complete satisfaction may be subject to discipline up to, and including, immediate termination.
- b. The appropriate level of discipline will be determined on a case by case basis at the City's discretion and may include treatment or rehabilitation under terms established by the City.
- c. The City is entitled to rely on the results of its drug or alcohol test to determine whether the employee has violated the policy prohibiting drug or alcohol.

I. Other Laws

This policy will be construed in accordance with federal, state, and local laws, including the Americans with Disabilities Act the Family Medical Leave Act, and the OMNIBUS Transportation Employee Testing Act of 1991.

ITEM NUMBER: 4.d.

SUBJECT: Resolution 1016-0224 – Adopting the City of Avondale Parks and Recreation Department Americans with Disabilities Act Access Audit and Transition Plan

MEETING DATE: 2/5/2024

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 Areas:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.
 - Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1016-0224, adopting the City of Avondale Parks and Recreation Department Americans with Disabilities Act Access Audit and Transition Plan 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 Parks and Recreation Department received national accreditation through the National Recreation and Parks Association's (NRPA) Commission for Accreditation of Park and Recreation Agencies (CAPRA) Standards in 2022. Through a process of peer verification of compliance with national standards, CAPRA accreditation assures policymakers, department staff, and the general public that an accredited park and recreation organization has the operational capacity to deliver programs, facilities, and services at a high level of quality.

During the accreditation process, it was determined that the City's Americans with Disabilities (ADA) Transition Plan was not current and that a new plan would need to be developed to meet CAPRA Standards and more importantly, the Americans with Disabilities Act. This was the only standard where the City was deficient.

7.2.1 – ADA Existing Facility and Site Access Audit

Standard: The agency shall complete an access audit of all existing sites and facilities. Pursuant to the US

Department of Justice Title II regulation at 35.105, the agency must evaluate its existing facilities and sites against the most current final and enforceable Standard for Accessible Design.

Further, the City must have a transition plan per 35.150(d) of the DOJ title II regulation. The plan should identify the barrier, the corrective work, the date by which the work will occur (in our reports, the Phase), and the person responsible for barrier removal. This plan does so for the Parks and Recreation Department.

DISCUSSION:

Last year, the city engaged the WT Group Accessibility Practice Project Team to perform an ADA audit of Parks and Recreation facilities and programs. The WT Group audited 22 sites and generated individual reports for each site. This report is a summary of those findings, along with recommendations, a phasing strategy, and a cost reference for corrective action.

John McGovern, Principal-in-Charge, WT Group Accessibility Practice Project Team, presented the draft plan for review of findings and implementation to the City Council for feedback on January 8, 2024.

There were no changes made to the transition plan following the presentation and it is being recommended for formal adoption by resolution for implementation and compliance with the Americans with Disabilities Act.

BUDGET IMPACT:

The total of all cost references is \$1,723,280.80. As recommended, the plan would be implemented over fourteen fiscal years, or less depending on resources available, and included in the annual budget.

RECOMMENDATION:

Staff recommends City Council adopt the Resolution adopting the City of Avondale Parks and Recreation Department Americans with Disabilities Act Access Audit and Transition Plan and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Contact person for document distribution: Bryan Hughes

RESOLUTION NO. 1016-0224

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING THE CITY OF AVONDALE AMERICANS WITH DISABILITIES ACT ACCESS AUDIT AND TRANSITION PLAN.

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

SECTION 1. The City of Avondale Americans with Disabilities Act Access Audit and Transition Plan (the “Plan”) is hereby adopted in substantially the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or the Plan adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, February 5, 2024.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A

TO

RESOLUTION NO. 1016-0224

[City of Avondale ADA Access Audit and Transition Plan]

See following pages.

AMERICANS WITH DISABILITIES ACT ACCESS AUDIT AND TRANSITION PLAN

REPORT TO CITY OF AVONDALE PARKS AND RECREATION DEPARTMENT

FINAL REPORT: SUMMARY AND RECOMMENDATIONS

DECEMBER 1, 2023

PARKS AND RECREATION STAFF PROJECT TEAM

Bryan Hughes, Parks and
Recreation Director

Corey Larriva, Assistant
Director of Parks and
Recreation

Dominic DeCono, Senior
Management Analyst



WT GROUP ACCESSIBILITY PRACTICE PROJECT TEAM

John N. McGovern, JD
Principal-in-Charge

**Tatum Storey, MSW, Certified
ADA Coordinator**
Project Manager

**Shelley A. Zuniga, CAsp,
Certified ADA Coordinator**
Senior Project Manager

**Laurel Heizelman, LRT, CTRS,
CPRP**
Accessibility Specialist



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INTRODUCTION AND THE ADA MANDATES

Federal requirements mandate the accessibility of Avondale sites and facilities. This report is a summary of our findings and recommendations to make Avondale parks and facilities more accessible to people with disabilities. The detail, and recommendations, are in the site reports. This report recommends steps to meet the requirements and incorporates smart practices.

For efficiency, the City cannot implement all of our recommendations at once; no local government can do so. We suggest a phased approach to retrofits. It is important that Avondale staffs gain a good understanding of the findings and recommendations. We suggest a step-by-step approach, as described in the following pages.

We first review the application of the Americans with Disabilities Act (ADA) to City facilities and parks. This portion also identifies some tasks that remain to be completed by the City.

What are the Americans with Disabilities Act (ADA) General Mandates?

The [Americans with Disabilities Act](#) (ADA) is a comprehensive federal civil rights law. It prohibits discrimination on the basis of disability. Effective January 26, 1992, it has been amended by Congress only once, in 2008. The ADA has three principal titles. Title II applies to the Avondale and the 89,000 other units of state and local government across the country, and it requires the City to make parks, facilities, policies, communications, and programs, accessible to and usable by people with disabilities. Other portions of the ADA prohibit discrimination by employers (title I), as well as businesses and nonprofits (title III).

The subject of this report is Avondale parks and facilities. We do note the treatment of employee spaces is different than public spaces. A space used principally by City employees that might be visited by a member of the public is not solely an employee space, and must have a level of accessibility for that visitor if he or she has a disability. The City may also have relationships with nonprofits or other entities, and when an entity uses or benefits from the use of City property or resources, the entity is prohibited from discrimination on the basis of disability.

The ADA is to be broadly interpreted. In this section of the final report, we will define terms as they are defined by the ADA. In the remainder of this section, we will review the:

- ADA administrative requirements for the City;
- Ways in which the ADA applies to new design and construction;
- ADA requirements for existing facilities;
- ADA Transition Plan requirement;
- ADA requirements for City public facing policies;
- ADA requirements for Avondale programs, and
- ADA requirements for Avondale communications.

Finally, this section concludes with a review of the limitations on the accessibility requirements, including technical infeasibility and the concepts of undue burden.

What Are the ADA Administrative Requirements?

The US Department of Justice (DOJ) published the title II implementing regulation in 1991, and it became effective on January 26, 1992. It has been amended once, and those changes became effective March 15, 2011. The DOJ title II regulation is [here](#).

Avondale faces many administrative requirements under title II of the ADA. In this section of the report, we will describe and review five key administrative requirements.

35.106 Notice Requirement: The City must make its citizens aware of the “...protections against discrimination assured them...” by the ADA. In doing so, the City must provide information about how parks, facilities, programs, policies, and communications are affected by the ADA. **We recommend the City do so in a way that is inviting and appealing, and consistent with the way in which the City communicates with members of other protected classes.**

35.107(a) Designation of Responsible Employee: The City must appoint at least one staff “...to coordinate its efforts to comply with and carry out...” its obligations under the ADA. Known as the ADA Coordinator, this employee is responsible for investigating complaints regarding noncompliance, and coordination of overall ADA implementation. Phil Cundiff is the ADA Compliance Officer; the City meets this requirement. **We recommend the Department assign coordination of ADA implementation to one employee, and that the employee coordinate their work with Cundiff.**

35.107(b) Complaint Procedure: The City must have a process by which disputes regarding accessibility at sites, effective communications, and inclusion in programs and services can result in “...prompt and effective resolution...”. DOJ refers to this as a “grievance procedure”. We do recommend that the City change the way it refers to this process. Naming this a complaint or grievance process makes it to be adversarial in nature. It need not be, and in fact, many believe that a more positive approach yields “prompt and effective resolution” in a much more customer-friendly way. **We suggest the City consider renaming the process to *Access and Inclusion Solutions Process*, or some other appropriate name that is inviting, not adversarial. We have provided a sample process to the Department.**

35.130(b)(7) Make Reasonable Modifications: The City must make reasonable modifications that enable access to programs and facilities, when so requested by a person with a disability, unless doing so creates an undue burden. The statute and the DOJ regulation identify many actions or devices that are a reasonable modification. In addition, court decisions and DOJ settlement agreements help further define the term and the limits on the concept of reasonable modification. The DOJ ADA website is a good source of information on this subject at www.ada.gov.

35.150(a)(3) Writing Requirement: The City, whenever it denies a request for a reasonable modification, must create a writing that describes the request and the reasons for the denial. This is a mandate once it is determined by City staff that a request would create an undue

burden. Importantly, the writing is to be signed by "...the head of the entity or his or her designee...". In making this decision, the entity is to consider "...all resources available for use in the funding and operation of the service, program, or activity...". **We recommend that the City Council, as a consent agenda item, delegate this authority to the City Manager, and authorize the City Manager to delegate that authority to the Director of Parks and Recreation and other department and division heads.**

We also recommend that the City keep these writings together for ease of access and analysis. These will have great risk management value and will help in forecasting the requests the City receives.

What Are the ADA Requirements for New Design and Construction?

Many of the ADA requirements are open to some interpretation regarding compliance. There is, however, one set of requirements that is clear: all City new design and construction must comply with the federal [2010 Standards for Accessible Design](#). The DOJ regulation at section 35.151 establishes this requirement, and permits a variance only when it is "structurally impracticable" to fully comply with the Standards.

Experts estimate that design and construction for ADA compliance adds not more than 1% to the facility cost. For the City, it is critical that all designers and contractors understand this mandate and comply with this mandate. Plan review and effective project management by City staff assure that plans and ongoing construction are compliant. The investment of human resources towards this goal is much less costly than removing barriers after the construction of a park, trail, or facility.

New design and construction includes alterations and additions, therefore alterations and additions must adhere to the 2010 Standards. The DOJ title II regulation, at 35.151(b)(4), establishes a requirement that when alterations or additions occur at an existing Avondale facility, that a "path of travel" is required to connect the accessible elements of the existing facility with accessible elements in the altered area or addition. In preparing the regulation, DOJ recognized the inequity of a result whereby the accessibility portion of an alteration or addition, the path of travel, could require more fiscal resources than the alteration or addition. The regulation therefore introduces the concept of disproportionality, which permits the City to limit path of travel costs to 20% of the cost of a project.

Three clarifications are necessary regarding the concept of disproportionality.

First, the City may elect to apply the concept of disproportionality; it is not required to do so. If the City wishes to make the cap 30% of the cost of the alteration or addition, it may do so. The ADA sets the floor, not the ceiling.

Second, the path of travel must be applied when the alteration or addition is to a primary function area. A primary function area is "...a major activity for which the facility is intended." Examples in the title II regulation include "...the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out." We would add other examples, pertinent to Avondale facilities. These include:

- Playground surfaces and playground components at City playgrounds; and
- Spectator seating and player seating at City softball and baseball fields.

Third, some work at an alteration or addition is simply maintenance and the cost of that work may be deducted from the determination of the cost of the alteration or addition, thereby affecting the amount necessary to meet the 20% disproportionality test. At many sites, these non-alteration costs are very small. In a world where every Avondale penny counts, it is appropriate to apply the concept of disproportionality properly.

Access requirements for new design and construction are important in the context of the Avondale Capital Improvement Plan (CIP). It is critical that CIP project designers and contractors meet or exceed federal and state requirements.

What Are the ADA Requirements for Existing Facilities?

The title II requirements for existing facilities begin with a requirement that the **programs** within those facilities and sites are what is to be made accessible. DOJ title II at 35.149 clearly states that "...no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

The term "program" is to be broadly interpreted. For the City, a program is the opportunity made available to the public.

Swimming is a program.

Making public comment at a City Council meeting is a program.

Sports fields are a program.

Playgrounds are a program.

Having picnic tables in a park is a program.

Staffing and conducting recreation activities during the summer or afterschool is a program.

Think broadly here, and understand that a program is not just an organized activity for which one registers and participates. In applying 35.149, it is a violation of the ADA if a City program cannot be accessed by a person with a disability because the facility in which the program is located is inaccessible.

Title II at 35.150 discusses the parameters for making existing facilities accessible. It requires the City to view that program "...in its entirety..." at 35.150(a). This is interpreted to mean that all of the locations of a program, e.g., every Avondale playground, must be viewed before determining which will be made accessible and which will be left as is until next altered or replaced. This latter statement is made clear at 35.150(a)(1), where the City is told by DOJ that

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these requirements do not "...necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities..."

Making a program accessible does not always require making a facility accessible. This is explained by DOJ at title II 35.150(b), where it reviews some of the methods to make a program accessible. The non-structural methods, include, but are not limited to:

- Relocating a program from an inaccessible site to a site that is accessible;
- Providing a program at two or more sites, one of which is not accessible and at least one of which is accessible;
- Redesign or acquisition of equipment to make program participation possible;
- Bringing the program to the person with a disability by making home visits;
- Construction of new accessible facilities to house the program; and
- Providing extra staff to facilitate interaction by program beneficiaries.

Elsewhere in title II, the City is required to make changes to rules and policies as well. These nonstructural alternatives may be effective in making a program accessible. However, when nonstructural alternatives are not effective in making the program accessible, 35.150(b) requires the City to alter existing parks, facilities, and assets, and when doing so, to treat the alteration as new work and comply with title II 35.151. The City must also give the highest priority "...to those methods that offer services, programs, and activities...in the most integrated setting". We review this mandate elsewhere in this report. Additionally, the City must disperse the accessible programs that are to be retrofit. For example, all accessible playgrounds cannot be located in one neighborhood of the City.

The 2011 title II regulation amendments introduced the concept of safe harbor for the City and other states and local governments at 35.150(b)(2). If the City in designing and constructing an asset, before March 15, 2012, complied with the 1991 Standards for Accessible Design, it cannot be penalized if the Standards change at a later date. An example of safe harbor is the reach range requirement. In the 1991 Standards, reach range could be as high as 54" above the finished floor (aff) if a side approach was used and only 48" aff if a forward approach was used. In the 2010 Standards, because of confusion about forward reach and side reach, the maximum reach range was simply reduced to 48" aff. The safe harbor concept applies here, and at Avondale facilities designed and constructed before March 15, 2012, where a proper side reach can be used, an operating mechanism can be as high as 54" aff. However, if that hypothetical operating mechanism is at 55" aff, it failed to meet the 1991 Standards and must be retrofit to meet the 2010 Standards maximum of 48" aff.

It is important to note that many City assets were not addressed by the 1991 Standards, and were only addressed later in the 2010 Standards. That includes City playgrounds, sports fields, sports courts, and fitness facilities, to name a few. As such, the concept of safe harbor cannot apply to these assets, and the program access test reviewed earlier in this section applies. As an example, playgrounds, but not necessarily all playgrounds, must be accessible. See our discussion regarding the transition plan for more detail.

What is the ADA Transition Plan Requirement?

The title II regulation, at 35.150(c) and 35.150(d), make clear the Transition Plan requirements. A transition plan is a phased order of retrofit for all existing parks and facilities. At 35.150(d), the requirements are:

- Describe the deficits at every City asset;
- Describe a solution for each deficit, or if it is to be left as is, describe why;
- Specify the year or by what date in which the retrofit will occur; and
- Name the City official responsible for assuring compliance.

No City plan can be effective, however, without cost references or estimates. In developing the Transition Plan, the City has received cost references for planning purposes to enable effective planning for the retrofits that will occur.

A key issue for the City is understanding guidance as to by what date all retrofits must be completed. The title II regulation, at 35.150(c), discussing the period for compliance, offers this guidance:

“Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.”

To suggest that this is not helpful guidance to the City is an understatement, for several reasons. First, the ADA became effective January 26, 1992. Second, it would be literally impossible for the City to have made all of the necessary retrofits by January 26, 1995. In fact, it would be literally impossible for the City to make all retrofits that are necessary during any three-year period. Third, when the title II regulation was amended by DOJ and made effective March 15, 2011, this language was not updated with a new compliance date. Fourth, when the 2010 Standards were published and included for the first time certain types of recreation assets, there was no change to the completion date of 1995.

The City can draw guidance from the statement above by acknowledging that retrofits will occur as soon as is possible. This requires a balancing of City resources, integration of Transition Plan retrofits with CIP activity, and assigning a higher priority to Transition Plan work than to discretionary development and acquisition.

Regarding parks and facilities, there is other guidance by DOJ. If there is only one of a type of asset, it must be made accessible. If there are numerous assets of the same or similar type, such as playgrounds and sports fields, not necessarily all must be retrofit to be accessible. When the issue of recurring assets arises, DOJ does not specify a ratio or percentage that must be accessible. Our work in preparing transition plan recommendations relies on making a minimum of one of every three recurring assets accessible, and dispersing accessible assets throughout the City. This assures that no matter where a resident is, some City assets are near him or her and are accessible.

Lastly, title II at 35.150(d)(a) requires the City to provide an opportunity for the public to participate in the development of the transition plan. The City conducted two feedback sessions on October 3 and 4, 2023. In addition, the City provided a survey for residents and other users of City sites that was available from September 18, 2023 through October 20, 2023. This is discussed in more detail later in this report.

What Are the ADA Requirements for Avondale Communications?

The title II regulation, at 35.160, requires that Avondale communications to the public with disabilities must be “as effective” as communications to those without disabilities. People with certain health conditions such as deafness or impaired vision may not be able to ascertain the message within the communication. People with a cognitive impairment may not understand the message. People with physical disabilities that limit their ability to use a mouse may not be able to get the cursor to the content on the website.

More and more local governments were using their websites for communication with the public as well as with employees. Certainly today, in a Covid-19 era, that reliance has only grown. The broad requirements apply to the City website, letters, contracts, aural communication that might occur at a City Board meeting, emails, phone calls, and more.

What Are the ADA Limitations? Technical Infeasibility and Undue Burden...

Title II does impose some restraint on the making of reasonable modifications, removal of architectural barriers, and making communications accessible. DOJ expects that these restraints will be implemented as an exception, rather than the rule.

In the 2010 Standards, technical infeasibility is defined within section 106.5 regarding Defined Terms. The City need not make retrofits when doing so is technically infeasible. Again, recognizing that the ADA sets a floor and not the ceiling, the City can choose to make the retrofit. A retrofit to an existing facility may be deemed as technically infeasible when it meets the condition described below:

“With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.”

Title II also defines undue burden. The concept of undue burden typically includes three elements: undue administrative burden, undue economic burden, and fundamental alteration. DOJ requires at 35.130(a)(3) that the City bear the burden of demonstrating that denial of a request by a person with a disability rises to the level of one of these three conditions. Each is cited and discussed below.

35.150(a)(3) Undue Administrative Burden: DOJ and the US Congress recognized that there may be circumstances in which a small local government, will find it difficult to administratively obtain the personnel, devices, and processes by which it can make reasonable modifications, or remove barriers. This circumstance will be hard to show in

Avondale. In a densely populated metropolitan area like the Phoenix suburbs, some jurisdiction, nonprofit, or business will have addressed and resolved the request related to disability faced by the City.

35.150(a)(3) Undue Financial Burden: DOJ and the US Congress recognized that there may be circumstances when a local government will find it difficult to provide the fiscal resources to make a modification or to remove barriers. This circumstance is hard to show for the City. DOJ guidance requires that the City consider the entire budget before claiming Undue Financial Burden. For example, if a modification for a child with a physical disability will require the creation of a firm and stable accessible route to sports fields, the City must consider operating and capital budget unexpended resources in determining whether it can grant this request for modification.

As an important note, City staff must understand this approach. Often, staff will consider only the budget they control, in making decisions about Undue Financial Burden. That is not the correct approach. If a City employee takes a job at another agency, and there are \$10,000 in salary savings due to that departure, it is the burden of the City to show why that \$10,000 could not be allocated to the accessible route example above.

35.130(b)(7) Fundamental Alteration in Nature of the Service, Program, or Activity: DOJ and the Congress recognized that a circumstance may arise where a local government will find it difficult to provide the requested modification based on disability because in doing so the fundamental nature of the service, program, or activity will be changed. For example, beach volleyball is very popular. However, a person using a wheelchair will be unable to negotiate the sand surface in a beach volleyball court. If he or she requests a modification such as replacing the sand with a hard surface court (wood, asphalt, concrete, etc.), the City could do so, as the engineering is not complex. Were that to happen however, the very nature of sand volleyball would be changed.

These same three concepts apply to Avondale communications. These must be as effective for people with communication impairments as are communications for people without disabilities. Language identical to 35.150(a)(3) and 35.130(b)(7) is found at title II 35.164.

A GUIDE TO THIS REPORT

There are approximately 1,300 access deficits identified in the 22 site reports. The ADA requires that the access audit identify every access deficit at every site. For each deficit, a solution must be identified. The City has many trails, and many have deficits. We discuss trail access later in this report.

The City does **not necessarily have to make every site accessible**. It **does** have to make every program it conducts within its sites accessible.

In this report, we identify some broad solutions, such as refreshing all accessible parking, as a way to address issues identified in the site reports, and as a way for the City to better manage compliance. This gives the City flexibility within its compliance efforts to move resources so that they are applied with optimal impact. We offer these systemic changes as a complement to a site-by-site approach. The City will determine how to proceed, and many local governments apply a hybrid of a systemic and site-by-site approach.

The scope of our work does not include the design of a solution. Our recommendations are performance based. For example, if a parking stall at the Civic Center Library needs to be made accessible by having the proper striping and signage, we will make that recommendation, and will note the dimensions and sign type. The design of a solution is a task for City staff or contractors.

We recommend the following to facilitate review:

First, read this Report. It provides a “big picture” review of the issues and solutions.

Second, read the 22 site reports. View the reports digitally, and you have instant access to the report content and supporting images.

Third, use your knowledge of the sites and the expertise of City staff. City staff know City sites better than we do, and City staff know the staff better than we do. Blend in what you know with what we recommend in the report. There are many ways to solve access problems, and the successful alternative may well be one you define.

COMMON ISSUES

In our work, some common big picture issues arose that complement the recommendations in the specific site reports. One of these is that ways in which maintenance affects accessibility to playground surfaces and other assets.

Maintenance

The City uses a conscientious staff to maintain its parks and facilities. However, over time, every site yields to wear and tear. The recommendations below describe ways in which attention to maintenance can specifically address some access deficits.

1. **Provide training** to maintenance staffs regarding the features of an accessible route and how to ensure that it remains unobstructed. This requires staff to place park amenities, e.g., garbage cans or signs, adjacent to the accessible route.
2. **Add door closer checks** to park maintenance staff checklists, and record observations on a regular basis. When too much force is required to open a door, adjust the closer.
3. **Purchase some new tools.** The City needs battery-powered 2’ digital levels, and tools to measure pounds of force that are designed for this purpose. Do not use 4’ digital levels. These tools can be assigned to staff for scheduled spot-checks at doors.

Changes in Level and Gaps

The routes and sidewalks that make up the City’s network of accessible routes are in fair condition. Wear and tear, settling, weather, and other factors combine to cause changes in level, and gaps along portions of those accessible routes, making that portion noncompliant and a barrier to many visitors with physical and sensory disabilities.

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Removing changes in level and gaps has a significant universal design benefit too, as more people with all types of conditions can more easily use City routes, such as staff pushing carts of supplies, parents with kids in strollers, and people using an assistive device such as a wheelchair, Segway, or walker.

4. **Add** change in level of more than .25" **to park maintenance safety checklists** in 2024. This will help identify and correct these problems before they expand. Make or buy pre-measured shims and distribute to employees for their use and ease of measurement.
5. **Add inspections for gaps** of greater than .5" **to park maintenance safety checklists** in 2024. Identify and fill these gaps before they expand. **In the alternative, consider resurfacing segments of deteriorated asphalt routes.**
6. **Eliminate changes in level** by the end of 2025. Using the rationale that the most severe changes in level are the greatest barriers to access, make changes in level of greater than .75" the highest priority.

Make changes in level of between .5" and .75" the second priority.

Make beveling of changes in level of .25" to .5" the third priority. ***Consider acquiring or contracting for a grinder.***

7. **Adopt** a policy about the use of Other Power-Driven Mobility Devices (OPDMD) at City sites, and promote that policy to the general public. Every day, people with limited physical mobility start to use a Segway or similar machines.

Per the new ADA title II regulation published September 14, 2010, City policies or processes permitting the use of OPDMDs were required as of March 15, 2011.

These assistive devices provide great benefits to people with disabilities and the sooner the City has a policy in regard to their use the better. The policy could, at a minimum, address times of allowed use (dawn to dusk), speed limits, off-limits areas, status of the user as a person with a disability, and minimum age. It is important to note that a power driven mobility device is not a wheelchair. That device has a separate definition and is already allowed in facilities and parks. The Department of Justice has a good advisory on this topic. It is [here](#).

Obstructed Accessible Routes

Employees **may** see an accessible route as an empty 36" wide space in which a potted plant or garbage can is a perfect fit. However, that blocks or obstructs the accessible route.

8. **Provide training to park maintenance, recreation, and administration staffs** regarding maintenance of accessible routes in parks and in recreation facilities.

Employee Work Areas

The City employs many qualified and skilled full time staff, making parks and recreation services available to residents. The City employs many more on a part-time or seasonal basis. The City

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likely has employees with disabilities and in the future, will have **more** employees with disabilities, in all categories of employment.

It is important to address access to work areas, and both the title II regulation and the work of the Access Board do so. Section 203.9 of the 2010 Standards for Accessible Design makes clear how to treat employee areas.

Generally, a person with a disability should be able to **approach**, **enter**, and **exit** the work area. This is addressed by requirements for accessible routes and accessible means of egress. Other factors are door width, and threshold changes in level.

Excluded from this exception are several types of common spaces in employee areas. Spaces such as the ones below must meet the access guidelines as they are excluded from the definition of employee-only areas:

- corridors;
- toilet rooms;
- kitchenettes for employee dining use, and
- break rooms.

In short, the key issues are the accessible route, changes in level, doors and entries, and maneuvering space once within the work area. This approach is effective so long as when the City hires an employee with a disability, or a current employee acquires a disability, it will remove architectural barriers in work areas or make other accommodations.

The two recommendations below are important for all employees at all City sites.

9. **Address accessibility in the City personnel policies**, and note that, upon request by an employee, the City will make reasonable accommodations, which **may** include the removal of architectural barriers in workspaces.
10. **Require new construction, and alterations or additions** that include employee work areas to be designed and constructed so they are compliant with the 2010 Standards for Accessible Design any more stringent Arizona requirements.

Accessible Parking

The City maintains approximately 2,482 public parking spaces with 107 designated accessible spaces. It is common to see barriers in parking, and the access audit revealed many deficits in parking.

The test for the ratio of accessible stalls to all stalls is per parking lot. See our site reports for details.

11. **Create a parking stall template.** A suggested template is below.

Parking Stall Dimensions

Stalls are a minimum of 8' wide. An adjacent access aisle must also be a minimum of 5' wide. The access aisle can be shared by two accessible stalls.

The collection of signs must include the International Symbol for Accessibility. Federal settlement agreements require a second sign, on at least one stall, that says VAN ACCESSIBLE. This stall must be 11' wide with a 5' access aisle. An acceptable alternate is 8' and 8'.

Finally, the bottom edge of the lowest parking sign is a minimum of 60" above the finished grade. We suggest that the signpost be centered at the head of the accessible stall and we suggest that the curb cut and detectable warning run the distance of the access aisle.

The most common deficit in accessible parking stalls and access aisles is the slope. The 2018 IAC limits the slope to **not more than 2.08% in any direction**.

This is a challenging requirement that can take considerable effort to meet.

Connection to the Accessible Route

The access aisles should connect to an accessible route. The maximum running slope for the accessible route is 5%, and to account for heaving and settling, we recommend 4%. The maximum cross slope is 2%.

Passenger Loading Zone

The loading zone must have an access aisle adjacent and parallel to vehicle pull-up space. The loading zone access aisle must be a minimum of 60" wide and 20' long.

12. By 2025, **develop a plan to correct or refresh every accessible stall** at every City facility. Incorporate this task into other plans that require parking lot repair, restriping, or resurfacing.

Running Slope and Cross Slope

There are many sites with running slopes steeper than permitted. At some sites, this was a minimal issue, but at others, it was a significant variance. This condition naturally occurs when concrete settles, or when connections between new and old routes are off by fractions of an inch.

Cross slope is equally important, as it serves drainage as well as access purposes.

13. **Revise standard specifications and details** so that in new construction and alterations the slope of the AR shall not exceed 1:21, or 4.7%, as opposed to 1:20, or 5%. This allows room for field error.

14. **Revise standard specifications and details** so that in new construction and alterations the ramp slope shall not exceed 1:13, or 7.7%, as opposed to 1:12, or 8.33%. This allows room for field error. It also makes ramps easier to use for everyone, not just people with disabilities. This universal design approach is also a risk management tool.
15. **Revise standard specifications and details** so that in new construction or alterations the cross slope shall be an integral part of the project and shall not exceed 1.9%. This allows room for field error.

Detectable Warnings

The US Access Board suspended the detectable warning requirement in the late 1990s, for several years. It was restored in 2002. However, it is not required in park and facility use by the 2010 Standards. **As a smart practice, we recommend the use of detectable warnings.**

16. As with parking, **develop a template for detectable warnings.**
17. In the same year that parking is refreshed, **implement a plan to correct or refresh every detectable warning** at every curb or crossing at City facilities. If necessary, phase this out over a two or three-year period.
18. Weather greatly affects the life of detectable warnings. We recommend the use of durable, metal plates as opposed to plastic plates.

Door Opening Force Requirements

Avondale facilities have many doors. Many have closer mechanisms. Some of these need adjustment to bring the pounds of force (lbf) necessary into compliance (5 lbf for interior doors and 8.5 lbf for exterior doors). However, some of the closers are just old. The wear and tear of 20 or more years erodes the closer effectiveness.

19. **Evaluate and determine the age of door closers.**
20. **Add door closer maintenance checks** to safety checklists in 2024 and for closers with 10 years of service or less, aggressively maintain them for effectiveness.
21. **Purchase and install new door closers** for all exterior doors (with closers 20 years old or more) and 50% of interior doors by the end of 2025.
22. **Purchase and install** new door closers for all remaining interior doors (with closers 20 years old or more) by the end of 2027.
23. **Consider acquiring, installing, and maintaining** power assisted door openers for City facilities with heavy consumer traffic.

Signage

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City signs serve several purposes. First, signs assist wayfinding in large sites such as the Civic Center Complex. Second, signs identify important permanent elements of facilities, such as restrooms. Third, signs facilitate access by people with vision and physical limitations.

The 2018 IAC treats two types of signs differently. Signs for permanent spaces, such as a bathroom, must be in both Grade 2 Braille and raised lettering. Signs that are directional or informational only require visual lettering of a certain size. Be certain to incorporate these approaches into signs in buildings and sites operated by the City.

24. **Create a sign template for use by the City** in 2024, and describe where and in what facilities signs will be used. The template could include size of sign, mounting height, mounting location, size of characters, space between characters, contrast between characters and background, icons or symbols used in the signs, City information (name of facility? phone number? main office number?), and more.
25. **Implement signage template and refresh** City signs in 2025.

Bathrooms

Bathrooms are an essential part of a visit to an Avondale site. Exercise, food and beverage, social activities, and more all rely on one of the oldest designs known to us. Making those facilities accessible is tremendously important.

26. **Develop a bathroom template in 2024.** This is a list of criterion for restrooms, not a design template. Be sure to include temporary facilities such as portable toilets in the template.

The template should address the toilet, grab bars, items in the stall such as toilet paper and hooks, the stall, operating mechanisms, mirrors, sinks, hand towels, and more.

27. **Include bathroom renovations** at facilities in the Avondale Capital Improvement Plan.
28. **Consider the use of automatic flush controls.** These have environmental benefits and are a great way to eliminate some accessibility problems.
29. **In the interim, implement non-structural modifications recommended in each section of this report,** such as lowering mirrors, remounting grab bars, changing the height of toilets and urinals, installing compliant stall hardware, and so forth.

These less costly changes on a site-by-site basis will serve your customers well until resources are available to renovate restrooms on a comprehensive scale.

30. **Make at least one portable toilet,** where provided at a site, accessible. This includes a portable toilet placed at a picnic shelter or adjacent to sports fields. These must be accessible and must be served by **an accessible route.**

The City has sites with portable toilets; this must be addressed. Use our site report recommendations, and require compliance by City vendors.

Alarms

In existing facilities where an aural or audible fire alarm system is provided, a visual alarm is not required unless the building was constructed after January 26, 1992 or has been upgraded since that same date. If an alarm in an existing facility is audible only, it need not be modified to include a visual alarm unless it is replaced or upgraded in the future.

31. **Determine in 2025** if systems have been upgraded or replaced since 1992.
32. **Develop a plan in 2026** for the installation of aural and visual alarms in renovations.
33. **Retrofit construction that has occurred since 1992** to include aural and visual alarms by the end of 2028.

Publications and Online Information

The use of an interactive park grid on the Avondale website is an important tool for residents and the Department can now use it to communicate about accessibility. Incorporate the access work City staff completes and indicate in your amenity list the location of accessible features.

34. **Update print material parks and facilities** information to reflect City plans regarding access, and to note which sites are accessible or will be made accessible.
35. **Update website** information to reflect City plans regarding access, and to note which sites are accessible or will be made accessible.

People with disabilities rely on the information in City publications as well as the City website. Later in this report, we summarize our recommendations for making City assets that recur, such as playgrounds and sports fields, accessible. Remembering that not necessarily every recurring asset must be accessible, we urge the City to use print and online materials to “brag” about what assets are accessible at which City sites. The City has accomplished much, and will accomplish even more in the years to come. Tell your community about those achievements through your print and online materials.

36. **Promote accessibility success stories** at City sites, in print and online materials.

Maintenance Buildings

Maintenance areas are addressed in specific site reports, and employee areas are addressed earlier in this report. We note earlier that the City can apply a different standard to employee work areas, but employee work areas are not exempted from access requirements. City maintenance staff should receive training in regard to applying the **approach, enter, and exit** strategy so that they understand the reason for the various requirements.

37. **Train maintenance staff supervisors** in accessibility concepts that are applicable to the maintenance building.
38. **Implement recommendations regarding parking, accessible route, changes in level, gaps, doors, and alarm systems** at the maintenance areas.

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For these sites, efforts must be made annually towards the correction of access deficiencies. This can be done through existing capital plans, or by following our recommendations in the site reports for specific retrofit work.

PROGRAM ACCESS TEST

The US DOJ test for existing facilities is known as the “program access test”. A “program” is an opportunity made available by the City. It can be as diverse as eating a sandwich at a picnic table in a park, enjoying a playground at a park, enjoying a walk at Alamar Park, and attending a Board of Commissioners meeting and making public comment. A program is not just an activity for which a person registers and pays a fee. Be sure to advertise your accessible amenities on your website and in printed materials.

The **minimum required** of the City by title II of the ADA is that the “program” of trails be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing trails should be accessible. We recommend that a minimum of one trail of every three be accessible.

We saw 10 trails and the City intends 4 to be accessible. **We recommend the City leave the three existing inaccessible trails as is until later resurfaced or altered.** Any trails to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible.

The Program Access Chart illustrates the areas where work is recommended so that every resident is close to an accessible trail.

39. **Make corrections** cited in the reports so the trails below **remain** accessible:

- **Donnie Hale Park**
- **Friendship Park (2)**
- **Park Avenue Plaza**

40. **Leave as is** the trails at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.

- **Alamar Park (1 of 2)**
- **Dessie Lorenz Park**
- **Crystal Gardens Wetlands Trails**

41. **Make corrections** cited in the reports so the trails below **become** accessible:

- **Alamar Park**
- **Las Ligas Park**
- **Mountain View Park**

Playgrounds

The **minimum required** of the City by title II of the ADA is that the “program” of playgrounds be accessible to residents. This is measured by the “program access test” described in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing playgrounds must be accessible. Treat this as a planning exercise and aim for one of three playgrounds being made accessible.

Our evaluation included 15 playgrounds. Of these, 12 are accessible. **We recommend changes to two playgrounds.**

Any playgrounds to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible. The Program Access Chart illustrates the areas where work is recommended so that every resident of the City is close to an accessible playground.

42. **Continue to maintain surfaces and components**, per the site reports, so that the playgrounds at the sites below **remain** accessible:
 - **Alamar Park (4)**
 - **Donnie Hale Park**
 - **Festival Fields Park (2)**
 - **Fred Campbell Park**
 - **Friendship Park (3)**
 - **Las Ligas Park**
43. **Leave as is** the playgrounds at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.
 - **Mountain View Park**
44. **Make corrections** cited in the reports so the playgrounds below **become** accessible:
 - **Friendship Park**
 - **Dennis DeConcini Park**
45. **Develop protocol for frequently maintaining engineered wood fiber (EWF) surfacing.**

For this surface to remain accessible, City staffs must more frequently inspect and maintain the surface. Maintaining EWF surfacing requires four tasks regularly completed:

 1. Inspect and refill surfacing when low
 2. Rake surfacing so it is flush with entries and routes
 3. Compact surfacing so it is firm and stable
 4. Wet surfacing

We recommend training staff on the steps required to maintain EWF and developing a schedule for doing so.

Tennis/Pickleball

The **minimum required** of the City by title II of the ADA is that the “programs” of tennis and pickleball be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing tennis or pickleball courts should be accessible. We recommend that at least one of every three be accessible. There are 11 courts and five are accessible. **We recommend changes to four pickleball courts.** The Program Access Chart illustrates the areas where work is recommended so that every resident is close to an accessible court.

46. **Make corrections** cited in report so the tennis or pickleball courts at the site below **remain** accessible:

- **Alamar Park – Tennis Courts (2)**
- **Fred Campbell – Tennis Court**
- **Friendship Park – Tennis Courts (2)**

47. **Leave as is** the tennis and pickleball courts at the parks named below, and if future alterations or renovations occur at those sites, make them accessible.

- **Alamar Park – Tennis Courts (2 of 4)**

48. **Make corrections** cited in the reports so the pickleball courts below **become** accessible:

- **Festival Fields – Pickleball (4)**

Basketball

The **minimum required** of the City by title II of the ADA is that the “program” of basketball be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35).

For similar multiple sites, no guidance is given as to how many existing basketball courts should be accessible. We recommend that a minimum of one basketball court of every three be accessible. We saw 10 basketball courts and nine are accessible. **We recommend no new access.** Any basketball courts to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible.

The Program Access Chart illustrates areas where work is recommended so every resident is close to an accessible court.

49. **Make corrections** cited in the reports so the basketball courts below **remain** accessible:

- **Alamar Park**
- **Dennis DeConcini Park**
- **Donnie Hale Park (2)**

- Fred Campbell Park
- Friendship Park (2)
- Randall McDaniel Sports Complex (2)

Ball Fields

The **minimum required** of the City by title II of the ADA is that the “program” of ball fields be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing ball fields should be accessible. We recommend that a minimum of one field of every three be accessible.

We saw 13 ball fields and **two are accessible. We recommend access to three more ball fields.** Any ball fields to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible.

The Program Access Chart illustrates the areas where work is recommended so that every resident is close to an accessible ball field.

50. **Make corrections** cited in the reports so the ball fields below **remain** accessible:

- Donnie Hale Park - Baseball Field
- Friendship Park - Baseball Field (2)

51. **Make corrections** cited in the reports so the ball fields below **become** accessible:

- Alamar Park – Baseball Field (1 of 2)
- Festival Fields – Baseball Field (1 of 2)
- Festival Fields – Softball Fields (2 of 4)

52. **Leave as is** the ball fields at the following sites:

- Alamar Park – Baseball Field (1 of 2)
- Festival Fields – Baseball Field (1 of 2)
- Festival Fields – Softball Fields (2 of 4)
- Friendship Park – Softball Field
- Las Ligas Park – Baseball Field

Athletic Fields

The **minimum required** of the City by title II of the ADA is that the “program” of rectangular athletic fields be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing athletic fields should be accessible. We recommend that a minimum of one athletic field of every three be accessible.

We saw 16 fields and 12 are accessible. **We recommend access to two soccer fields.**

Any athletic fields to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible. The Program Access Chart illustrates the areas where work is recommended so that every resident is close to an accessible field.

53. **Make corrections** cited in the reports so the athletic fields below **become** accessible:

- **Randall McDaniel Sports Complex – Soccer Fields (2)**

54. **Leave as is** the athletic fields at the following sites:

- **Mountain View Park – Soccer Field**
- **Las Ligas Park – Multiuse Field**

Picnic Areas and Picnic Shelters

The **minimum required** of the City by title II of the ADA is that the “program” of picnicking be accessible to residents. This is measured by the “program access test” described in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as to how many existing picnic areas or picnic shelters should be accessible.

There are 21 picnic areas and picnic shelters and 10 are accessible. **We recommend access to four picnic shelters.**

Any picnic areas or picnic shelters to be replaced in the future, or designed and built where one did not exist, must comply with the 2010 Standards and will therefore be accessible. The Program Access Chart at the end of this section illustrates the areas where work is recommended so that every resident of the City is close to an accessible picnic area or picnic shelter.

55. **Make corrections** needed to **maintain access**, including adding accessible picnic tables, to picnic areas and picnic shelters at:

- **Festival Fields Park - Shelters (4 of 6)**

56. **Leave as is** the picnic areas and picnic shelters at the following sites, until next altered:

- **Alamar Park – Shelter (1 of 6)**
- **Dennis DeConcini – Shelter**
- **Doc Rhodes Park – Shelter**
- **Festival Fields Park – Shelter (2 of 6)**
- **Fred Campbell Park – Shelter (1 of 2)**
- **Las Ligas Park - Shelter**

Volleyball

The **minimum required** of the City by title II of the ADA is that the “program” of volleyball be accessible to residents. This is measured by the “program access test” found in section 35.150 of the title II regulation (see 28 CFR Part 35). For similar multiple sites, no guidance is given as

to how many existing volleyball courts should be accessible. We recommend that a minimum of one volleyball court of every three be accessible.

We saw five volleyball courts and three are accessible. **We recommend access to one additional volleyball court.**

The Program Access Chart illustrates areas where work is recommended so every resident is close to a volleyball court.

57. **Make corrections** cited in the reports so the volleyball courts below **remain** accessible:

- **Randall McDaniel Sports Complex (3)**

58. **Make corrections** needed to **maintain access** to volleyball court at:

- **Mountain View Park**

PARKS AND RECREATION TRANSITION PLAN

The City must have a transition plan per 35.150(d) of the DOJ title II regulation. The plan should identify the barrier, the corrective work, the date by which the work will occur (in our reports, the Phase), and the person responsible for barrier removal. This Plan does so for the Parks and Recreation Department.

The City should remove barriers as soon as is possible. Phasing the work to be done allows access to occur and makes the best use of the resources of Avondale. We recognize that each phase requires a different number of years for implementation. The City should determine the annual activity within its fiscal years.

We recommend work in three phases. We also note work we believe need **not** occur in a category titled City Option. Should City plans change, or should other resources become available, the corrective work needed at these sites is known. Finally, we do recommend some work occur as a smart practice.

We have made cost **references for planning purposes** for the corrective work recommended. We note that these are not estimates and should be used only for planning purposes. The final design, the year in which the work will occur, the relationship with the contractor, and many other factors must be considered before a cost estimate is made.

Our total of all cost references is \$1,723,280.80. We believe the work in Phase One, Two, and Three can be accomplished in fourteen fiscal years. We have balanced work through all three phases, and the City can certainly choose to reorder those recommendations. We describe our phasing below.

- In Phase One, we recommend work in two categories: easy to do with existing staff and fiscal resources (low-hanging fruit), and work sites that is not compliant that is covered in older accessibility standards (such as parking and restrooms). We suggest that completion of this phase requires four fiscal years. Cost references for Phase One are \$651,857.60.

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- In Phase Two, we recommend work in areas that are new to the 2010 Standards. This typically includes sports fields and courts, playground surfaces, playground components, and other park assets. We suggest that completion of this phase requires two fiscal years. Cost references for Phase Two are \$236,228.50.
- In Phase Three, we recommend work in two categories: employee spaces and elements where correction is complex or costly. We suggest that completion of this phase requires one fiscal year. Cost references for Phase Three are \$80,660.70.
- We do phase some work as City Option. This is costly work at a site or element with access deficits where we believe the City can meet the program access test and defer plans to make these sites accessible, until and unless the City later alters these for another purpose. Cost references for City Option are \$647,291.05.
- We identify corrections that are not currently subject to standards, but we refer to as “smart practices in the column labeled “SP”. These corrections, we believe, make your services and assets more accessible and usable by individuals with disabilities. Cost references for smart practices are \$107,242.95.

COMMUNITY ENGAGEMENT

The ADA does require the City to provide an opportunity for public feedback in the shaping of transition plan priorities. Two in person public feedback sessions were held on October 3 and 4, 2023 at the Visitor & Conference Center and a survey was made available from September 18, 2023 through October 20, 2023.

Ability360, a center for independent living serving metropolitan Phoenix, assisted the Department in this effort. Ability360 promoted the event, and staff attended the October 3 meeting. City staff and members of the public attended the sessions. In discussion regarding access preferences and priorities, the audience expressed two concerns about playgrounds. One was the notion of not having all playgrounds accessible. The second was the lack of fencing at playgrounds. We discuss both below.

Title II allows the City to make playground retrofits over time. Not necessarily all playgrounds must be made accessible at once. There was some concern about waiting for playground access. This can be addressed by making transition plan efforts related to playgrounds transparent to the community.

The issue of fencing at playgrounds is an important safety issue. Although fences are not required at playgrounds, the lack of fencing allows some children with some disabilities, such as autism, to elope from the playground. Elopement creates many safety issues. Some families choose not to use playgrounds that lack a fence. We urge the City to consider fencing at playgrounds built new, and for application to some existing playgrounds. Promoting parks with fencing provided may be an additional measure for the City to consider.

FUNDING ACCESS RETROFITS

We have developed this section to discuss some of the potential funding sources other Cities

and local governments have used for accessibility compliance. This is a primer on this topic and is not intended as a comprehensive list.

No Dedicated Federal Source

There is no dedicated source of federal funds for accessibility renovations to existing sites. This will not likely change in the future. Even if a change were to occur, federal funding is unpredictable, as we have seen from other federal programs.

Earmarks

Some of our clients have pursued Congressional earmarks for access work. Earmarks are unpopular, and difficult to obtain. While Congressional earmarks were not used for a decade or more, both political parties now support the use of earmarks. This is an opportunity for the City.

Community Development Block Grant Funds

Several of our clients have acquired federal Community Development Block Grant (CDBG) funds for accessibility renovations at existing sites. CDBG funds often have a scale of priority. It is important to establish accessibility as a priority for CDBG applications.

Covid Relief Funds

Many jurisdictions received Covid relief funds. Several of our clients used those funds for ADA issues. Those ranged from transition plan consultation to the acquisition of adaptive equipment to making retrofits to remove barriers at existing sites. While the likelihood of additional Covid relief funds is small, should those be released again the City should consider ADA compliance as an appropriate use.

State Grants Programs

Several states, and several of our clients, have successfully pursued state legislation to set aside dedicated state funds that can be used for specific park purposes, including access retrofits. To name a few, Illinois, New Jersey, Colorado, Ohio, Florida, and Texas all have sources of revenue funded in various ways, such as a real estate transfer tax.

While the various states have all at times not fully funded these grant programs, they remain an effective tool regarding site acquisition and development.

State Discretionary Funds

Most state legislatures provide some type of discretionary funding for legislators. In some states, these are relatively small grants of under \$50,000. In others they may be as high as \$500,000. These can be a viable option for a city with good relationships with state legislators.

Private Giving

Some of our clients have successfully sought private gifts for accessibility purposes. The private giving area is subject to fluctuations depending on the economy, political issues, and related

fiscal impacts. In our experience, private giving works best when an agency has an employee dedicated to this purpose.

Corporate Giving

Some of our clients have successfully sought grants from corporations. These may, for corporate purposes, come from marketing (such as naming rights to a facility) or from community giving. Also, many corporations have a related foundation that manages corporate giving.

In our experience, corporate giving works best when an agency has an employee dedicated to this purpose.

Community Foundations and Other Foundations

Community foundations, which operate on a regional basis, have also been involved in accessibility giving. Perhaps the greatest example here is the multi-million dollar Kellogg Foundation project that improved accessibility in Michigan, Ohio, Indiana, Illinois, and other states that bordered the Kellogg headquarters in Michigan.

Other Methods

There are many other methods, some of which a community crafts to meet a unique set of circumstances. These include:

- A New Jersey community takes 100% of accessible parking fines and applies those towards recreation for people with disabilities.
- Many jurisdictions have added a small surcharge (\$10) to every program registration, earmarking the fees generated for access and inclusion expenses.
- Several communities have successfully sought budget increases to address accessibility backlogs, just as they have with maintenance backlogs. Those increases may be general fund allocations, proceeds from successful referenda, or reallocations of under-expended funds originally budgeted for other local government purposes.

Risk Management

Investing in safety saves money by avoiding legal expenses related to injuries on City properties. The same concept applies here. Investing in retrofits saves the City the cost of staff time and attorneys to defend against ADA lawsuits or administrative complaints.

While we do not believe a decision about access should hinge solely on risk management factors, we recommend that Avondale be aware of this factor going forward. ADA enforcement continues to grow and touch more and more communities.

Relief under the ADA is intended to be injunctive in nature, but the time consumed and cost of litigation can be a great drain on human and fiscal resources.

The General Fund

Another method is to fund retrofits through the General Fund, Corporate Fund, or CIP. Some of the methods discussed earlier in this section help to reduce General Fund reliance. These typically are not a substitute for General Fund support.

IMPLEMENTATION STRATEGIES

Title II of the ADA is relatively straightforward. That said, we offer some suggestions below regarding implementation of the several mandates in the regulation.

1. ***Maintain a strong relationship with disability advocacy groups.*** Make it a point to seek out and work with local advocacy groups, and seek their feedback on future initiatives. Having a good relationship between the City and the advocacy groups will help greatly in meeting the ADA mandates and improving the quality of life for all, including those with disabilities.
2. ***Maintain the Certified ADA Coordinator credential.*** There is no nationwide credential required for ADA implementation. However, a Certified ADA Coordinator will benefit the City, keeping it current on implementation strategies and smart practices from other local entities in the United States.
3. ***Identify available sign language interpreters and enter into agreements*** before situations arise where the City needs such services. Negotiate rates, availability, environments where the work will occur, and so forth.
4. One of the title II requirements for communications produced by the City ***requires the Department to respond to inquiries in the form by which the person inquired.*** We also believe that this is the courteous way to respond. Here, if an inquiry to the City comes in the form of a Braille document, the response from the City should also be in Braille.

We recommend the City either locate the nearest Braille printer and enter into an arrangement for use, or simply acquire one and have employees learn how to use it. For a review of this topic by the American Foundation for the Blind, visit [this site](#).

5. ***Acquire assistive listening systems.*** There are three principal types: inductive loop systems, infrared systems, and FM systems. These devices are helpful for persons with some residual hearing. These devices separate speech from ambient noise and amplify speech. People who are deaf or hard of hearing may prefer, for various reasons, one type of device. The National Association of the Deaf has a brief review of the topic [here](#).
6. ***Monitor the development of the website accessibility requirements.*** The DOJ suspended the pending website accessibility guideline in 2014 because technology had advanced so much that the old guideline, developed in 2011, was obsolete. The plan was that US DOJ would reevaluate the guidance and issue a final and enforceable Standard in 2018.

DOJ did not execute that plan. A 2017 Presidential directive required that for every new regulation, the issuing agency must rescind two. This caused significant turmoil in the world of accessibility, where there are only three regulations (title II, title III, and the 2010 Standards). To rescind one of the three would have disastrous consequences for City residents with disabilities. The present Administration will not require such a rescission. It is therefore likely US DOJ will issue some new ADA regulations, but it is impossible to predict when. However, the City website must be usable by people with disabilities.

During the interim, DOJ has published a 2022 advisory regarding website accessibility. It is [here](#) and we commend its use to the City of Avondale.

7. ***Develop an ongoing series of disability training for employees.*** Every day, new products appear on the market, agencies issue new enforcement decisions, and local entities develop and refine strategies for inclusion and access. Keep current on these developments and share this news with City staffs.
8. ***There are still other sites the City must audit and include in a transition plan.*** All Avondale infrastructure, including the City Court, fire stations, and sidewalks must be audited against the 2010 Standards, the Public Right-of-Way Guideline, and any Arizona requirements that are more stringent.

CONCLUSION

The City of Avondale Parks and Recreation Department has a variety of facilities and sites. The skilled staff operates facilities and sites the community wants and enjoys. This report identifies some issues that are typical in parks and recreation infrastructure, and some that are unique to the City. The City takes steps towards accessibility every year and that undoubtedly helps. That said, access work should occur every year during the transition plan.

While no one can say with certainty how long the City can stretch these projects, the City should make access retrofits an ongoing part of its annual plans and budgets. DOJ officials have said the City must complete work as soon as is possible. Be certain to understand that a complaint could force the City to accelerate its pace. Making accessibility projects a high priority is a show of good faith by the City.



Submitted by:

John N. McGovern, JD
Partner, Principal-in-Charge
WT Group Accessibility Practice

ITEM NUMBER: 4.e.

SUBJECT: Resolution 1017-0224 - Amendment No. 2 of the Intergovernmental Agreement with the Salt River Valley Water Users Association for the New River and Agua Fria Underground Storage Project

MEETING DATE: 2/5/2024

TO: Mayor and Council

FROM: Kirk Beaty, Public Works 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 Areas:

- Innovative Program and Service Delivery – Avondale will continue to serve as a model of innovative, efficient and responsive government.
- Natural Resources and Open Spaces – Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities and planning.

The purchase of additional Storage Entitlement in the New River Agua Fria Underground Storage Project (NAUSP) was a cost-effective solution to support and enhance Avondale's diverse water portfolio while protecting one of its precious natural resources for future generations.

PURPOSE:

City Council will consider a request to adopt Resolution 1017-0224 approving Amendment No. 2 of the Intergovernmental Agreement with the Salt River Valley Water Users Association for the New River and Agua Fria Underground Storage Project 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 New River Agua Fria Underground Storage Project (NAUSP) is a constructed groundwater recharge facility located at 107th Avenue and the Bethany Home Road alignment. The NAUSP was constructed in 2004 in accordance with an Intergovernmental Agreement (IGA) with participation by the following parties: City of Avondale; City of Chandler; City of Glendale; Salt River Valley Water Users Association (SRP). In 2008, the original Intergovernmental Agreement was amended (Amendment No. 1) to include the City of Peoria as a participant in the NAUSP.

Recharge facilities like the NAUSP have physical limits to the amount of water that can be recharged through percolation. The NAUSP is managed and operated by SRP as the Operating Agent which monitors the

physical recharge capacity of the facility. Currently, the NAUSP has demonstrated the capacity to recharge a total of 2,400 Acre-Feet of water each month.

To ensure an equitable division of water storage rights, interested parties purchased 'Storage Entitlements' to become participants in the facility. Participants may only recharge and store water up to the limit of their storage entitlement percentage.

On May 1, 2023, City Council approved the purchase of 18% of Storage Entitlements by the City of Avondale from the City of Chandler with Resolution 1023-0523. This purchase increased Avondale's storage entitlements from 10% up to 28% effective on July 1, 2023.

DISCUSSION:

The IGA for the NAUSP and all amendments to the IGA need to be approved by all Participants in the NAUSP, including Avondale. As the Operating Agent for the NAUSP, SRP is responsible for amending and updating the IGA when a change to the ownership of storage entitlements occurs.

Exhibit C of the IGA for the NAUSP outlines the Storage Entitlement percentage held by each entity in the Agreement. This Amendment No. 2 of the IGA updates Exhibit C of the IGA to reflect the current storage entitlements held by each Participant at the NAUSP. All other terms of the IGA, as previously amended, shall remain in full force and effect.

BUDGET IMPACT:

There is no budget impact to approving this resolution, and all costs related to this agreement have been included in the Water Fund's annual operating budget. The purchase of storage entitlements was completed, and this Amendment to the IGA reflects the outcome of the purchase.

RECOMMENDATION:

Staff recommends that City Council approve the request to adopt a Resolution approving Amendment No. 2 of the Intergovernmental Agreement with the Salt River Valley Water Users Association for the New River and Agua Fria Underground Storage Project and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Contact person for document distribution: Eric Bay

RESOLUTION NO. 1017-0224

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE SECOND AMENDMENT TO THE NEW RIVER AND AGUA FRIA RIVER UNDERGROUND STORAGE PROJECT INTERGOVERNMENTAL AGREEMENT AMONG THE SALT RIVER VALLEY WATER USERS' ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND THE MUNICIPAL CORPORATIONS OF AVONDALE, CHANDLER, PEORIA, AND GLENDALE.

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

SECTION 1. The Amendment No. 2 to the New River and Agua Fria River Underground Storage Project Intergovernmental Agreement among the Salt River Valley Water Users' Association, Salt River Project Agricultural Improvement and Power District and the Municipal Corporations of Avondale, Chandler, Peoria, and Glendale (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 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, February 5, 2024.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO

RESOLUTION NO. 1017-0224

[Amendment No. 2 to the Intergovernmental Agreement]

See following pages.

AMENDMENT NO. 2

TO THE NEW RIVER AND AGUA FRIA UNDERGROUND STORAGE PROJECT INTERGOVERNMENTAL AGREEMENT AMONG SALT RIVER VALLEY WATER USERS' ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, AND THE MUNICIPAL CORPORATIONS OF AVONDALE, CHANDLER, PEORIA, AND GLENDALE

This Amendment No. 2 ("Amendment"), dated this 28th day of August 2023, hereby amends the *New River and Agua Fria Underground Storage Project Intergovernmental Agreement Among Salt River Valley Users' Association, Salt River Project Agricultural Improvement and Power District, and the Municipal Corporations of Avondale, Chandler, Peoria, and Glendale* dated August 4, 2004, as amended July 23, 2008 ("IGA"). Capitalized terms used in this Amendment and not otherwise defined shall have the meanings set forth in the IGA.

RECITALS:

WHEREAS, the New River and Agua Fria Underground Storage Project ("NAUSP") was authorized by this IGA and the parties have been operating NAUSP for nineteen years; and

WHEREAS, on June 30, 2023, the City of Avondale and the City of Chandler executed an *Intergovernmental Agreement for the Conveyance of Rights in the New River and Agua Fria Underground Storage Project* ("Conveyance Agreement"), conveying 18.00% of the City of Chandler's NAUSP Storage Entitlement to the City of Avondale. Therefore, pursuant to the Conveyance Agreement and Section 30.2 of the IGA, the parties want to amend Exhibit C of the IGA to reflect the changes in the City of Chandler's NAUSP Storage Entitlement from 22.80% to 4.80%, and in the City of Avondale's NAUSP Storage Entitlement from 10.00% to 28.00%; and

WHEREAS, any amendment to the terms of the IGA must be in writing and be approved by all parties.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein and other good and valuable consideration, the parties do hereby agree as follows:

AGREEMENT:

1. Exhibit C is hereby deleted in its entirety and replaced by the attached "Exhibit C (Revision Dated August 28, 2023)."

2. Except as modified by this Amendment, all terms of this IGA, as previously amended, shall remain in full force and effect.

3. This Amendment shall become effective upon execution by the Parties and shall remain in effect throughout the term of the IGA.

IN WITNESS WHEREOF, the parties have executed this *Amendment No. 2 to the New River and Agua Fria Underground Storage Project Intergovernmental Agreement Among Salt River Valley Users' Association, Salt River Project Agricultural Improvement and Power District, and the Municipal Corporations of Avondale, Chandler, Peoria, and Glendale* as of the date first set forth above.

CITY OF AVONDALE

By: _____
Title: _____

Attest and Countersign

City Clerk

APPROVED AS TO FORM AND
WITHIN THE POWER AND
AUTHORITY GRANTED UNDER
THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF
AVONDALE

City Attorney

Attest and Countersign

CITY OF CHANDLER

City Clerk

By

Title:

APPROVED AS TO FORM AND
WITHIN THE POWER AND
AUTHORITY GRANTED UNDER
THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF
CHANDLER

City Attorney

Attest and Countersign

CITY OF GLENDALE

City Clerk

By

Title:

APPROVED AS TO FORM AND
WITHIN THE POWER AND
AUTHORITY GRANTED UNDER
THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF
GLENDALE

City Attorney

Attest and Countersign

CITY OF PEORIA

City Clerk

By

Title:

APPROVED AS TO FORM AND
WITHIN THE POWER AND
AUTHORITY GRANTED UNDER
THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF
PEORIA

City Attorney

Attest and Countersign

SALT RIVER VALLEY WATER USERS'
ASSOCIATION

Secretary

By

Title:

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By

Title:

APPROVED AS TO FORM AND
WITHIN THE POWER AND
AUTHORITY GRANTED UNDER
THE LAWS OF THE STATE OF
ARIZONA TO THE ASSOCIATION
AND DISTRICT

Attorney

EXHIBIT C

NEW RIVER AND AGUA FRIA RIVER UNDERGROUND STORAGE PROJECT

STORAGE ENTITLEMENTS

Participant	Storage Entitlement %
Association	27.20
Avondale	28.00
Chandler	4.80
Glendale	20.00
Peoria	20.00
TOTAL	100.00

Revision Date: June 30, 2023

ITEM NUMBER: 5.a.

SUBJECT: Public Hearing and Ordinance 2002-0224 - Tolleson Union High School District No. 214 – Application PL-23-0266

MEETING DATE: 2/5/2024

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:

Strategic Initiative: Creative and Sustainable Community Development

Strategy: Maintain and expand quality infrastructure and improve connectivity to city amenities.

PURPOSE:

City Council will hold a public hearing and consider a request to adopt Ordinance 2002-0224, approving a request by Sandy Hayden of HILGARTWILSON, LLC, on behalf of the property owners Tolleson Union High School District No. 214, to annex approximately 54.73 acres of land located at the southeast corner of Alamar Boulevard and Dysart Road (Assessor Parcel Numbers 500- 72-001L and 500-72-001C) 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 site is irregularly shaped and currently, the property is being used for farming. There are agricultural irrigation ditches that run north/south within the eastern half of the property and east/west along the north and southern property boundaries. Overhead electrical transmission lines within easements abut the southern property boundary. There are no existing buildings or residents on the property.

The parcels are zoned Rural-43 (RU-43) in the County (Exhibit B). The principal purpose of this zoning district is to conserve and protect farms and other open land uses, foster orderly growth in rural and agricultural areas, prevent urban and agricultural land use conflicts, and encourage sustainable development. Principal uses permitted in this zoning district include both farm and non-farm residential uses, farms, and recreational and institutional uses. As required by Arizona statute, upon annexation, the property will be assigned City zoning equivalent to the existing Maricopa County Zoning. The City equivalent zoning to Maricopa County's RU-43 district is Avondale's Rural Residential (RR-43) zoning district. The purpose of the RR-43 district is to encourage and preserve low-density residential developments with low intensity agricultural operations in a growing area. A public school is permitted in the RR-43 district.

The General Plan land use designation is Medium Density Residential (Exhibit C), which is a residential land designation with densities ranging from 2.5 to 4 single-family dwelling units per acre. This land use category

provides for a suburban lifestyle with planned detached single-family residential communities with larger setbacks and neighborhood facilities. Churches, parks, trails and other open space amenities, and public facilities are permitted in this category.

The site is contiguous with the City of Avondale corporate boundaries and meets state law requirements for annexation.

The existing uses and zoning of surrounding properties include:

NORTH: Vacant land currently being used for farming zoned Alamar Planned Area Development (PAD).

EAST: Single-family residences currently under construction zoned Alamar PAD.

SOUTH: Vacant land currently being used for farming zoned Alamar PAD.

WEST: Vacant land currently being used for farming zoned Three Rivers Ranch PAD.

SUMMARY OF REQUEST:

The applicant is proposing to annex approximately 54.73 acres described in the legal description and map exhibit attached to the blank petition and affidavit (Exhibit E). The proposed annexation will facilitate the future development of a public high school. At its meeting on December 18, 2023, the Council provided Staff with authorization to proceed with the proposed Tolleson Union High School Annexation. Staff and the project applicant, Sandy Hayden of HILGARTWILSON, LLC, have subsequently completed all statutorily required steps leading up to the public hearing scheduled for tonight's meeting including:

- December 19, 2023: Filing of the blank petition and affidavit with the Maricopa County Recorder.
- December 20, 2023: Publication of a display ad in the Southwest Valley Arizona Republic giving notice of the public hearing.
- On or before December 24, 2023: Posting of three (3) signs of the land to be annexed giving notice of the public hearing.
- On or before January 6, 2024: Send notice of the public hearing to real and personal property owners and the Maricopa County Board of Supervisors Chairman.

DISCUSSION:

As required by Arizona statute, notice of the annexation has been provided to all owners within the annexation boundary. The applicant is expected to bring the executed petition, signed by one-half or more of the persons owning real and personal property that would be subject to taxation by the City in the event of annexation, in both assessed valuation and ownership, to the meeting on February 5, 2024.

Council will consider the adoption of the Ordinance approving the requested annexation. To date, no comments on the request have been received by Staff.

The annexation, if approved by the City Council, will bring the subject site into Avondale's jurisdiction effective 30 days from the adoption of the Ordinance, on February 5, 2024. The property will be zoned RR-43.

BUDGET IMPACT:

The annexation application included the required \$6,000 fee that will be used towards costs related to the processing of the annexation. If the proposed annexation is approved by the Council at a future meeting and required signatures on the annexation petition are successfully obtained, increased revenue from construction sales tax, water and sewer fees, and development impact fees can be expected from the development of the subject site. Conversely, the City will incur costs of serving the property with Avondale services, including, but not limited to, water, sewer, solid waste, police, fire, and street services.

RECOMMENDATION:

City Council will conduct a public hearing and **ADOPT** an Ordinance, annexing approximately 54.73 acres located at the southeast corner of Alamar Boulevard and Dysart Road.

Contact person for document distribution: Michelle Simerdla

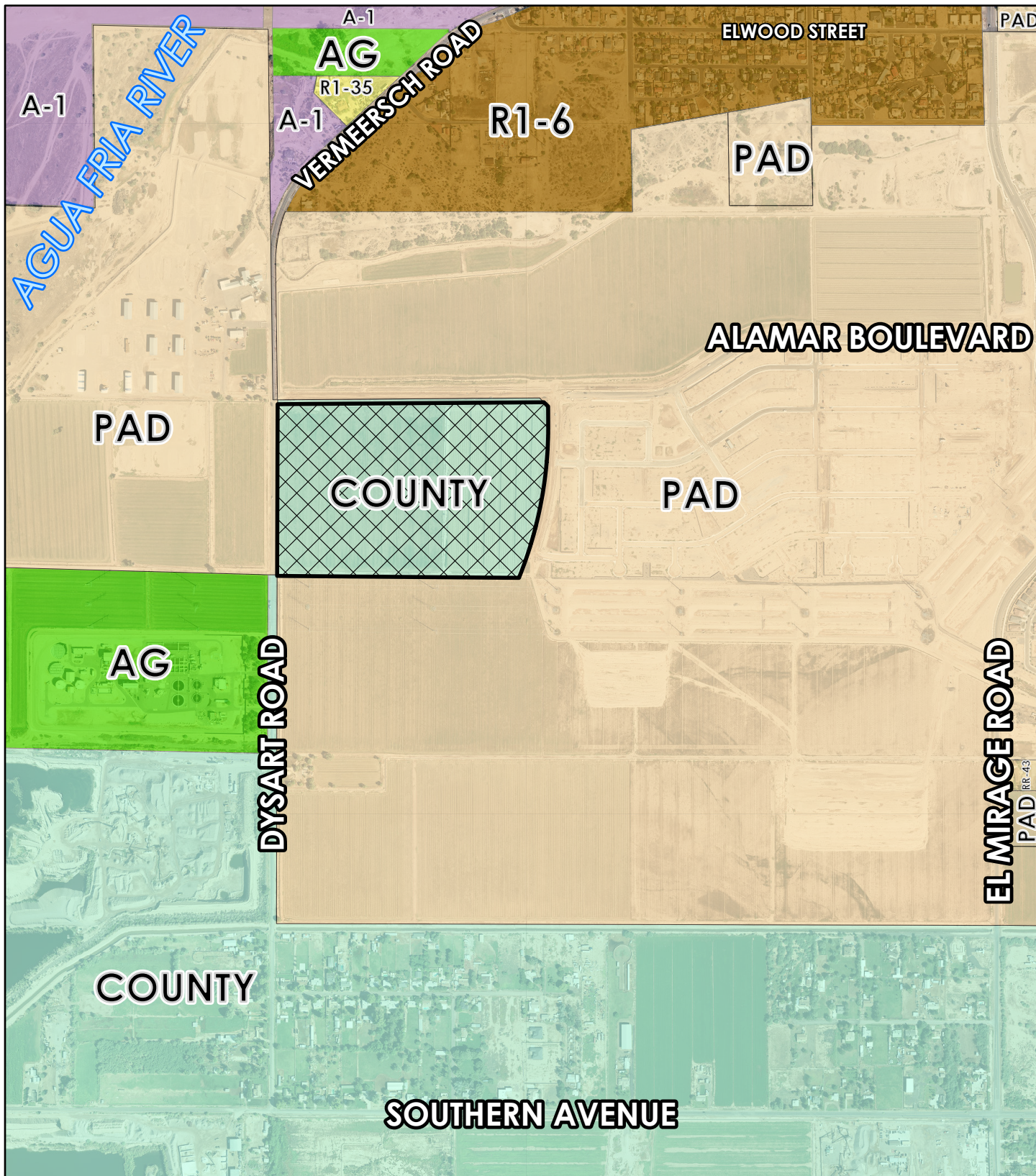


Aerial Map



 Subject Property



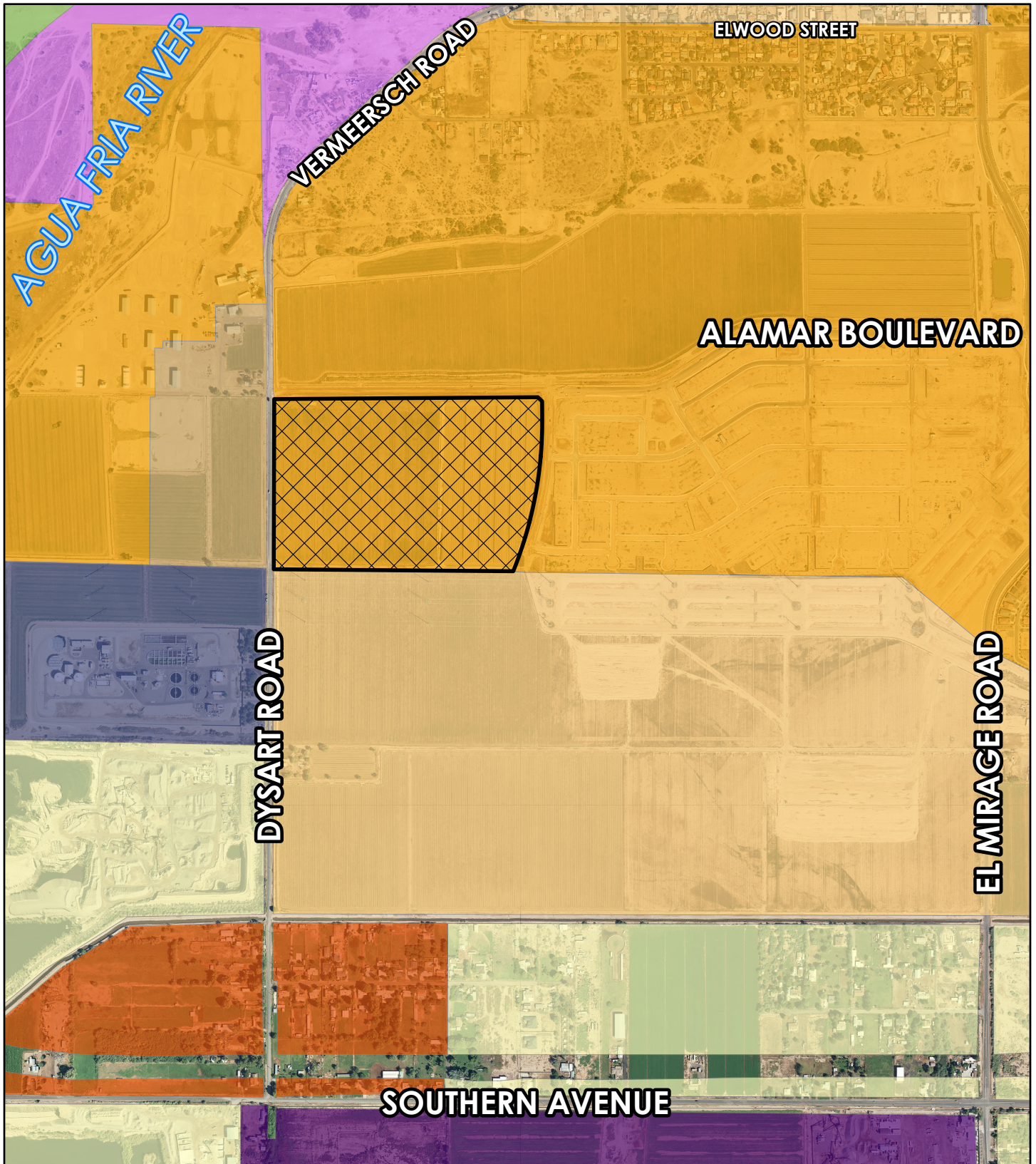


Zoning Vicinity



Subject Property





General Plan Land Use



- | | |
|---------------------------------|--------------------------------|
| Corporate Park | Open Space and Parks |
| Freeway Commercial | Public/Civic |
| Medium Density Residential | Rural Low Density Residential |
| Medium/High Density Residential | Estate/Low Density Residential |
| Mixed Use | |



Subject Property



August 31, 2023

Avondale Development Services Department

11465 W Civic Center Drive
Avondale, AZ 85323

RE: Narrative for Tolleson High School Site Annexation Request

To Whom it May Concern,

This narrative letter includes the required information to commence the annexation request for the future Tolleson High School Site #8 into the City of Avondale ("Avondale" or "City"). The school site property is located at the southeast corner of Alamar Boulevard and Dysart Road and is comprised of Maricopa County Assessor Parcel Numbers 500-72-001C, 500-72-001L, 500-72-525 and portions of 500-72-001E and 500-72-001K. APNs 500-72-001C and 500-72-001L are currently within unincorporated Maricopa County and are the subject of this annexation request, (collectively, the "Property")

Explanation of annexation request:

The purpose of this request is to annex the Property into the City of Avondale from Maricopa County jurisdiction to facilitate the development of a high school site. The Property is located within Avondale's Municipal Planning Area and is generally located at the southeast corner of Alamar Boulevard and Dysart Road.

Explain how request conforms with Arizona state law requirements:

The request complies with the requirements of ARS 9-471 as the Property is contiguous with the City of Avondale corporate boundaries. Annexation of the Property will not create any county islands. A parcel map displaying the relationship of the Property to adjacent City limits is included with this request.

Description of expected future use/development of the proposed annexation area:

The Property is intended to be developed as high school site #8 within the Alamar community by Tolleson Union High School District No. 214.

Disclose any easements, utilities, irrigations, canals, state land property, and the like:

Agricultural irrigation ditches run north/south within the eastern half of the Property and east/west along the northern and southern Property boundaries, respectively. An access easement and a portion of a Designated County Road are located adjacent to Dysart Road within APN 500-72-001L. Overhead electrical transmission lines within easements abut the southern Property boundary.

Description of existing infrastructure: water, sewer, electricity, natural gas, phone, cable, irrigation, wells, curb, gutter, sidewalks, streetlights, pavement, and the like:

There is a 12-inch water main running along Dysart Road. A reclaimed water line runs north along Dysart Road and east along Alamar Boulevard. Existing 36-inch and 48-inch sewer lines run along Alamar Boulevard and Dysart Road, respectively.



Century Link provides phone service, Cox Communications provides cable service, Salt River Project provides electrical service, and Southwest Gas provides gas distribution facilities adjacent to the Property.

Alamar Boulevard is a dirt road running east/west along the northern boundary of the Property. Dysart Road is an existing paved two-lane road running north/south on the western boundary of the Property. 128th Avenue (Alamar Lane) is an existing paved road abutting the east Property boundary. Irrigation ditches run north/south along the eastern half of the Property and east/west along the northern and southern boundaries of the Property, respectively.

Identify all existing residential and non-residential structures within the proposed annexation area:

There are no existing buildings within the proposed annexation area. Irrigation ditches run north/south and east/west in the eastern half and along the southern boundary of the Property, respectively.

Description of existing conditions:

The Property is currently used for agricultural purposes and has no existing buildings or residents.

Information related to any Maricopa County zoning violations and legal nonconforming buildings and/or uses:

There are no known County zoning violations or non-conforming buildings on the Property.

Explanation of desired City services:

Upon annexation, the City would provide municipal services to the Property in the same manner as similarly situated properties within the City.

Identify which school districts will be affected by the development:

The proposed annexation area lies with the Littleton Elementary School District and the Tolleson Union High School District.

Proximity to Police and Fire stations:

Avondale Fire Rescue Station 171 is located 2 miles northwest of the Property and the Avondale Police Department Cashion Sub-Station is located 3 miles northeast of the Property.

Sincerely,
HILGARTWILSON, LLC

Cindy Paddock, AICP
Project Manager – Land Planning

Enclosed:
Aerial Map, Parcel Map, Application Fee

ORDINANCE NO. 2002-0224

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF AVONDALE BY ANNEXING THERETO CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING CITY LIMITS.

WHEREAS, a petition in writing, accompanied by a map of said real property, having been filed and presented to the Council of the City of Avondale (the “City Council”), signed by the owners of more than one-half in value of the real and personal property and more than one half of the persons owning real and personal property as would be subject to taxation by the City of Avondale (such owners and persons are collectively referred to herein as the “Petitioners”) in the event of annexation within the territory and land hereinafter described (the “Annexation Area”) as shown by the last assessment of said property, which territory is contiguous to the City of Avondale (the “City”), and not now embraced within its limits, asking that the property more particularly hereinafter described be annexed into the City, and to extend and increase the corporate limits of the City so as to embrace the same; and

WHEREAS, the City Council desires to comply with said petition and extend and increase the corporate limits of the City to include the Annexation Area; and

WHEREAS, said petition (i) sets forth a true and correct legal description of all the exterior boundaries of the entire Annexation Area and (ii) is asserted by Petitioners to have had attached thereto at all times an accurate map of the Annexation Area; and

WHEREAS, the Petitioners have asserted and the City Council has just cause to believe that no alterations increasing or reducing the Annexation Area have been made after the said petition has been signed by any owner of real and personal property in such territory; and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-471(L), a city shall adopt a zoning classification for the annexation area that permits densities and uses no greater than that permitted by the county immediately before the annexation; and

WHEREAS, the Annexation Area is currently zoned by Maricopa County as Rural 43 Zoning District RU-43 (“RU-43”), and the City’s “Rural Residential - RR-43” zoning classification does not permit densities and uses greater than permitted by Maricopa County’s RU-43 zoning classification; and

WHEREAS, the provisions of ARIZ. REV. STAT. § 9-471, and amendments thereto, have been fully observed; and

WHEREAS, proper and sufficient certification and proof of the foregoing facts are now on file in the office of the City Clerk together with a true and correct copy of the original petition referred to herein, which is on file in the office of the Maricopa County Recorder.

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

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

SECTION 2. The Annexation Area, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by this reference, is hereby annexed to the City and that the present corporate limits are hereby extended and increased to include the Annexation Area.

SECTION 3. The land-use classification for the Annexation Area is hereby designated as “Rural Residential - RR-43” under the City of Avondale Zoning Ordinance.

SECTION 4. The City Clerk is hereby authorized and directed to file with the Maricopa County Recorder’s Office a fully executed copy of this Ordinance, together with an accurate map of the Annexation Area.

SECTION 5. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, February 5, 2024.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2002-0224

(Legal Description and Map)

See following pages.

**TUHSD HS-#8
ANNEXATION
LEGAL DESCRIPTION**

A portion of land being situated within the Northwest Quarter of Section 26, Township 1 North, Range 1 West of the Gila and Salt River Meridian, MARICOPA County, Arizona, a portion of the Alamar phase 4 plat, recorded in Book 1600, Page 48 being more particularly described as follows:

COMMENCING at a found Maricopa County Highway Department brass cap accepted as the Northwest Corner of said Section 26, from which a found Maricopa County Highway Department brass cap accepted as the West Quarter Corner thereof bears South 00°06'33" West, 2594.83 feet;

THENCE along the West line of said section 26, South 00 degrees 06 minutes 33 seconds West 65.00 feet to a line 65.00 feet south of and parallel with the North line of said Section 26;

THENCE along said parallel line North 89°48'21" East 33.00 feet to the **POINT OF BEGINNING**;

THENCE continuing along said parallel line North 89°48'21" East 1929.16 feet to the Westerly right of way line of Alamar Lane;

THENCE along said Westerly line South 45°11'49" East 42.43 feet;

THENCE South 00°11'49" East 125.93 feet to a tangent curve, concave right, having a radius of 2930.00 feet;

THENCE Southwesterly along said curve, through a central angle of 22°20'29", an arc length of 1142.49 feet to a non-tangent line and the Northerly line of a 160-foot easement per documents 2002-1076599 MCR and 2005-1738976 MCR;

THENCE along said Northerly line North 89°19'27" West 1742.21 feet to a line 33.00 feet East of and parallel with the West line of said Section 26;

THENCE along said parallel line North 00°06'33" East 1242.50 feet to the **POINT OF BEGINNING**.

The above-described parcel contains a computed area of 2,384,410 sq. ft. (54.7385 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 2497
Date: August 2023



ORD.#
2064-1122

NORTHWEST CORNER
SEC. 26, T1N, R1W

FOUND MCDOT
BRASS CAP,
DATED 2009
P.O.C.

ORD.#
1652-518

POINT OF BEGINNING

W ALAMAR BLVD

S00°06'33"W 65.00'

N89°48'21"E 1929.16'

N89°48'21"E 33.00'

33'

65'

S45°11'49"E 42.43'

S00°11'49"E 125.93'

ORD.#
2064-1122

DYSART ROAD

S00°06'33"W 2594.83'
(BASIS OF BEARING)

N00°06'33"E 1242.50'

ANNEXATION AREA
2,384,410 SQ FT
54.7385 ACRES

R=2930.00' D=22°20'29" L=1142.49'

APN 500-72-001C

APN 500-72-001L

N89°19'27"W 1742.21'

N. LINE 160' EASEMENT PER DOC. #'S
2002-1076599 MCR & 2005-1738976 MCR

ORD.#
1652-518

WEST QUARTER CORNER
SECTION 26, T1N, R1W
FOUND MCDOT BRASS CAP
IN HAND HOLE



P.O.C. = POINT OF COMMENCEMENT

//// = LIMITS OF PROPERTY ANNEXED

PAGE 2 OF 2

PROJ.NO.: 2497.0102

DATE: AUG 2023

SCALE: N.T.S.

DRAWN BY: NOG

CHECKED BY: KJP

TUHSD HS-#8
CITY OF AVONDALE ANNEXATION
MARICOPA COUNTY, ARIZONA

EXHIBIT


HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

ITEM NUMBER: 5.b.

SUBJECT: Update on Parks and Recreation Master Plan 2024

MEETING DATE: 2/5/2024

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 Areas:

- Diverse Recreation and Entertainment Opportunities - Avondale provides residents with the ability to connect with amenities, businesses, and their community, enhancing the opportunity to live, work, and enjoy a healthy, active, and affordable lifestyle.
 - Natural Resources and Open Spaces - Avondale recognizes the value of its natural resources and promotes environmental sustainability and conservation in its operations, activities, and planning.
-

PURPOSE:

City Council will receive an update regarding the Parks and Recreation master planning process and engagement strategy. This item is for discussion and feedback only.

BACKGROUND:

In 2017, the City of Avondale Parks, Recreation, Libraries, and Trails Master Plan was adopted by the City Council. The plan included five focus areas:

1. Destination
2. Marketing and Community Awareness
3. Investment and Partnerships
4. Maintenance
5. Character

The city has experienced rapid growth since the 2017 Master Plan was approved, and many of the plan's goals have been successfully achieved and implemented. As a result, a new master plan is needed to reflect the growth and accomplishments and help plan the future of parks, recreation, and libraries.

DISCUSSION:

Jason Genck, Manager/Practice Lead for the BerryDunn Local Government Practice Group, will discuss the master planning process and the engagement strategy and get feedback from the City Council.

BUDGET IMPACT:

Not Applicable

RECOMMENDATION:

Presentation Only

Contact person for document distribution: