



City of Avondale

City Council Meeting

Monday, January 6, 2025

Mayor and Council

Mike Pineda, Mayor

Curtis Nielson, Vice Mayor

Tina Conde, Councilmember | Jeannette Garcia, Councilmember

Gloria Solorio, Councilmember | Shari Weise, Councilmember

Max White, Councilmember

Administration

Ron Corbin, City Manager

Tracy Stevens, Assistant City Manager | Katie Gregory, Assistant City Manager

Dale Nannenga, Deputy 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 the City Council shall appear in person to speak.



City Council Meeting Notice & Agenda Monday, January 6, 2025

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

A reception for the newly elected Mayor and Councilmembers will be held beginning at 5:00 p.m. in the lobby of City Hall. The Avondale City Council will be in attendance at the reception; however, no City business will be conducted.

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 (DISCUSSION ONLY)

a. INSTALLATION OF CITY COUNCIL

The newly elected Mayor Mike Pineda and Councilmembers Jeannette Garcia, Gloria Solorio, and Shari Weise will take their Oaths of Office. This item is for discussion only.

b. EMPLOYEE ANNOUNCEMENTS

The following new employees will be presented to City Council. This item is for discussion only.

- **Engineering** - Torsten Schmutde, Project Manager in CIP
- **Fire and Medical Department** - Stefanie Hernandez, Fire Inspector

c. RECOGNITION OF CAMP HERO PARTICIPANTS

City Council will recognize the graduates of the 2024 Camp HERo program. This item is for discussion only.

d. INFORMATION TECHNOLOGY DIGITAL CITIES AND SOLUTION AWARDS

City Council will recognize and celebrate the City's recent achievements in receiving the prestigious Digital Cities Award and the Solutions Award. 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. Councilmembers may pull items from consent if they would like them considered separately.

a. MINUTES

City Council will consider a request to approve the December 2, 2024 and December 16, 2024 City Council meeting minutes. The Council will take appropriate action.

b. APPOINTMENT OF CHAIR AND VICE CHAIR TO THE PLANNING COMMISSION AND BOARD OF ADJUSTMENT

City Council will consider a request to: (a) appoint Larry White as the Chair of the Planning Commission and Alex McBurney as the Vice Chair of the Planning Commission for the remainder of the 2025 calendar year; and (b) appoint LaChrisha Dourisseau as the Chair of the Board of Adjustment and Kenneth Shoaff as the Vice Chair of the Board of Adjustment for the 2025 calendar year and authorize the City Clerk to execute the necessary documents. The Council will take appropriate action.

c. WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT WITH SUMMIT INFRASTRUCTURE GROUP, LLC

City Council will consider a request to approve a new Wired Telecommunications License and Right-of-Way Use Agreement with Summit Infrastructure Group, LLC, to allow the placement of fiber telecommunication infrastructure in the 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 the appropriate action.

d. RESOLUTION 1001-0125 - AMENDMENT NO. 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY HUMAN SERVICES DEPARTMENT FOR THE CSBG SERVICE INITIATIVE ADDING COUNTY GENERAL FUNDS

City Council will consider a request to adopt Resolution 1001-0125, approving an amendment to the Intergovernmental Agreement with Maricopa County Human Services Department to add County General Funds to support the City's Temporary Shelter Services Initiative to provide long-term case management and shelter for families experiencing homelessness and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. ORDINANCE 2001-0125– DISPOSITION AND DEVELOPMENT AGREEMENT-TRELLIS AND THE CITY OF AVONDALE FOR MARICOPA COUNTY AMERICAN RESCUE PLAN ACT FUNDS FOR DEVELOPMENT OF 516 EAST DEE STREET

City Council will consider a request to adopt Ordinance 2001-0125, approving a Development and Disposition Agreement with Trellis, a non-profit housing developer, and an ordinance for the disposition of land located at 516 E. Dee Street for the construction of affordable housing and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. ORDINANCE 2002-0125 – DISPOSITION AND DEVELOPMENT AGREEMENT-HABITAT FOR HUMANITY CENTRAL ARIZONA AND THE CITY OF AVONDALE FOR MARICOPA COUNTY AMERICAN RESCUE PLAN ACT FUNDS FOR DEVELOPMENT OF 320 EAST HILL DRIVE

City Council will consider a request to adopt Ordinance 2002-0125, approving a Development Agreement with Habitat for Humanity Central Arizona and an ordinance for the disposition of land located at 320 E. Hill Drive for the construction of affordable housing and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. ORDINANCE 2003-0125 – AMENDING CITY CODE CHAPTER 15, ARTICLE V - RELATING TO SHOPPING CARTS

City Council will consider a request to adopt Ordinance 2003-0125, amending Avondale City Code, Chapter 15, Article V, relating to Shopping Carts and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. FINAL PLAT OF ENTRADA - PHASE 3 – APPLICATION PL-23-0154

City Council will consider a request to: (a) approve Application PL-23-0154, a request by Daniel Auxier with EPS Group Inc., on behalf of Meritage Homes of Arizona Inc., for approval of the Final Plat of Entrada - Phase 3 located generally north of Broadway Road and west of 107th Avenue; and (b) 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. SELECTION OF VICE MAYOR

City Council will accept nominations and designate one of its members as Vice Mayor for a two-year term. The Council will take appropriate action.

b. COUNCIL APPOINTMENTS TO REGIONAL AND LOCAL BOARDS, COMMISSIONS, AND COMMITTEES

City Council will consider a request to appoint members of the City Council to various regional and local boards and committees. The Council will take appropriate action.

c. RESOLUTION 1002-0125 - 2025 PUBLIC POLICY PRIORITIES FOR THE UPCOMING STATE AND FEDERAL LEGISLATIVE SESSIONS

City Council will consider a request to: a) adopt Resolution 1002-0125, adopting the 2025 Public Policy Priorities for the upcoming state and federal legislative sessions, b) authorize the City Manager or his designee(s) to act on such items; and c) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

6. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCILMEMBERS
(5 minutes)

7. ADJOURNMENT

Councilmembers 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.a.

SUBJECT: Installation of City Council

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

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

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

STRATEGIC PLAN:

n/a

PURPOSE:

The newly elected Mayor Mike Pineda and Councilmembers Jeannette Garcia, Gloria Solorio, and Shari Weise will take their Oaths of Office. This item is for discussion only.

BACKGROUND:

On July 30, 2024, the City of Avondale held a primary election and the following candidates were declared elected and issued Certificates of Election:

- Mike Pineda - Mayor
- Jeannette Garcia, Gloria Solorio, and Shari Weise - Councilmembers

DISCUSSION:

Mike Pineda will be sworn in as Mayor and Jeannette Garica, Gloria Solorio, and Shari Weise will be sworn in as Councilmembers. This item is for discussion only.

BUDGET IMPACT:

This item does not have a budget impact.

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution: n/a

ITEM NUMBER: 2.c.

SUBJECT: Recognition of Camp HERo Participants

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Larry Rooney, Fire Chief

THROUGH: Dale Nannenga, Deputy City Manager, (623) 333-1017

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Community-Oriented Lifelong Learning Opportunities - Avondale will continue to foster an environment where education is a defining value and learning opportunities abound for residents of all ages.
-

PURPOSE:

City Council will recognize the graduates of the 2024 Camp HERo program. This item is for discussion only.

BACKGROUND:

Avondale Fire and Medical hosted its first Camp HERo from November 15th to 17th. This hands-on camp was designed for high school girls interested in exploring careers in the fire service. Participants were introduced to the skills, challenges, and rewards of being a female firefighter through this unique and empowering experience.

DISCUSSION:

The City Council will recognize the graduates of the Camp HERo program: Makenna Gradski, Brooklyn Blocher, Sloan Giffin, Elin Melle, Esperana Acuna, Renee Nomee, Nayeli Mendoza, Brianna Herrera, Daisy Menghini, Scarlett Gallardo, Renata Campos, Madison Osborn, and Reese Bernier.

BUDGET IMPACT:

This item does not have a budget impact.

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution: n/a

ITEM NUMBER: 2.d.

SUBJECT: Information Technology Digital Cities and Solution Awards

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Jeff Scheetz, Chief Information Officer

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:

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

PURPOSE:

City Council will recognize and celebrate the City's recent achievements in receiving the prestigious Digital Cities Award and the Solutions Award. This item is for discussion only.

BACKGROUND:

The City has recently been recognized with two prestigious awards: the **Digital Cities Award** from the Center for Digital Government and the **Public Technology Institute (PTI) Solutions Award**. These national recognitions celebrate the City's leadership in leveraging technology to improve operations, enhance public services, and foster innovation across all departments.

DISCUSSION:

This achievement reflects the collective effort of the IT Department and all City departments, working collaboratively to implement innovative solutions that directly benefit our residents, businesses, and internal operations.

Digital Cities Award

The Digital Cities Survey evaluates cities nationwide based on their use of technology in key areas, including:

- **Citizen Engagement and Service Delivery:** Expanding access to services through digital platforms and tools.
- **Cybersecurity:** Strengthening protections to safeguard city operations and data.
- **Data-Driven Decision Making:** Leveraging analytics to guide policy and operational improvements.
- **Operational Efficiencies:** Streamlining workflows to optimize resources.

Public Technology Institute (PTI) Solutions Award

The PTI Solutions Award honors innovative technology initiatives that solve real-world challenges for local governments. The City's award-winning project(s) highlight:

- **Cross-Departmental Collaboration:** IT worked closely with departments across the City to develop and deploy solutions that address operational challenges and improve public service delivery.
- **Innovation:** Projects embraced modern technologies and creative problem-solving to deliver measurable results.
- **Community Impact:** Solutions were implemented with a focus on enhancing service quality, reliability, and accessibility for residents and businesses.

BUDGET IMPACT:

There is no budget impact.

RECOMMENDATION:

This item is for discussion only.

Contact person for document distribution:

ITEM NUMBER: 4.a.

SUBJECT: Minutes

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

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. The approval of this agenda item provides residents with access to a previous meeting's minutes. The meeting minutes provide another outlet for residents to connect with the City Council.

PURPOSE:

City Council will consider a request to approve the December 2, 2024 and December 16, 2024 City Council meeting minutes. The Council will take appropriate action.

BACKGROUND:

Pursuant to Arizona Revised Statute § 38-431.01(B), the City must provide written minutes of all City Council meetings.

DISCUSSION:

City Council held a meeting and the attached minutes have been prepared for approval.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

Staff recommends City Council approve the December 2, 2024 and December 16, 2024 City Council meeting minutes.

Contact person for document distribution: Chris Pierson

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
December 02, 2024

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened at 11465 West Civic Center Drive in open and public session at 5:30 p.m.

Mayor Mike Pineda led the Pledge of Allegiance, followed by a moment of silent reflection.

Members Present: Mayor Mike Pineda and Councilmembers Tina Conde*, Veronica Malone, Jeannette Garcia, Gloria Solorio, and Max White.

**Councilmember Tina Conde attended the meeting virtually.*

Members Absent: Vice Mayor Curties Nielson.

Other Municipal Officials Present: Ron Corbin, City Manager; Tracy Stevens, Assistant City Manager; Katie Gregory, Assistant City Manager; Dale Nannenga, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Sarmiento, City Clerk; Liz Barker Alvarez, Intergovernmental Affairs Administrator; Kirk Beaty, Public Works Director; Barbara Coppage, City Auditor; Jennifer Stein, Economic Development Services Director; Memo Espinoza, Police Chief; Joel Evans, Facilities Director; Corey Larriva, Parks and Recreation Director; Chris Lopez, Neighborhood and Family Services Director; Andy Mesquita, Human Resources Director; Kimberly Moon, Engineering Director; Mark Neerings, Assistant Chief Information Officer; Jodie Novak, Development Services Director; Larry Rooney, Fire Chief; Pier Simeri, Marketing and Public Relations Director; and Renee Weatherless, Finance and Budget Director.

Audience: Approximately fifty members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. PRESENTATION ITEMS (DISCUSSION ONLY)

a. EMPLOYEE ANNOUNCEMENTS

The City Manager presented an employee recognition, and the following new employees were presented to City Council. This item was for discussion only.

City Manager's Office

- Whitney Castro, Management Analyst

Finance and Budget Department

- Addison Dunlap, Accounting Specialist

Human Resources Department

- Angela Tolliver, Human Resources Analyst

b. RECOGNITION

City Council recognized the following 2024 outgoing Board and Commission Members for their dedicated service to the community. This item was for discussion only.

Planning Commission

- Denise Stanfield
- Linda Warren

Neighborhood & Family Services Commission

- Oliver Morrison

c. CITIZEN LEADERSHIP ACADEMY

The following 2024 Avondale Citizens Leadership Academy graduates were recognized for completion of the program. This item was for discussion only.

- | | |
|--------------------------|---------------------------|
| • Hector Arellano | • Timothy Kroll |
| • Stephen Bailey | • Crystal Lopez-Davey |
| • Timothy Barrett | • Mike Martin |
| • Rhonda Bell | • Suzanne Naylor |
| • Maria Carrillo | • Nica Pangilinan-Johnson |
| • Cynthia Ceasar | • Christina Perez |
| • Pamela Crow | • Lourdes Reveles |
| • Anthony Davidson | • Joanne Spina |
| • Cindy de la Riva | • Jessica Valdez |
| • Amanda Duncan-Billiman | • Kendra Vasquez |
| • Desiree Encinas | • Robin Velasquez |
| • Tanya Hanegan | |

3. UNSCHEDULED PUBLIC APPEARANCES

None.

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. Councilmembers may pull items from consent if they would like them considered separately.

Mayor Pineda asked if any Councilmember wished to have an item removed from the Consent Agenda. Councilmember White requested agenda item 4c be pulled from consent to be considered separately. Motion was made by Councilmember Malone, seconded by Councilmember White, to approve the Consent Agenda with the exception of agenda item 4c.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Mayor Pineda	Aye

a. MINUTES

City Council approved the November 4, 2024 City Council meeting minutes.

b. SERIES 12 (RESTAURANT) LIQUOR LICENSE - CALI TACOS

City Council recommended approval to the Arizona Department of Liquor License and Control of an application for a Series 12 (Restaurant) Liquor License submitted by Yajaira Berenice Loera for the sale of alcohol at Cali Tacos, located at 10220 W McDowell Rd #100 in Avondale and authorized the City Clerk to execute the necessary documents.

c. RESOLUTION 1109-1224 - AMENDMENT NUMBER 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR AMERICAN RESCUE PLAN FUNDING

This item was pulled from the consent agenda for further discussion. Item is listed below in more detail.

d. ORDINANCE 2034-1224 - AMENDING CITY CODE CHAPTER 2 - RELATED TO COMPOSITION OF ADMINISTRATIVE DEPARTMENTS AND OFFICES

City Council adopted Ordinance 2034-1224, amending Chapter 2 of the Avondale City Code related to the composition of Administrative Departments and Offices and authorized the Mayor or City Manager, City Attorney, and City Clerk to execute the necessary documents.

NOTE FROM THE CITY CLERK: THE FOLLOWING ITEM WAS PULLED FROM THE CONSENT AGENDA TO BE VOTED ON SEPARATELY:

c. RESOLUTION 1109-1224 - AMENDMENT NUMBER 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR AMERICAN RESCUE PLAN FUNDING

City Council considered a request to adopt Resolution 1109-1224, approving Amendment No. 2 to an Intergovernmental Agreement (IGA) between Maricopa County and the City of Avondale relating to the American Rescue Plan Act of 2021 funding (ARPA) for the construction of affordable housing and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Councilmember White noted the city will be receiving funding from the American Rescue Plan Act and requested the amount be officially recorded for transparency, especially to address concerns that may arise from discussions about affordable housing.

Chris Lopez, Director of Neighborhood and Family Services, provided an overview of the Intergovernmental Agreement with Maricopa County regarding the allocation of the \$2,750,000. The funds are intended to support housing projects that provide long-term affordability for residents. Specifically, the funds will contribute to Legacy Phase III, a project that continues the development of affordable homes sold to low-income families. This phase will add nine additional affordable units to the community.

Councilmember White moved to adopt Resolution 1109-1224, approving Amendment No. 2 to an Intergovernmental Agreement (IGA) between Maricopa County and the City of Avondale relating to the American Rescue Plan Act of 2021 funding (ARPA) for the construction of affordable housing and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents; Councilmember Malone seconded the motion.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Mayor Pineda	Aye

5. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCILMEMBERS

Mayor Pineda reported that during the week leading up to Thanksgiving, Mercy House provided food, clothing, and hygiene products to many individuals in the Cashion community. He also announced an upcoming fundraiser for Westside Recreation, which will raise funds to provide scholarships for Avondale students.

Councilmember Solorio, speaking on behalf of Councilmember Malone, shared that the Avondale Firefighter Charities is organizing a toy drive and encouraged all to participate by donating toys.

6. ADJOURNMENT

There being no further business before the Council, Councilmember Malone moved to adjourn the Regular Meeting into Executive Session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(3) and (A)(4), discussion with the City Attorney or attorneys for the City for legal advice concerning pending litigation and to instruct the City Attorney and attorneys

for the City on such litigation for the matter of Charles Montoya vs. City of Avondale, et al.; Councilmember Solorio seconded the motion.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Mayor Pineda	Aye

The meeting was adjourned at 6:25 p.m.

Mike Pineda, Mayor

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 2nd day of December 2024. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Sarmiento, City Clerk

Date Approved by City Council

MINUTES OF THE AVONDALE CITY COUNCIL
CITY OF AVONDALE, ARIZONA
CITY COUNCIL CHAMBER
December 16, 2024

A **Regular Meeting** of the City Council of the City of Avondale, Arizona was convened at 11465 West Civic Center Drive in open and public session at 5:31 p.m.

Mayor Mike Pineda led the Pledge of Allegiance, followed by a moment of silent reflection.

Members Present: Mayor Mike Pineda; Vice Mayor Curties Nielson; Councilmembers Tina Conde, Veronica Malone, Jeannette Garcia, Gloria Solorio, and Max White.

Members Absent: None.

Other Municipal Officials Present: Ron Corbin, City Manager; Tracy Stevens, Assistant City Manager; Katie Gregory, Assistant City Manager; Dale Nannenga, Deputy City Manager; Nicholle Harris, City Attorney; Marcella Sarmiento, City Clerk; Liz Barker Alvarez, Intergovernmental Affairs Administrator; Kirk Beaty, Public Works Director; Barbara Coppage, City Auditor; Jennifer Stein, Economic Development Services Director; Memo Espinoza, Police Chief; Julie Knoll; Deputy City Clerk; Craig Jennings, Judge; Corey Larriva, Parks and Recreation Director; Chris Lopez, Neighborhood and Family Services Director; Andy Mesquita, Human Resources Director; Kimberly Moon, Engineering Director; Jodie Novak, Development Services Director; Abril Ruiz-Ortega, Court Administrator; Larry Rooney, Fire Chief; Jeffrey Scheetz, Chief Information Officer; Pier Simeri, Marketing and Public Relations Director; and Renee Weatherless, Finance and Budget Director.

Audience: Approximately 100 members of the public were present.

1. ROLL CALL BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES

None.

3. CONSENT AGENDA

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

Mayor Pineda asked if any Councilmember wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Councilmember White, seconded by Councilmember Malone, to approve the Consent Agenda.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

a. MINUTES

City Council approved the November 18, 2024 City Council meeting minutes.

b. AMERICAN RESCUE PLAN ACT (ARPA) MODIFICATION

City Council modified the city's American Rescue Plan Act (ARPA) plan as summarized in the attached Exhibit A and facilitated the modification of the city's ARPA plan by authorizing Finance and Budget Department staff to take the steps necessary to execute the necessary budget transfers.

c. SETTLEMENT AGREEMENT AND PAYMENT FOR THE CLAIM OF DAENG PHONGSAVATH

City Council approved the settlement agreement with Daeng Phongsavath in the amount of \$110,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

d. RESOLUTION 1110-1224 - AUTHORIZING GRANT ACCEPTANCE FROM THE ARIZONA INTERNET CRIMES AGAINST CHILDREN TASK FORCE FOR THE PURCHASE OF EQUIPMENT

City Council a) adopted Resolution 1110-1224, authorizing a grant provided by the Arizona Internet Crimes Against Children Task Force in the amount of \$800, to purchase equipment which will support the Police Department's investigations related to Internet crimes against children of a sexual nature and authorized and directed staff to take all steps necessary to cause the execution of the Agreement; b) take all the steps necessary to carry out the purpose and intent of this Resolution; and c) authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

e. RESOLUTION 1111-1224 - AGREEMENT WITH THE STATE OF ARIZONA FOR THE PARTICIPATION IN THE EXCESS PROPERTY (1033) PROGRAM

City Council adopted Resolution 1111-1224, authorizing an agreement with the State of Arizona to authorize the Avondale Police Department to participate in the Federal Excess Property (1033) Program and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

f. RESOLUTION 1112-1224 - AUTHORIZING THE EXTENSION OF THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT FOR THE HEALTHY FOREST INITIATIVE GRANT

City Council adopted Resolution 1112-1224, approving the extension of the Intergovernmental Agreement with the Arizona Department of Forestry and Fire Management for the Healthy Forest Initiative Grant and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

g. ORDINANCE 2035-1224 - AUTHORIZING THE SALE AND ISSUANCE OF CITY OF AVONDALE, GENERAL OBLIGATION BONDS, SERIES 2025

City Council a) adopted Ordinance 2035-1224, approving the sale, execution, and delivery of General Obligation bonds; approving the form and authorizing the execution and delivery of agreements necessary for such sale; delegating authority to determine certain matters and terms with respect to the foregoing and declaring an emergency; and b) authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

h. ORDINANCE 2036-1224 - AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM GREAT LAKE FUNDING I TRUST

City Council adopted Ordinance 2036-1224, authorizing the purchase of property located at 518 E Western Avenue, Avondale, AZ 85323, from Great Lake Funding I Trust in the amount of \$1,150,000 and authorized the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

4. PRESENTATION ITEMS

a. PROCLAMATION - RECOGNITION OF COUNCILMEMBER VERONICA MALONE

City Council recognized Councilmember Veronica Malone for her service as a member of the Avondale City Council from 2017 - 2024 and present a Certificate of Appreciation to Terrance Malone for his unselfish "behind the scenes" service to the City of Avondale. This item was for discussion only.

b. PROCLAMATION- RECOGNITION OF MAYOR KENNETH WEISE

City Council recognized prior Mayor Kenneth Weise for his service as a member of the Avondale City Council from 2006 - 2024 and present a Certificate of

Appreciation to Shari Weise for her unselfish "behind the scenes" service to the City of Avondale. This item was for discussion only.

5. SUMMARY OF CURRENT EVENTS FROM MAYOR, VICE MAYOR, AND COUNCILMEMBERS

Councilmember Garcia shared her experience at the Newly Elected Officials training. She noted her attendance at several community events to include Shop with A Cop event, Pepe's West Side Recreational Holiday Party, and the Cashion for Love Holiday Party.

Councilmember Malone reported the new tactical truck drives beautifully and shared her enjoyment of the Shop with A Cop event. In conclusion, she stated she will miss everyone but will remain in contact.

6. RECESS INTO EXECUTIVE SESSION

Councilmember White moved to recess the Regular Meeting and held an Executive Session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(3) and (A)(4), discussion with the City Attorney or attorneys for the City for legal advice and to consider its positions on the Purchase and Sale agreement with Diversified Partners, LLC and to instruct the City Attorney and attorneys for the City on such contract negotiations, contemplated litigation and settlement offers in order to avoid litigation and (ii) Ariz. Rev. Stat. § 38--431.03(A)(1) for discussion of the mid-year performance evaluation and salary of the City Auditor; Councilmember Solorio seconded the motion.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

City Council recessed the Regular Meeting at 7:24 p.m.

City Council reconvened the Regular Meeting at 8:21 p.m.

7. REGULAR AGENDA

a. TERMINATION AGREEMENT AND MUTUAL RELEASE WITH DIVERSIFIED PARTNERS, LLC

Councilmember Malone moved to approved the Termination Agreement and Mutual Release with Diversified Partners, LLC in the amount of \$75,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.; Councilmember Garica seconded the motion.

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

8. ADJOURNMENT

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

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

Councilmember Conde	Aye
Councilmember Malone	Aye
Councilmember Garcia	Aye
Councilmember Solorio	Aye
Councilmember White	Aye
Vice Mayor Nielson	Aye
Mayor Pineda	Aye

The meeting was adjourned at 8:23 p.m.

Mike Pineda, Mayor

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 16th day of December. I further certify that the meeting was duly called and held, and that the quorum was present.

Marcella Sarmiento, City Clerk

Date Approved by City Council

ITEM NUMBER: 4.b.

SUBJECT: Appointment of Chair and Vice Chair to the Planning Commission and Board of Adjustment

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

THROUGH: Tracy Stevens, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the Connected Community Strategic Outcome Area. Avondale will work directly and closely with our communities to develop programs and infrastructure that connect residents to the city's resources, the region, and each other. The Board & Commission program was created to expand community engagement opportunities for residents.

PURPOSE:

City Council will consider a request to: (a) appoint Larry White as the Chair of the Planning Commission and Alex McBurney as the Vice Chair of the Planning Commission for the remainder of the 2025 calendar year; and (b) appoint LaChrisha Dourisseau as the Chair of the Board of Adjustment and Kenneth Shoaff as the Vice Chair of the Board of Adjustment for the 2025 calendar year and authorize the City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

For the Planning Commission, Larry White is currently serving as the Chair and Julia Jewell is currently serving as the Vice Chair. For the Board of Adjustment, the Chair seat is currently vacant and Kenneth Shoaff is currently serving as the Vice Chair. Although appointed, the members of the Board of Adjustment have not held a meeting in the past year as the board meets on an as-needed basis.

DISCUSSION:

The Bylaws for the Planning Commission and the Board of Adjustment require that the Council appoint the Chair and Vice Chair for these bodies. Each year, staff recommends members to serve in these positions for the upcoming year. This year's recommendations are as follows:

Planning Commission

Chair – Larry White
Vice Chair – Alex McBurney

Board of Adjustment

Chair - LaChrisha Dourisseau
Vice Chair – Kenneth Shoaff

The members will serve in these positions for all of 2025.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDATION:

Staff is recommending approval of staff's recommendations for appointment of members to serve as Chair and Vice Chair of the Planning Commission and the Board of Adjustment for all of 2025.

Contact person for document distribution: Catherine Lorbeer, Deputy Director of Planning

ITEM NUMBER: 4.c.

SUBJECT: Wired Telecommunications License and Right-of-Way Use Agreement with Summit Infrastructure Group, LLC

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Kimberly Moon, Director, Engineering Department

THROUGH: Katie Gregory, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

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

PURPOSE:

City Council will consider a request to approve a new Wired Telecommunications License and Right-of-Way Use Agreement with Summit Infrastructure Group, LLC, to allow the placement of fiber telecommunication infrastructure in the 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 the appropriate action.

BACKGROUND:

Summit Infrastructure Group, LLC (Summit), provides telecommunications services used for high-speed or large corporations. With the recent West Valley expansion, Summit desires to install and construct fiber telecommunication infrastructure within the City's right-of-way to provide telecommunications services to businesses within the region. This is part of a currently planned project Summit has to install infrastructure within Avondale along with other West Valley Cities.

DISCUSSION:

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

Allow Summit to occupy the City right-of-way (ROW) with conduit and fiber, as well as lease fiber and telecommunication services to businesses in the West Valley.

- Allow for the possibility of the City to receive and use in-kind dark fiber from Summit for City purposes.
- Require Summit to provide as-built drawings of any conduit located within the ROW to the City electronically in a format compatible with our GIS system.

Summit shall be responsible for installing, operating, maintaining and repairing cable containing bundles of multiple optical fibers within the City's ROW subject to the requirements of this Agreement. The Agreement includes performance bond and security fund requirements that must be met by Summit to guarantee that they observe, fulfill and perform all terms of the Agreement.

Standard insurance requirements are outlined as well. City staff is planning to work with Summit to help add to the City's fiber resources. The initial term of the agreement is five (5) years, with an automatic renewal term for up to three (3) additional five (5) year periods.

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 that the City Council approve a new Wired Telecommunications License and Right-of-Way Use Agreement with Summit Infrastructure Group, LLC, to allow the placement of fiber telecommunication infrastructure in the 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: Kimberly Moon, Elisabeth Kahn, Jonathan Almanza, Barbara Cason

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 October, 2024 by and between the City of Avondale, an Arizona municipal corporation ("City" or "Licensor") and Summit Infrastructure Group, LLC, a Virginia limited liability company ("Licensee").

RECITALS

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

WHEREAS, Licensee has obtained a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("ACC") to provide telecommunications services within Arizona;

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 47 CFR § 76.5. Cable Services is not a Telecommunications Service.

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

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

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

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

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

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

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

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

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

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

AGREEMENT

1. LICENSE: TERM

1.1. **License; Route.** The City hereby grants to Licensee a non-exclusive, revocable license to use the designated portion of the ROW ("Route") subject to and conditioned upon Licensee's full, timely, complete, and faithful performance of all obligations required under this Agreement. Such use of the Route will be for the sole purpose of operating and maintaining a wired network as described in this Agreement. The Route will be occupied by Licensee's Conduit System, Fiber Optic Network, plant, equipment, and property used in the provision of communication and Telecommunication Services, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW (collectively, the "Licensee's Facilities") and is as reflected on the map (*i.e.* use area) in **Exhibit A**, herein incorporated by this reference. For the avoidance of doubt, under no circumstances shall the Route include any other property other than the ROW. Licensee may request modification or expansion of the Route by submitting all required permits for construction to the City. Any modifications or expansions to the Route shall be governed by the terms and conditions of this Agreement and must be approved in writing by the City in its sole discretion. Any modifications or expansions shall become part of the Route. Licensee shall not use any portion of the ROW that is abandoned by the City or removed from the City's legal boundaries or for any purpose other than that expressly stated in this Agreement.

1.2. **Term; Effective Date.** This Agreement is effective the date the last party signs ("Effective Date") and shall remain in effect for five (5) years from the Effective Date ("Term"), unless sooner terminated. No provision of this Agreement may be construed to grant any automatic extension, renewal, or replacement thereof.

1.2.1. **Holdover.** If Licensee's Facilities remain in the Route, and Licensee continues to use such Licensee's Facilities beyond the expiration of the Term, the Agreement shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed sixty (60) days

beyond the expiration of the Term, and no permits will be issued to Licensee by the City until a new license agreement has been approved by the City Council.

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

Upon completion of new or relocation construction of Licensee's Facilities in the Route, Licensee shall create and maintain precise, up-to-date maps of any of Licensee's Facilities and the Route using as-builts in pdf and AutoCAD and will make this information available to the City at least annually, or upon request of the City. The information provided by Licensee under this Section will be accurate to the best of Licensee's knowledge. Licensee shall make commercially reasonable efforts 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 accordance with industry, professional, state and federal mandated standards.
- 2.2. Liability for Licensee's Work. For purposes of this Agreement, whenever work is done in the ROW or adjacent to the ROW as part of any work Licensee is performing in the ROW, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all persons, firms, partnerships, corporations, associations or other organization, or a combination of any of them, including any subcontractor hired and/ or used by Licensee, that performs services or provides goods relating to this Agreement and that the obligations of this Agreement are imposed on both Licensee and any of Licensee's contractors (and any subcontractors used thereunder), who will be considered Licensee's representatives and for whom Licensee will be responsible.

- 2.3. Licensee shall ensure that Licensee and its employees, agents, contractors, and representatives comply with all ROW use requirements, including, but not limited to, the following:
- 2.3.1. Licensee shall ensure that Licensee's Facilities are constructed, installed, operated, repaired, and/or maintained in accordance with the Avondale City Code and established practices with respect to the ROW, including, but not limited to, obtaining the proper permits prior to commencing any work and following all terms and conditions of such permits.
 - 2.3.2. Licensee's use of the ROW shall be according to plans approved by the City Engineer, provided that such approval of plans shall not be unreasonably withheld or delayed.
 - 2.3.3. Licensee's Facilities to be constructed, installed, operated, maintained, repaired, upgraded, and/or removed shall be located or relocated as to interfere as little as possible with traffic or other authorized uses within the ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, paving, and/or location or relocation of Licensee's Facilities shall be subject to regulation by the City Engineer.
 - 2.3.4. Provided such guidelines complies with State and Federal law, the City may issue reasonable policy guidelines to all licensees/permittees with Telecommunications Services and Right-of-Way Access Agreements to establish procedures for determining how to control the issuance of engineering permits to multiple licensees/permittees for the same one-mile segments of the ROW. Licensee agrees to cooperate with the City in establishing such policies with procedures established by the City Manager or their designee to coordinate the issuance of multiple engineering permits in the same one-mile segments of the ROW.
 - 2.3.5. Licensee and its employees, agents, contractors, and representatives are subject to the City's exercise of its police, regulatory, and other powers as the City now has or may later obtain to the same extent that such police, regulatory, and other powers are applied to all telecommunications and/or fiber occupants/users of the ROW, 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 to the extent that such stipulations are applied to all telecommunications and/or fiber occupants/users of the ROW.
- 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, but not be limited to, concrete manholes, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, Fiber Optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Licensee and/or its contractors shall install any new Conduit and access points (e.g. manholes, pull boxes) using industry standard practices and in full compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the City's supplements to MAG, and the City's General Engineering Requirement Manual ("GER").
 - 2.9.1. Aerial Facilities. In accordance with the GER, Licensee may place Fiber Optic Cables above ground along the Route where there are existing aerial/aboveground facilities. If such existing aerial/aboveground facilities are subsequently relocated underground, Licensee shall relocate its then-existing aerial/aboveground Fiber Optic Cables underground in those locations and locate any new Fiber Optic Cables underground in those locations.

- 2.10. Written Approval for Changes. Licensee shall obtain written approval from the City Engineer or their designee if Licensee desires to change any components of any Licensee's Facilities, which shall not be unreasonably withheld, delayed, or denied.
- 2.11. Work Restrictions/Requirements. Licensee shall comply with and ensure that its contractors comply with the City of Avondale Temporary Work Zone Traffic Management Policy ("Avondale Work Zone Policy"), as amended from time to time, herein incorporated by this reference. All of Licensee's work under this Agreement shall follow the Avondale Work Policy, which includes, but is not limited to, defined road types, allowable hours of work and holiday/event restrictions, and other work requirements and restrictions. The City will provide the Avondale Work Policy as requested and may be found on the City of Avondale website.
- 2.12. Right to Inspect. The City shall have the right, but not the obligation, to inspect all construction and/or installation work performed subject to the provisions of this Agreement and to make such tests as the City deems necessary to meet the City's standards, the Avondale Work Policy, the MAG Uniform Standard Specifications and Standard Details for Public Works Construction, and any and all applicable City supplements thereto.
- 2.13. Common Installations. Licensee shall reasonably coordinate the installation of Licensee's Facilities with other utilities and the City to accommodate opportunities for common installation. Nothing herein shall require Licensee to incur any material additional expense to accommodate common installations.
- 2.14. Boring; Street Openings. Although the exact placement and location of Licensee's Facilities shall be determined by the City through the permitting process, Licensee has expressed its intent and the City has expressed its desire to have such Licensee's Facilities installed outside of the paved street area whenever such location is feasible and reasonable. If Licensee intends to place Licensee's Facilities by directional boring under such streets when feasible and reasonable, said proposed 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 maintaining 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 ten (10) business days following completion of Licensee's work which necessitated such opening or alteration, subject to weather permitting, except heat shall not preclude restoration, and other force majeure events. Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or Licensee's contractors (and any subcontractors used thereunder) to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.
- 2.18. Restoration. After any work, installation, repair, maintenance, replacement, or relocation work performed in the Route, Licensee shall restore all disturbed areas of the Route, affected ROW, and any affected surrounding property to the same condition or better that existed immediately prior to the commencement of the installation, repair, maintenance, replacement or relocation work. Such restoration includes, but is not limited to, repairing and/or replacing to the City's standards, rules, and policies (as amended from time to time) all pavement, sidewalks, curbs, landscaping, or other City improvements that may be disturbed or damaged by Licensee's activities or work under this Agreement.
- 2.19. Clean; Removal of Debris. Licensee and/or its contractors shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site, the Route, and the ROW in a safe, neat, and clean condition.
- 2.20. Safety. Licensee and its contractors shall be solely and completely responsible for the conditions of any job site, including safety of all individuals (including employees) and property, during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. The safety provisions herein shall conform to all applicable federal (including OSHA), state, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the stricter requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 2.21. Traffic Control. Licensee shall comply with the following traffic control requirements:
- 2.21.1. Licensee's traffic control shall comply with the City of Avondale Temporary Work Zone Traffic Management Policy, herein incorporated by this reference. Licensee shall follow the guidelines contained in the latest editions of the Manual on Uniform Traffic Control Devices ("MUTCD"), herein incorporated by this reference, and the City of Phoenix Traffic Barricade Manual, herein incorporated by this reference. Licensee shall additionally comply with any special provisions herein.

- 2.21.2. At the time of the pre-construction conference, Licensee or its subcontractors 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. If pedestrian access is not able to be maintained, Licensee and City will identify most suitable alternative path so as not to impede public access to pedestrian areas for prolonged periods of time.
- 2.22. Arizona 811. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with ARIZ. REV. STAT §§ 40-360.21 through 40-360.32 and participate as a member of Arizona 811 with the necessary records and persons to provide location service of Licensee's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the agreement or proof of membership shall be filed

with the City Engineer.

- 2.23. Compliance with Laws. Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, the Avondale City Code, Arizona law, and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Licensee to comply with any law or regulation of the Federal Communications Commission ("FCC") or the Arizona Corporation Commission ("ACC") to engage in the business activities anticipated by this Agreement, Licensee shall comply with such laws or regulations.

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, provided that the exercise of such right will not require any of Licensee's existing Facilities to be unreasonably interfered with or relocated except as expressly required herein.
- 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, on a non-discriminatory basis and at no expense to the City, to remove, relocate, or abandon in place Licensee's Facilities in order to accommodate the activities of the City. The City shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee's Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW,

provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

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

- 3.8. Third-Party Contracts. Licensee may enter into contracts with third-parties ("ROW Users") in the ordinary course of Licensee's business for use of Licensee's Facilities within the Route, subject to this Agreement. Such contracts ("User Contracts") are subject to all terms and conditions of this Agreement, including, but not limited to, the following:
- 3.8.1. No ROW User shall transmit data over Licensee's Fiber Optic Network, use Licensee's Facilities, or use the Route for any purpose, except under a User Contract with Licensee; and
- 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.
- 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 the number of linear feet of trench of the 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, provided that in no event shall multiple Annual Fee Payments be due for any given linear foot of trench containing a mix of the foregoing Facilities, Conduit and/or Dark Fiber.
- 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. 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 annual 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").
 - 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.
- 4.4. Appropriate Taxes. Licensee shall pay any applicable city, county and state transaction privilege and use taxes. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this Section.
- 4.5. Permit Fee Payment Amount. Licensee shall pay all applicable construction permit fees, including, but not limited to, charges for encroachment permit applications, issuance, inspection, testing, plan review, and any other fees adopted by the City and applicable to persons doing work or encroaching in the ROW.
- 4.6. Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st following the completion of the first anniversary of the Commencement Date. 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; provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, the City shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by the City in the City's reasonable discretion. Any delayed adjustment shall be effective retroactively.
- 4.7. Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.
- 4.8. Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all Fee Payment on the following schedule:
- 4.8.1. Licensee shall pay Annual Fee Payment by the anniversary date of each year of this Agreement.
- 4.8.2. Licensee shall pay Permit Fee Payment at the times and in the amounts specified by the City's normal processes for permitting, including, but not limited to, construction permits, encroachments, issuances, inspections, testing, plan review, and other processes applicable to persons doing work or encroaching in the ROW.
- 4.8.3. All other Fee Payment shall be payable quarterly in arrears on the last calendar day of the first month of the next calendar quarter. For example, the Violation Fee

Payment for the first calendar quarter of a year shall be payable on or before April 30.

- 4.9. Fee Payment Amount Report. Each installment of Fee Payment by Licensee, other than Permit Fee Payment, shall include a report showing the manner in which each component of the Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment.
- 4.10. Damage Fees. Licensee shall pay all reasonable costs associated with any damage caused by Licensee or its subcontractors, employees, or agents to the ROW or other public property.
- 4.11. Violation Fee Payment. During the Term of this Agreement, the City may suffer certain money damages in the form of administrative cost and inconvenience, disharmony among Competing Activities, and general inconvenience in ROW use by the City, Competing Activities, and the public as a result of an uncured violation of this Agreement by Licensee ("Inconvenience Costs"). Assessing the actual damages for these Inconvenience Costs may be impracticable to determine. In lieu of paying the actual damages for these Inconvenience Costs, the City may assess Violation Fee Payments against Licensee to cover the damages that caused the Inconvenience Costs and is as described in Section 4.11.1. The Violation Fee Payments will be assessed with the processes described in Section 4.11.2. The Violation Fee Payments are only intended to remedy the Inconvenience Costs that the City suffers. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way the City's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment. Provided however, that if the City determines to exercise any other legal or equitable remedy provided by this Agreement or otherwise, City may not, in addition to such remedy, assess a Violation Fee Payment. Except for any failure to properly restore the public ROW under 4.11.1.1, or other violation of this Agreement by Licensee that in the City's sole determination may impact the health, safety, or welfare of the public, City shall use reasonable efforts to notify Licensee of any violation of this Agreement and permit Licensee an opportunity to cure such violation in accordance with the applicable cure period in this Agreement or as otherwise agreed by City.
 - 4.11.1. The Violation Fee Payments per calendar day or part thereof are as follows:
 - 4.11.1.1. The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after the City's notice to correct such defects except where such curative efforts by Licensee are precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.

- 4.11.1.2. Following a ten (10) day notice to cure, the amount of Two Hundred Fifty Dollars (\$250.00) per calendar day for each failure to make Licensee's books and records available as required by this Agreement.
 - 4.11.1.3. The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this Agreement.
 - 4.11.1.4. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee in violation of this Agreement that causes Inconvenience Costs and that is not cured after three (3) calendar days' notice.
- 4.11.2. Process for assess a Violation Fee Payment:
- 4.11.2.1. If the City determines that Licensee is liable for Violation Fee Payment, then the City shall issue to Licensee a notice of the City's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.
 - 4.11.2.2. Licensee shall have thirty (30) calendar days after the notice to pay the Violation Fee Payment or give Licenser notice contesting the assertion of noncompliance.
 - 4.11.2.3. If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.
- 4.11.3. Except as may be expressly stated in this Section 4, no cure period applies to the accrual of Violation Fee Payment.
- 4.11.4. Licensee may elect to draw upon the letter of credit to collect an unpaid 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 thirty (30) calendar days after the Effective Date and after 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) 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) 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) calendar 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 relevant documentation and relevant books and records for the City's inspection, to the extent reasonably necessary to confirm compliance with this Agreement, including proper payment of all fees under this Section 4. Such documentation can include information on the type of services Licensee is offering its customers (but not information disclosing any particular service being provided to a specific customer, and/or any customer identifying information) and/or the financial information used in calculating any payments or taxes/fees due to the City under this Agreement.
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, and if Licensee does not pay such actual relocation costs within thirty (30) days, the City may draw 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. GOVERNINGLAW

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 third-party 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 for the applicable statute of limitations period. 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. 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, provided that any changes to the requirements hereunder shall only be made via written amendment to this Agreement.

12.3. Proof of Insurance - Certificates of Insurance.

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

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

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

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

With copy to:

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

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

12.4. Required Coverage. Such insurance shall protect Licensee from claims set forth below that may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by Licensee or by anyone directly employed by Licensee. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 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. Licensee shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of a Contract, the City, its agents, representatives,

officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

12.6. Worker's Compensation and Employer's Liability. If Licensee employs anyone who is required by law to be covered by workers' compensation insurance, Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee's employees engaged in the performance of work or services under a Contract and shall also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

12.7. Automobile Liability. Licensee shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Licensee's owned, hired and non-owned vehicles assigned to or used in the performance of the Licensee's work or services under a Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of the Contract, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. The City reserves the right to require additional insurance coverages and/or increase any minimum coverages herein at any time with written notice to Licensee.

13. **LIMITATION OF LIABILITY**

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

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

13.3. Licensee shall assume the risk of, and hereby relinquishes any claim against the City in connection with any final, non-appealable determination by a court of competent

jurisdiction that the City lacked the current statutory authority under Arizona law to issue this Agreement.

14. **WARRANTY**

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

15. **SURVIVAL OF LIABILITY**

All obligations of Licensee and the City hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement through the applicable statute of limitations period.

16. **PUBLIC EMERGENCY**

- 16.1. The City shall have the right, because of a public emergency, to sever, disrupt, relocate, remove, tear out, dig-up or otherwise damage and/or destroy Licensee's Facilities of without any prior notice to Licensee, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, Public Works Director, or their designees. In such event, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), or Licensee's customers for any harm so caused to them or Licensee's Facilities. To the extent possible under the circumstances, City will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform Licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of Licensee's Facilities damaged pursuant to any such action taken by City related to the public emergency.
- 16.2. If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other City improvements or activities within or outside of the Route, or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety, and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the City's request to secure the route area, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment.
- 16.3. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), Licensee's customers, or other third parties for any harm so caused to them by

the reasonable actions of the City or its agents, contractors or employees in reasonably responding to such public emergency. Where possible, the City will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or Licensee's Facilities involved.

17. NOTICE

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

THE CITY

City of Avondale
Attn: City Engineer
11465 W. Civic Center Drive
Avondale, AZ 85374
Phone: (623)222-6150
Fax: (623) 222-6001

LICENSEE

Summit Infrastructure Group, LLC
Jason Kaufman, VP
Business Development
22365 Broderick Dr., Suite 250
Sterling, VA 20166
Tel: (703) 376-3700

With copy to:

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

With a copy to:

Summit Infrastructure Group, LLC
Attn: General Counsel
22365 Broderick Dr., Suite 205
Sterling, VA 20166
Email: legal@summitig.com

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

18. TRANSFERABILITY OF LICENSE

- 18.1. This Agreement is personal to Licensee and therefore the rights, privileges and license granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold, conveyed or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Licensee, either by act of Licensee or operation of law, without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, Licensee shall seek the consent of the

City to the proposed transfer. Approval by the City to a transfer does not constitute a waiver or release of any of the rights of the City under the Avondale Municipal Code or this Agreement, whether arising before or after the date of transfer.

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

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 855-776-6515 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. Licensee may seek appropriate confidentiality protections for any information to be produced to City. 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.

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

City of Avondale

Licensee: Summit Infrastructure Group, LLC

By: _____

By: Sunny Kumar

Its: _____

Its: Chief Executive Officer

Date: _____

Date: 11/15/2024

EXHIBIT A - The Route Map/Use Area

See Appendix A
to
Licensee Application
Submitted September 5, 2024

ITEM NUMBER: 4.d.

SUBJECT: Resolution 1001-0125 - Amendment No. 2 to the Intergovernmental Agreement with Maricopa County Human Services Department for the CSBG Service Initiative Adding County General Funds

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Chris Lopez, Neighborhood and Family Services 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:

- Public Health and Safety - Avondale is a city where all people feel safe and secure, relying on trusted public and community-based resources. This agreement will serve to establish safe and healthy housing with support services for Avondale families experiencing homelessness.
-

PURPOSE:

City Council will consider a request to adopt Resolution 1001-0125, approving an amendment to the Intergovernmental Agreement with Maricopa County Human Services Department to add County General Funds to support the City's Temporary Shelter Services Initiative to provide long-term case management and shelter for families experiencing homelessness and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

In January 2023, A New Leaf was awarded a contract for \$62,500 to fund a position to provide Family Navigation Services for Avondale families experiencing homelessness.

On August 21, 2023, the City Council approved a resolution authorizing an Intergovernmental Agreement between the City of Avondale and the Maricopa County Human Services Department to continue Family Housing Navigation Services through a \$62,500 agreement to A New Leaf, replacing a previous agreement and ensuring services through December 2024.

On December 18, 2023, City Council approved Resolution 1082-1223 and entered an Intergovernmental Agreement with Maricopa County Human Services Department for \$62,500 to expand a partnership with A New Leaf, adding a part-time caseworker and the ability to provide safe temporary housing in the form of motel and hotel vouchers for families experiencing homelessness.

On June 16, 2024, City Council approved an amendment to the Intergovernmental Agreement with Maricopa County Human Services Department to extend the agreement term from July 1, 2024, through June 30, 2025, for \$75,000 to support the City's Temporary Shelter Services Initiative to provide long-term case management and shelter for families experiencing homelessness.

DISCUSSION:

Staff seek to amend the agreement with the Maricopa County Human Services Department to add \$100,000 of County General Funds for the City's work to serve those experiencing homelessness and expand services specifically for families experiencing homelessness. The funding provided by the Maricopa County Human Services Department will allow the City of Avondale - Neighborhood and Family Services Department to expand the following elements of homeless services:

- Caseworker - The amendment will add funding to increase this position, currently part-time, to a full-time position. This will increase the capacity to assist families resolve their homelessness and connect to services.
- Temporary Safe Shelter for Families - The amendment expands funding from \$37,534 to \$69,134 for safe temporary housing in the form of hotel and motel vouchers. The additional funds expand capacity both for the number of families to be served and the length of time each family may be served.
- Flex Funding - The amendment adds \$29,068.76 in flexible funding. Flex funding is low-barrier funds that may be used to remove barriers to stable housing. Flex Funds may be used for, but not limited to: rent and utility deposits, storage facility rental, transportation and vehicle repairs, and basic needs.

The County shall provide funding to the City of Avondale for service delivery. The funding for services shall be on a reimbursement basis to the City.

BUDGET IMPACT:

The total funding provided by Maricopa County for FY25 is \$175,000 to provide case management and safe temporary shelter for families experiencing homelessness in Avondale. A grant match is included in the FY2025 budget for the CSBG portion of the funds, \$75,000. There is no match required for the \$100,000 added through this amendment.

RECOMMENDATION:

Staff recommends that City Council adopt a Resolution approving an Amendment to the Intergovernmental Agreement with Maricopa County Human Services Department for \$100,000 to support the City's Temporary Shelter Services Initiative to provide long-term case management and shelter for families experiencing homelessness.

Contact person for document distribution: Brian Planty

RESOLUTION NO. 1001-0125

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AMENDMENT NO. 2 TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE CITY'S TEMPORARY SHELTER SERVICES INITIATIVE.

WHEREAS, The City of Avondale (the "City") and Maricopa County (the "County"), and entered into an Intergovernmental Agreement (the "Agreement"), dated on or about December 28, 2023, for the County to provide \$62,500 in Community Services Block Grant ("CSBG") funding to assist with the City's Temporary Shelter Services Initiative;

WHEREAS, the City and County entered into Amendment No. 1 to the Agreement, on or about June 26, 2024, to extend the term of the Agreement until June 30, 2025 and provide \$75,000 in additional CSBG funding for fiscal year 2024-25;

WHEREAS, the City and County wish to enter into Amendment No. 2 to the Agreement, to provide an additional \$100,000 in funding; for a total of \$175,000 in funding for fiscal year 2024-25.

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

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

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in an amount not to exceed \$175,000.00; (ii) the expenditure of a City match in an amount not to exceed \$46,356; and (iii) the execution of the amendment between the County and the City relating to acceptance and administration of the Grant (the "Amendment") in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit the Amendment and any other necessary or desirable instruments in connection with the Grant and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
January 6, 2025.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1001-0125

[Amendment]

See following pages.

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

- I. Maricopa County ("County"), administered by its Human Services Department, and the City of Avondale, ("Subrecipient") entered into a financial Intergovernmental Agreement ("Agreement"), which was fully executed on or about December 28, 2023. The purpose of the Agreement is to support the City of Avondale's Temporary Shelter Services Initiative (the "Initiative") to provide a long-term case management program with emphasis on addressing housing instability for families experiencing homelessness. The Agreement term is December 1, 2023, through June 30, 2024. The County provided the Subrecipient with \$62,500 in Community Services Block Grant (CSBG) Funds under Assistance Listing Number (ALN) 93.569 provided to the County through an Intergovernmental Agreement with Arizona Department of Economic Security (ADES) for Initiative activities. The County and the Subrecipient collectively are referred to as the "Parties."

The Parties fully executed Amendment No. 1 on or about June 26, 2024. The Amendment extended the Agreement through June 30, 2025, and provided funds for fiscal year 2025 (FY25), in the amount of \$75,000 in CSBG funds, through and Agreement with ADES. The period of funding availability is from July 1, 2024, through June 30, 2025. The Amendment also updated Agreement required clauses.

- II. The Parties agree to enter into this Amendment No. 2 to amend the Agreement as follows:

- A. Revise Paragraph 5.0 (Administrative Change Orders), by removing it in its entirety and replacing with the following:

5.0 ADMINISTRATIVE CHANGE ORDERS

- 5.1 The Chairman of the Board of Supervisors is authorized, upon the recommendation of the Human Services Department Director and Legal Counsel, to review and execute administrative changes to the Agreement on behalf of the County through Administrative Change Orders. Administrative Change Orders will be effective upon execution by both the Parties. Administrative Change Orders shall address any of the following changes:

- 5.1.1 Modifications to the project timeline if the last day of the project timeline is within the Agreement term;
- 5.1.2 Modifications to Budget line items if the Agreement Amount remains unchanged;
- 5.1.3 Modifications required by federal, state, or County regulations, ordinances, or policies; and/or
- 5.1.4 Modifications to Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by the federal, state or local regulations, policies, or requirements.

- B. Revise Paragraph 6 (Funding) and attached Operating Budget by removing in its entirety and replacing with the attached Operating Budget. The County shall provide the Subrecipient with a not to exceed amount of \$175,000 (\$100,000 in County General Funds and \$75,000 in funds provided to the County through an IGA with ADES). The funding period of availability is July 1, 2024, through June 30, 2025, Fiscal Year 2025 (FY25).
- C. Revise Paragraph 13.0 (Notices) for Maricopa County Representative and replace it with the following:
- Maricopa County Representative:
Human Services Department
Community Resilience Division
Siman Qassim, Assistant Director
234 N. Central Avenue, 3rd Floor
Phoenix, AZ 85004
602-506-4841
Siman.Qaasim@maricopa.gov
- D. Revise paragraph 54.0 (Administrative Requirements) to remove subparagraph 54.3.2 and replace it in its entirety with the following:
- 54.3.2 The Subrecipient shall each have a valid Unique Entity Identifier (UEI) number and an active profile in the federal System for Award Management, or [SAM.gov](https://sam.gov). Documentation of the UEI Number must be included in all project files. The Subrecipient must remain current with their registration throughout the term of the Agreement. Contractors and subcontractors will not receive a subaward until that entity has provided its UEI number. 2 C.F.R. § 25.300; Appendix A to 2 C.F.R. § 25
- E. Add the following paragraphs to the Agreements:
- 58.0 ACRONYMS AND DEFINITIONS**
Acronyms and Definitions found under 2 C.F.R. §§ 200.0 & 200.1 are hereby incorporated by reference.
- 59.0 CASH MATCH/LEVERAGE REQUIREMENTS**
- 59.1 The Subrecipient is required to leverage a minimum 25% cash match of the total Agreement award, to support administration and operating costs in the delivery of program services.
- 59.2 Subrecipient shall provide information regarding the revenue sources and amounts of cash match contributions.
- III. Section II above contains all the changes to the Agreement made by this Amendment No. 2. The Agreement is amended to incorporate the changes contained in this Amendment No. 2. All other terms and conditions of the Agreement remain in full force and effect as executed by the Parties. This Amendment No. 2 is subject to and incorporates the provisions of A.R.S. § 38-511.
- IV. The Parties have authorized the undersigned to execute this Amendment No. 2 on their behalf and it shall be effective upon approval and signature by both Parties.

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

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

City Manager Date

Chairman Date
Board of Supervisors

Attested To:

Attested To:

City Clerk Date

Juanita Garza, Clerk of the Board Date

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: _____
Attorney for the City Date

BY: _____
Deputy County Attorney Date

City of Avondale
Operating Budget
FY2025

City of Avondale Operating Budget – CSBG Service Initiatives

Contract Period - July 1st, 2024, through June 30th, 2025

Funding Source	Initial Funding (Amendment 1)	Additional Funding (Amendment 2)	New Total Cost
County Funds	\$75,000	\$100,000	\$175,000
Cash Match Contributions*	\$46,356		\$46,356
	\$121,356	\$100,000	\$221,356

Budget Category	Direct Cost	Administration Cost	Total Cost
Total Expenses	\$221,356	\$12,915	\$208,441

*Cash Match is paid by the Subrecipient, at a minimum of 25% contribution

ITEM NUMBER: 4.e.

SUBJECT: Ordinance 2001-0125– Disposition and Development Agreement-Trellis and the City of Avondale for Maricopa County American Rescue Plan Act funds for Development of 516 East Dee Street

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Chris Lopez, Director, Neighborhood and Family Services

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:

- 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 consider a request to adopt Ordinance 2001-0125, approving a Development and Disposition Agreement with Trellis, a non-profit housing developer, and an ordinance for the disposition of land located at 516 E. Dee Street for the construction of affordable housing and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On October 3, 2023, the City and Maricopa County through its Human Services Department, executed an agreement allocating Maricopa County American Rescue Plan Act (ARPA) of 2021 State and Local Fiscal Recovery Funds (SLFRF) of \$1,000,000 for the development of two (2) City-owned lots-516 East Dee Street and 320 East Hill Drive. The lots were purchased by the City through U.S. Department of Housing and Urban Development Neighborhood Stabilization Program (NSP) funds in 2014. The NSP regulations require the land to be developed for affordable housing.

The City will sell and convey the vacant lot at 516 East Dee Street to Trellis for \$10,000. Acting in the capacity of a developer, Trellis will construct a single-family detached home and sell it to an income-qualifying first time homebuyer who earns 120% or less of the Area Median Income (AMI). Through a Land Use Restrictive Agreement (or LURA), the buyer will be required to maintain the property as their principal residence for fifteen (15) years.

The total funding allocated to the project is \$432,160 in Maricopa County ARPA funds. All program income earned from the sale of the property will be returned to the City.

DISCUSSION:

Staff seek to enter into a Development and Disposition agreement with Trellis that will provide funding for the development of 516 East Dee Street. The funding will allow the City of Avondale Neighborhood and Family Services Department to develop the city-owned land (purchased through the NSP) and create a new affordable housing opportunity for a low-moderate income household. The funding regulations for the project require the homes to be sold to low-moderate income homebuyers who earn up to 120% of the AMI.

The County ARPA funding for development is on a reimbursement basis to the City.

BUDGET IMPACT:

There is no budgetary impact to the City associated with this request. All grant funds will be reimbursable directly to the City from Maricopa County.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance as the Disposition and Development Agreement with Trellis.

Contact person for document distribution: Chris Lopez and Regina Marette

ORDINANCE NO. 2001-0125

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF EAST DEE STREET BETWEEN SOUTH 4TH STREET AND SOUTH 7TH STREET AND APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH TRELLIS RELATING TO THE DEVELOPMENT OF AFFORDABLE HOUSING.

WHEREAS, the City of Avondale (the “City”) is the owner of real property, Maricopa County Assessor’s Parcel No. 500-53-068, locally known as 516 East Dee Street in Avondale, Arizona (the “City Property”); and

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City to sell its acquired property as the City’s interest may require; and

WHEREAS, the Council of the City of Avondale desires to sell whatever right, title or interest it has in the City Property, except those interests specifically retained as set forth in the Disposition and Development Agreement attached hereto as Exhibit A and incorporated herein by reference.

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

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

SECTION 2. The sale of the City Property is hereby authorized.

SECTION 3. The Disposition and Development Agreement is hereby approved in substantially the form and substance attached hereto as Exhibit A.

SECTION 4. 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 5. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
January 6, 2025.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2001-0125

[Development and Disposition Agreement]

See following page.

DISPOSITION AND DEVELOPMENT AGREEMENT
(516 Dee Street)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into between the CITY OF AVONDALE, an Arizona municipal corporation (“CITY”), and Trellis, an Arizona nonprofit corporation (“TRELLIS”), as of this day December 2, 2024 (the “Effective Date”).

RECITALS

A. The City is authorized to enter into development agreements pursuant to A.R.S. § 9-500.05. This Agreement is a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such.

B. The City owns the vacant lot legally described in **Exhibit A**, attached hereto and incorporated herein by reference (the “Property”), also known as 516 Dee Street, Avondale, Arizona.

C. The City purchased the Property using Neighborhood Stabilization Program (“NSP”) funds received by the City pursuant to the Housing and Economic Recovery Act of 2008, as amended.

D. The City has received Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act of 2021 (“ARPA”), which the City intends Trellis or its Affiliate to use to fund development of the Property.

E. Pursuant to Avondale City Code § 25-18, the City conducted a request for proposals, RFP No. NFS 24-050 Development and Disposition of Lots for Construction of Residential Homes, and Trellis was selected as the contractor submitting a proposal that is most advantageous to the City.

F. The City intends to convey the Property to Trellis or its Affiliate, subject to the extensive conditions and restrictions set forth herein, in further consideration of the development of sustainable affordable housing; maintaining the affordability of the housing for a minimum affordability period, as defined herein.

G. Pursuant to the terms and conditions hereafter set forth, the City grants Trellis exclusive development rights over the Property, and Trellis agrees to develop the Property in accordance with this Agreement.

NOW, THEREFORE, in consideration of the premises, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

“**Affiliate**” means a to-be-formed Arizona limited liability company having either Trellis or Trellis Community Development, an Arizona nonprofit corporation, as its sole member.

“**Annual Income**” means the anticipated total income from all sources, as defined in 24 C.F.R § 5.609, to

be received by the family head and spouse or co-head and each additional member of the household during a twelve-month period.

“City” means the City of Avondale, an Arizona municipal corporation, and any successor public body or entity.

“Completion Certificate” means a written approval of final completion issued by the City certifying that all necessary title transfer requirements and construction work have been performed to the City’s satisfaction; the Project complies with the NSP and ARPA program requirements; as those programs are defined herein, and the final drawdown for the Project has been disbursed. Upon issuance to Trellis, the Completion Certificate shall be attached to this Agreement, but no amendment shall be required.

“Development Plan” means all construction documentation upon which Trellis shall rely in building each and every part of the Improvements and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as “working drawings”), site plans, subdivision plat, or other required plats, as modified by the planning and development review process.

“Down Payment Assistance” means the sum of up to \$40,000 to be provided by the City to Trellis or its Affiliate to be used for closing costs and a downpayment for the initial sale from the Affiliate to an Eligible Household. The Down Payment Assistance is being provided from the ARPA funds and is more fully described in Section 2.3.2.

“Eligible Household” means a homebuyer who wishes to purchase the Unit and (a) who is a first-time homebuyer or one who has not owned a home in the past three years, or is a single parent who has only owned a home with a former spouse while married, or is a displaced homemaker who has only owned a home with a spouse; (b) has a gross income of no more than 120% Area Median Income, as defined by the U.S. Department of Housing and Urban Development (“HUD”). Further, solely for the purposes of qualifying, an otherwise Eligible Household for Downpayment Assistance to be provided by Trellis as set forth in Section 2.3.2, an Eligible Household shall also (a) qualify for a conventional mortgage through a participating lender, and (b) contribute at least 1% of the purchase price toward down payment and closing costs.

“Escrow Agent” means Michele Lucero of Pioneer Title Agency, Inc.

“Homeowner” means the owner of record of the Unit.

“Improvements” means all public and private improvements which may be constructed from time to time on any parcel comprising the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by Trellis, pursuant to the terms of this Agreement.

“Official Records” means the official records of the Maricopa County, Arizona Recorder.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and special assessments on the Project contested or not then delinquent; (ii) utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions encumbering or to encumber the Project; (iii) the Declaration of Affirmative Land Use Restrictive Covenants; (iv) any judgment lien against Trellis or the Project provided such lien is not released of record or bonded to the complete satisfaction of City within sixty days of the filing of such lien; (v) such items as are shown on Schedule B of the Title Commitment obtained for the Project and approved by Trellis; (vi) the liens of any Permitted Trellis or Eligible Household Mortgagees,

provided no such Mortgages may ever be in superior lien position to the LURA; (vii) and such other liens or encumbrances as may be consented to in writing by City.

“Permitted Trellis Mortgages” means any and all loans (interim, permanent, “cash flow”, “soft” or refinancing thereof) obtained by Trellis for the purpose of financing the construction of the Improvements and the development and operation of the Project, assignments of leases and rents, security agreements, and other collateral or security documents or instruments required by the lender or lenders providing such financing, and to all renewal, extensions, modifications or refinancing thereof.

“Preference” means that if the Unit is available for purchase by two equally creditworthy Eligible Households, if one of the households (1) currently resides in Avondale and that household (2) currently receives a rental subsidy from the City of Avondale or from a nonprofit agency through an affiliation with the City of Avondale, then the Avondale Eligible Household shall be preferred assuming that the Preference is in accordance with fair housing law and policy. Otherwise, the Unit shall be offered to creditworthy Eligible Households on a “first come, first serve” basis. Trellis shall conduct an affirmative marketing campaign to actively recruit Eligible Households.

“Program Income” Defined as the gross income directly generated from the use of federal grant funds, in this case, ARPA and the proceeds from the disposition by sale of real property constructed.

“Project” means the construction of a single-family home in accordance with the Scope of Work, Schedule of Performance, and Budget attached as **Exhibit B** and incorporated herein by reference.

“Term” shall mean the term of this Agreement, which shall be the date upon the first sale by Trellis or its Affiliate to an Eligible Household..

“Unit” shall mean the Property with all Improvements constructed thereupon.

ARTICLE II **DEVELOPMENT AND USE**

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date and continue through the date upon which the Affiliate transfers the Unit to an Eligible Homeowner, unless otherwise cancelled as provided in Sections 8.1 through 8.4 and 9.1 of this Agreement.

2.2 General Cooperation. The City agrees to use its reasonable best efforts to assist Trellis and its Affiliates in the development of the Improvements, including any assistance with other governmental agencies as appropriate. To further the commitment of City and Trellis to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Trellis shall designate and appoint a representative to act on its behalf under this Agreement. Both the City Representative and the Trellis Representative shall be available at reasonable times to discuss and review the performance of the City and Trellis under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in Section 9.1.

2.3 Development of the Project and Restrictions on Use. In consideration of this Agreement, Trellis shall use the Property solely to construct and maintain the Improvements as follows:

2.3.1 Land Use Restriction Agreement. Prior to conveying the Unit to Trellis, the City shall execute the Land Use Restriction Agreement, attached hereto as **Exhibit C** (the “LURA”) encumbering the Property with covenants restricting ownership of the Unit (whether resulting from the initial sale or

any subsequent resale) to an Eligible Household for a period not less than 20 years from the date 90 days following the issuance of a Certificate of Final Completion to be issued by the City upon final completion of the Improvements (the “Affordability Period.”) The LURA shall be recorded on the Property as soon as feasible before the Property is conveyed to Trellis.

2.3.2 Affordability Restrictions. Trellis shall ensure that the Unit will be sold only to an Eligible Household, with a Preference for Avondale residents, having an income of no more than 120% AMI. Any purported transfer done in violation of this Agreement, as amended, shall be null and void. The sales price shall be calculated so that monthly housing expenses (including principal, interest, property taxes, and home insurance) do not exceed 35% of the buyer’s gross monthly household income, unless there are documented compensating factors. In addition, the Unit will have a purchase price that does not exceed 95% of the median purchase price for a comparable single family home in the area as described in 24 C.F.R. § 92.254 (a)(2).

Upon initial sale of the Unit to an Eligible Household, Trellis shall provide up to \$40,000 in Downpayment Assistance to the Eligible Household to be used for Downpayment Assistance in compliance with 24 C.F.R. Part 92. Prior to expending Downpayment Assistance funds, Trellis shall require the Homebuyer to enter into the City of Avondale Homebuyer Assistance Agreement and Note, to be secured by a Deed of Trust, with the form of such documents to be provided to Trellis by the City. The Downpayment Assistance Deed of Trust shall be made by the Homeowner as “Trustor” for the benefit of the City and shall be recorded against the Unit.

2.3.3 Transfer Restrictions.

2.3.3.1 Transfer to Heirs of Eligible Households: In the event of the Homeowner’s demise, upon receipt of notice from the executor of the Homeowner’s estate given within ninety (90) days of the death of the Homeowner (or the last surviving co-owner of the Unit) the City shall, unless for good cause shown, consent to a transfer of the Unit to and by one or more of the possible heirs of the Homeowner listed below as provided that a Letter of Stipulation in a form to be provided by the City, setting forth the heirs’ review, understanding, and acceptance of the terms of the LURA, are obtained when the Unit is transferred to the heirs:

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner’s household who have resided in the Unit with Homeowner for at least one year immediately prior to the Homeowner’s death; or
- d) any joint owner of the Unit if the Unit was owned as joints tenants with right of survivorship.

2.3.3.2 Homeowner Intent to Sell: In the event that a Homeowner wishes to sell the Unit, the Homeowner shall notify the City, in writing, of such wish (the Intent-to-Sell Notice).

2.3.3.3 Recapture. Upon any involuntary transfer of the Unit, or upon any transfer to person who is not an Eligible Household or without the City’s prior written consent, any Downpayment Assistance provided to the initial Homebuyer from funds subject to this Agreement that enabled the Homebuyer to purchase the Unit shall be recaptured by the City upon closing of such transfer. This recapture shall include the foreclosure of the Down Payment Assistance Deed of Trust.

2.3.4 Reserved.

2.3.5 Program Income. Any Program Income from the Project shall be remitted to the City,.

2.4 Approvals. The City hereby agrees that, in connection with all approval requests relating to the construction of any Improvements that only customary plan or review requirements will be imposed on Trellis, consistent with City's normal process, and that no extraordinary plan or review requirements will be imposed.

2.5 Development Plan. Trellis shall at its sole cost and expense, submit a Development Plan for City approval pursuant to the Schedule of Performance and develop the Property in general conformance with the Development Plan. Development of the Property shall be consistent with and governed by the provisions, requirements, and restrictions of the applicable zoning and land use laws and ordinances, including any Planned Area Development approved for all or any portion of the Property. The Development Plan will set forth the current plan for development of the Property and reflect Trellis's general intent regarding development of the Property. City reserves the right to review and approve, which approval shall not be unreasonably withheld, any changes to the Development Plan, as well as the specific locations and design features of the Improvements to be constructed on the Property, separate and apart from any review or approval required as part of any re-zoning or other land use modifications or approvals Trellis may request.

2.6 Infrastructure Improvements and Site Preparation: Trellis shall, at its own cost, design, fund, and obtain all permits necessary to construct additional infrastructure to the Property.

2.7 Monitoring of Sales Transactions. During the term of this Agreement, staff from City's Neighborhood and Family Services Department (or the designated successor(s) thereof) shall monitor all sales transactions for compliance with income eligibility and programmatic requirements. Prior to consummation of any sale of the Unit, Trellis shall provide City with information regarding buyer's income for verification of compliance with this Agreement.

ARTICLE III
CONVEYANCE

3.1 Price. The City has agreed to sell fee title to the Property for \$10,000.00 (the "Purchase Price") to the Affiliate. Such Purchase Price shall be payable as follows: (a) an initial deposit of \$1000.00 (the "Deposit") to be deposited in Escrow (as defined below) within three (3) days of the Opening Date (as defined below), and (b) the balance to be paid at Closing (as defined below) in cash, certified funds, wire or warrant as determined by Buyer.

3.2 Survey. Trellis may, at its expense, order an ALTA survey on the Property (the "Survey") within the Feasibility Period (as defined below). Trellis shall have a right to update the Survey of the Property to have the Survey certified to Trellis and the Title Company (as defined below), at Trellis's sole cost and expense. The legal description of the Property shown on the Survey (or as updated) shall be identical to the legal description used for purposes of the Deed (as defined below) and the Commitment (as defined below).

3.3 Commitment. Within five (5) days after the Opening Date, Escrow Agent (as defined below) shall deliver to Trellis and the City a current ALTA commitment (the "Commitment") for an extended owner's policy of title insurance, accompanied by a copy of all recorded and other documents affecting the Property (the "Title Report") issued by Escrow Agent on the Property. The Commitment shall be updated by the Escrow Agent as necessary, upon receipt of the completed Survey.

3.4 Environmental Reports. The City shall provide Trellis all documentation in the possession of or known to the City from the Arizona Department of Environmental Quality or United States Environmental Protection Agency pertaining to the Property. In addition, Maricopa County, Human Services Division and the City shall be completing an Environmental Assessment for the Project, in accordance with 24 C.F.R. Part 58, as further set forth in Section 4.1.16 – 4.1.19 below.

Notwithstanding the terms of this Agreement, Trellis may, at its own cost, order any additional Phase I Environmental Site Assessment Report for the Property (a “Phase I Report”) within the Feasibility Period. Trellis may, at Trellis's sole cost and expense, update the Phase I Report and conduct or cause to be conducted, in addition to the Phase I Report, an environmental audit, archaeological and other studies of the Property, including a Phase II Environmental Report (collectively, the “Environmental Reports”).

3.5 Feasibility Period.

3.5.1. Trellis shall have 180 days from the effective date of this Agreement (the “Feasibility Period”) to determine the feasibility of Trellis’s planned development of the Property. At any time prior to the end of the Feasibility Period, Trellis may, for any reason in its sole and absolute discretion, cancel this Agreement. If Escrow Agent issues a supplemental or amended commitment showing additional exceptions to title (an “Amended Commitment”), Trellis shall have a period of time equal to ten (10) days or such lesser time as may be elected by Trellis in its sole discretion (a “Supplemental Feasibility Period”) from the date of receipt of the Amended Commitment and a copy of each document referred to in the Amended Commitment in which to give notice of dissatisfaction as to any additional exceptions. All title matters approved by Trellis are referred to as the “Permitted Exceptions”.

3.5.2. Upon a cancellation in accordance with the provisions of this Section, all documents deposited in Escrow by Trellis shall be returned to Trellis, all documents deposited in Escrow by the City shall be returned to the City, and this Agreement shall terminate, whereupon the parties shall have no further liability hereunder (except with respect to those provisions that specifically survive the termination of this Agreement);

3.5.3. Within five (5) days of the Opening Date, the City shall provide Trellis a copy of all existing reports, studies, surveys and any other information regarding the Property that is in the City’s possession or control.

3.6 Right of Entry and Inspection. At any time prior to Closing, at Trellis’s sole expense, Trellis or its authorized agents may, upon 24 hours prior written notice to the City and upon the City’s consent, which shall not be unreasonably withheld, enter upon the Property for any lawful purpose, including making Inspections (as defined below) and erecting signs Trellis deems necessary. Trellis may select qualified professionals to make “Inspections” (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Trellis shall order the Inspections within the Feasibility Period. Trellis shall keep the Property free of any liens, and repair any material physical damages to the Property arising from the Inspections. If any Inspections disclose matters unsatisfactory to Trellis, which the City is unable or unwilling to correct at the City’s expense, Trellis may cancel this Agreement. All Inspections shall be carried out at Trellis’s sole cost and expense and Trellis shall have no right to conduct any Phase II environmental assessment work or any invasive environmental testing at the Property without the City’s prior written consent, which shall not be unreasonably withheld. Trellis shall, at no cost to the City, promptly provide the City with copies of any studies, reports, tests or other documents prepared in connection with Trellis’s inspection or review. Trellis hereby agrees: (1) to indemnify the City against and

hold the City harmless for, from and against any claim, damage (personal or property), liability, cost (including court costs and attorneys' fees), loss or injury (the "Liabilities") arising from any such Inspections; and (2) to restore the Property to its original state after completion of any and all Inspections (the "Inspection Indemnity"). The Inspection Indemnity shall survive any cancellation or termination of this Agreement or the Closing. In addition, the City shall be responsible for all environmental reports required under Section 4.1.16 of this Agreement.

3.7 Deed. At the Close of Escrow, the City shall convey title to the Property to Trellis by special warranty deed (the "Deed") in substantially the form attached hereto as Exhibit D, subject to no defects, exceptions, leases, rights of possession or occupancy, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except the Permitted Exceptions and any additional matters accepted in writing by Trellis.

3.8 Title Policy. At the Close of Escrow, and as a condition to Trellis's obligations to close this transaction, the City shall provide Trellis with an ALTA extended coverage owner's policy of title insurance issued through Escrow Agent by a title insurance company acceptable to Trellis (the "Title Company"), together with any endorsements reasonably required by Trellis (but always including a comprehensive, contiguity and patent endorsement, if applicable) and specifically insuring over any mechanic's or materialmen's liens on the Property notwithstanding that work may have been performed on the Property, in the full amount of the Purchase Price, effective as of the Close of Escrow, ensuring Trellis that fee simple title to the Property is vested in Trellis, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters approved by Trellis as provided in of this Agreement, and to any other matters approved in writing by Trellis. The City shall pay the cost of a standard coverage policy. Trellis shall pay the additional premium for extended coverage and the cost of any other endorsements requested by Trellis other than as required by the City to remove matters objected to.

3.9 Escrow. An escrow (the "Escrow") for the transaction from the City to Trellis shall be established with a title agency mutually acceptable to Trellis and the City. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, the Parties agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

3.10 Opening and Closing Dates.

3.10.1 Escrow shall be deemed open on the date (the "Opening Date") when a fully originally executed copy of this Agreement has been delivered to Escrow Agent. Escrow Agent shall advise both Parties in writing of the Opening Date.

3.10.2 The closing of this transaction and escrow (referred to in this Agreement as the "Closing" or the "Close of Escrow") shall occur on or before ten (10) days after the effective date of the expiration of the Feasibility Period, unless otherwise provided in this Agreement. Closing shall be deemed to occur upon the recording of the Deed with the County Recorder for Maricopa County, Arizona.

3.11 Escrow Cancellation Charges. If the Escrow fails to close because of the City's default, the City shall be liable for all customary escrow cancellation charges. If the Escrow fails to close because of Trellis's default, Trellis shall be liable for all customary escrow cancellation charges. If the Escrow fails to close for any other reason (including without limitation, a failure to satisfy contingencies), the City and Trellis shall each be liable for one-half of all customary Escrow cancellation charges.

3.12 Closing Costs.

3.12.1 the City agrees to pay the Escrow charges and the entire cost of the ALTA standard coverage owner's policy of title insurance;

3.12.2 Trellis agrees to pay the additional premium for extended coverage title insurance and for any endorsements to the title policy requested by Trellis unless otherwise provided in this Agreement;

3.12.3 The City agrees to pay all real property taxes due on the Property pro-rated to the date of Close of Escrow.

ARTICLE IV **OBLIGATIONS**

4.1 Representations of Trellis. Trellis represents, warrants, and covenants to City as follows:

4.1.1 Subject to the terms of this Agreement and as a material consideration of City conveying the Property to Trellis, Trellis shall construct the Project and shall operate the Project in accordance with this Agreement. Trellis will ensure compliance with all Project requirements and use all normal and customary practices and procedures for the development of the Project and provide a level of service that is consistent with the level of service for similar programs administered by it in the community.

4.1.2 Maintain records pertaining to this Agreement and the Property for six (6) years.

4.1.3 Comply with the requirements and standards of Office of Management and Budget ("OMB") in accordance with 2 C.F.R. § 200 and the HUD implementing regulations in accordance therewith as such may be amended or revised. Such compliance will be subject to monitoring from time to time by the City or by HUD.

4.1.4 Trellis shall construct the Project in compliance with the Development Plan, including applicable zoning for the Property, the City's design review approval, and the approved site plan and other City-approved plans or specifications for the Project.

4.1.5 During Trellis' ownership of the Property, Trellis shall ensure the payment of all applicable taxes for the Project.

4.1.6 Trellis shall maintain records of all ethnic and racial statistics of persons and families benefited in the performance of its services on the Property, including, but not limited to, the number of moderate income persons (81%-120% of median income); low and moderate income persons (51%-80% of median income), the number of very low income persons (31%-50% of median income) and the number of extremely low income persons (0-30% of median income) and households assisted in accordance with federal income limits, the number of elderly (over 62 years of age) and individuals with disabilities, family size, and number of female heads of households.

4.1.7 During Trellis' ownership of the Project, provide the City with written reports of its activities with respect to the Project quarterly, or as otherwise requested by the City and a final report when this Agreement terminates, setting forth the demographic information stated in Section 4.1.6 (above), as well as the activities, program accomplishments, new program information and current statistics on expenditures and activities. The City and the United States Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining performance to Project documents and

papers, and the right to examine financial records.

4.1.8 Give all notices and comply with all laws, ordinances, rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If Trellis observes that any of the Agreement documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify City, in writing, and any necessary changes shall be accomplished by appropriate written modification as deemed necessary by City.

4.1.9 Trellis acknowledges that the funds, in part, utilized by City to acquire the Property were received by City pursuant to the Housing and Economic Recovery Act of 2008 and the American Rescue Plan Act of 2021 (the “Acts”) and that expenditure of these funds must comply with these Acts and all other pertinent regulations issued by agencies of the federal government. Trellis agrees to comply fully with all federal, state, and local laws and court orders applicable to its operation, whether or not referred to in this Agreement.

4.1.10 Trellis and its subcontractors shall abide by all regulations pursuant to the Immigration and Naturalization Reform Act of 1986, specifically as it relates to employment and client services, and such other provisions as may be applicable, including A.R.S. § 23-214(A). Should Trellis perform any work knowing it to be contrary to applicable laws, ordinances, rules building codes and/or regulations, it shall assume full responsibility therefore, and shall bear all costs incurred due to its negligence.

4.1.11 Trellis shall acknowledge the contributions of the City of Avondale in all published literature, brochures, programs, fliers, etc., during the term of the Agreement.

4.1.12 Trellis agrees to comply with Section 319 of Public Law 101-121, (31 U.S.C. § 1352).

4.1.13 Trellis agrees to afford Preference, as defined in Article I, to those Eligible Households who qualify for such Preference.

4.1.14 Trellis shall comply with the requirements of 24 C.F.R. 75, also known as Section 3 of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

4.1.15 Trellis shall comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Project. Pursuant to HUD’s Notice, “Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as applied to recipients of HUD Federal Financial Assistance” (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

4.1.16 The City and Maricopa County is assuming all responsibilities for environmental review, decision making, and action regarding the Project under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such activities as federal activities in accordance with 24 C.F.R. § 58 (environmental review procedures for entities assuming HUD environmental responsibilities). The City and Maricopa County will also assume the responsibility for the Request for the Release of Funds. Trellis agrees not to conduct any “choice limiting activities” until this environmental review process has been completed. Should it be determined that Trellis has incurred expenses in violation of the NEPA requirements, Trellis will be responsible for the full costs for such expenditures and repayment of any related reimbursements. City will be solely

responsible for obtaining the HUD ERR, the RROF, and the AUGF (defined below).

4.1.17 This Agreement does not constitute a commitment of funds or site approval until satisfactory completion of environmental review and receipt by Maricopa County of an approval of the Request for Release of Funds (RROF) and certification from the HUD under 24 CFR Part 58 with an Authority to Use Grant Funds (AUGF). The provision of any funds to the project is conditioned on Maricopa County's determination to proceed with, modify or cancel the project based on the results of the environmental review.

4.1.18 If remediation is indicated by any Phase I, Phase II or ERR for the Project or any part of the Property, the parties shall determine between them who is responsible for paying for the remediation costs indicated by any Environmental Report. If the parties agree that Trellis shall pay for the costs of any Phase II or for remediating the Property, Trellis shall determine, in its sole and absolute discretion, whether it has sufficient funds in its development budget and/or sufficient time in its construction schedule (given the constraints of this Agreement) to have a Phase II prepared and/or to remediate the Property or whether to terminate this Agreement. Trellis shall promptly notify the City in writing if it has elected to terminate this Agreement due to the need to remediate the Project. Trellis shall have no obligation to construct the Project until any remediation required by Trellis's financing and construction partners has been completed to their financing and construction partners' complete satisfaction. Notwithstanding the foregoing, it is Trellis's responsibility to notify the City of any requests to extend the Project's completion date based upon environmental remediation activities.

4.1.19 If a Section 106 Review is indicated by any Phase I or ERR, then the parties shall determine who is responsible for engaging and overseeing the Section 106 Review and implementing any required findings of adverse effects. If the parties determine that Trellis is responsible for implementing, overseeing, and complying with any Section 106 Review findings of adverse effect, then Trellis shall determine, in its sole and absolute discretion, whether it has either sufficient funds in its development budget and/or sufficient time in its construction schedule (given the constraints of this Agreement) to comply with the Section 106 Review requirements and remediate any findings of adverse effects or whether to terminate this Agreement. Trellis shall promptly notify the City in writing if it has elected to terminate this Agreement pursuant to the terms of this Section. Trellis agrees to notify the City of any requirements to extend the Project's Completion Date based upon Section 106 Review activities.

4.1.20 Affirmative Marketing. Trellis shall adopt and follow affirmative marketing procedures pursuant to 24 C.F.R. 92.351 to provide information to otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. The affirmative marketing procedures and requirements must apply in the context of the preferred eligibility for the project as listed in this Agreement. The affirmative marketing requirements and procedures adopted must include:

- a) Methods for informing the public and potential buyers about Federal fair housing laws and Trellis's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations);
- b) Requirements and practices that will be adhered to in order to carry out the affirmative marketing procedures (e.g., use of media, Equal Housing Opportunity logotype or slogan, and display of Fair Housing posters);
- c) Procedures to be used to solicit applications from persons in the housing market area who are not likely to apply for the housing program without special outreach (e.g., through the use of community organizations, churches, employment centers);

d) Records that will be kept describing actions taken by Trellis to affirmatively market the program and records to assess the results of these actions; and

e) A description to assess the success of the affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

4.2 Representations of City. The City represents, warrants, and covenants to Trellis as follows:

4.2.1 The City owns fee simple title to the Property, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances. To the City's actual knowledge, the Property is in compliance with all easements, restrictions and other matters of record affecting title and has received no notices asserting noncompliance.

4.2.2 The City has full right, power and authority to make, execute, deliver and perform its obligations under this Agreement. Subject to the City Council's approval of this Agreement, the City has obtained and received all required and necessary consents and approvals to enter into this Agreement with Trellis. The entry by the City into this Agreement with Trellis and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which City is a party or by which it is bound.

4.2.3 The City hereby agrees that, in connection with all approval requests relating to the construction of any Improvements that only customary plan or review requirements, which are to include the use of sustainable practices in the design and/or construction of the Project, will be imposed on Trellis, consistent with City's normal process, and that no extraordinary plan or review requirements will be imposed.

4.2.4 As of the Effective Date of this Agreement, there will be no tenants, lessees or other occupants of the Property having any right or claim to possession or use of the Property or a claimed preference for occupancy in the Property and City agrees to execute any affidavits required by the title company insuring title to this Project.

4.2.5 There are no unpaid special assessments of which City has received notice, or of which City is otherwise aware, for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Property.

4.2.6 City is not obligated under any contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Property except as previously disclosed to Trellis.

4.2.7 There is no action, suit, litigation or proceeding pending or, to City's knowledge, threatened against City and/or the Property which could prevent or impair City's obligations hereunder or materially and adversely impact Trellis's rights hereunder.

4.2.8 The person signing this Agreement on behalf of City is duly and validly authorized to do so.

4.2.9 There are no pending condemnation proceedings relating to any portion of the Property, and City has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Property or of any other proceedings against or any taking of all or any part

of the Property.

4.2.10 There is no pending or threatened litigation, governmental proceeding, notice of action required to be taken, judgment or cause of action against or related to the Property, or any portion thereof, or against City or City's agents with respect to the Property or any portion thereof.

4.2.11 Except as may be referenced in any Phase I, Phase II, or ERR (collectively, an "Environmental Review Record") and to the City's actual knowledge, no part of the Property has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation, or disposal of any Hazardous Materials (as defined herein). Except as referenced in any Environmental Report, to the City's actual knowledge, no Hazardous Materials have been installed, used, stored, handled, or located on or beneath the Property, which Hazardous Materials, if found on or beneath the Property, or improperly disposed of off the Property, would subject the owner or occupant of the Property to damages, penalties, liability, or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation, or installation in or in connection with the Property ("Environmental Cleanup Work") in order to comply with any legal requirements applicable to the Hazardous Substances found. No notice from any governmental authorities or any person has been served upon City, its agents or employees, claiming a violation of a legal requirement, or any liability thereunder, pertaining to Hazardous Materials, or requiring or calling attention to the need for Environmental Cleanup Work on or in connection with the Property, except as has been disclosed in writing by City to Developer, and neither City, its agents or employees has any knowledge of any threatened or proposed serving of any such notice of violation or requirement of corrective work. Except as referenced in any Environmental Report, no part of the Property is affected by any "Hazardous Materials Contamination," which for the purposes hereof shall mean (i) the contamination of any improvements, facilities, soils, subsurface strata, groundwater, ambient air, biota, or other elements on or of the Property by Hazardous Materials; or (ii) the contamination of the buildings, facilities, soil subsurface strata, groundwater, ambient air, biota, or other elements on or of any other property as a result of Hazardous Materials emanating from the Property. For purposes of this Agreement, "Hazardous Materials" shall have the meaning ascribed in, and shall include those substances listed in Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and the regulations promulgated thereunder (as amended from time to time) and the Clean Air Act, 42 U.S.C. § 7401, et seq. and the regulations promulgated thereunder (as amended from time to time) and includes oil, petroleum distillates or byproducts, waste oil and used oil as those terms are defined in the Clean Air Act, 33 U.S.C. § 1251, et seq. and regulations promulgated thereunder (as amended from time to time) and the Resource, Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and regulations promulgated thereunder (as amended from time to time) and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. and regulations promulgated thereunder (as amended from time to time), and shall include any (A) groundwater contaminated by such Hazardous Substance(s) and (B) other pollutant or contaminated designated as a Hazardous Substance by Congress or the United States Environmental Protection Agency (EPA) or defined by any other federal or Arizona law, ordinance, code, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

4.2.12 The City will make the results of any Phase I, Phase II and the ERR immediately available to Trellis. Any Phase I, Phase II or ERR shall be addressed to Trellis, and City agrees to provide such reliance letters to any of Trellis's financing partners as they may require.

4.2.13 Reserved.

4.2.14 The funds used by City to acquire and develop the Property were received pursuant to the Acts and expenditure of these funds must comply with the Acts and all pertinent regulations issued by agencies of the federal government. Accordingly, City hereby agrees to comply with all applicable laws,

rules and regulations adopted by HUD and applicable to the acceptance and disposition of any funds for the Project.

4.2.15 The City shall provide technical assistance to Trellis in satisfying its obligation to comply with applicable federal guidelines governing the use of federal funds.

4.2.16 The Project is in compliance with both the City of Avondale's and Maricopa HOME Consortium's current Consolidated Plan/Action Plans which have been approved by HUD.

ARTICLE V **FUNDING**

5.1 The City shall provide Trellis with up to \$432,160 in ARPA funding to be used for development of the Project as set forth in the budget attached hereto as **Exhibit B**. This ARPA funding will not be secured by a deed of trust encumbering the Property.

5.1.1 The Agreement is on a cost reimbursement basis. Trellis shall submit monthly invoices to the City for reimbursement and the City shall reimburse Trellis for approved expenses on a new 0 payments standard.

5.1.2 The City shall pay Trellis monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a description of the work performed in sufficient detail to justify payment.

Expenditures for pre-development activities conducted by Trellis prior to the Effective Date may be reimbursed upon approval by the City, which shall be at the City's sole and reasonable discretion.

All invoices for reimbursement shall be submitted prior to November 1, 2026 to allow for approval and drawdown prior to December 31, 2026. Any invoice submitted after November 1, 2026 shall not be reimbursed.

5.1.3 Payment by the City is not to be construed as final in the event that the federal government, State, or Maricopa County disallows payment for the activity or any portion thereof. Funds not expended in implementing this Project or upon completion of the Project shall be returned to the City, or remitted to the County, as applicable.

5.1.4 The Parties' obligations under this Agreement shall become effective when funds assigned for the purpose of compensating Trellis are available to the City for disbursement. The City shall be the sole authority in determining the availability of funds under this Agreement, and the City shall keep Trellis fully informed as to the availability of funds. If any action is taken by any federal, state, local agency, or any other agency or instrumentality of competent jurisdiction other than the Parties to amend, suspend, or terminate its fiscal obligation under or provided in connection with this Agreement, then the Parties may amend, suspend, or terminate this Agreement. In the event of termination, the City shall be liable for payment only for costs incurred prior to the effective date of the termination, provided that such services were performed in accordance with the provisions of this Agreement. Furthermore, upon termination, Trellis shall be released from all pending responsibilities and shall have no further obligation to perform under the Agreement unless it is expressly provided for herein as an obligation that survives termination. The Parties shall give written

notice of their intent to suspend performance or intent to terminate this Agreement under this Section at least thirty (30) calendar days in advance.

5.1.5 If Trellis does not meet the expenditure or obligation dates, Trellis shall submit to the City, a written plan specifying the actions that will be taken to bring the Project into compliance, including anticipated obligation and expenditure dates. The City shall make the final decisions as to what action to take, including but not limited to granting an extension of time for completion of the work, cancellation of this Agreement, recapture of a portion or all funds provided under this Agreement.

5.2 2 C.F.R. Part 200 Compliance. By entering into this Agreement, Trellis agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, Part 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. §§ 200, *et seq.*

5.3 Disallowance.

5.3.1 The cost principles set forth in 2 C.F.R. Part 200 Subpart E shall be used to determine the allowability of incurred reimbursable costs under this Agreement. Trellis shall follow cost principles as outlined in the Office of Management and Budget (OMB) Uniform Guidance, 2 C.F.R. Part 200.

5.3.2 Those costs that are specifically defined as unallowable in 2 C.F.R. Part 200, Subpart E, shall not be submitted for reimbursement by Trellis and shall not be reimbursed.

5.4 Developer Fee. The Project is presumptively eligible as a use of ARPA funds as it meets the requirements of the HOME Program and is being held to the HOME eligible project cost requirements. Per HUD CPD Notice 15-11 Section VII(d), developers and owners may financially benefit from HOME-assisted projects, including via use of reasonable developer fees. Developer fees “are charged by the developer as part of the project cost to compensate for the risk, time, and effort to build and sell or lease the property.” As such, agreed upon developer fees are an eligible project cost, and may be included in a claim for reimbursement. The developer fees will be paid out based upon the amount of work completed or funds expended from the Project. The amount of the developer fee payable to Trellis is described in **Exhibit B**. The Developer Fee shall be paid as follows:

30% upon issuance of the building permit for the Improvements,

30% upon completion of the Improvements,

30% upon transfer of the Unit to an Eligible Household, and

10% upon issuance of the Completion Certificate.

ARTICLE VI **NON-DISCRIMINATION**

6.1 Trellis shall not discriminate against any employee or applicant for employment because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran.

6.2 Trellis shall take affirmative action in employment to ensure that employees are treated during employment, without regard to their gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran. The scope of non-

discrimination shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training.

6.3 Trellis agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of nondiscrimination as described in this Agreement.

6.4 Trellis shall not discriminate against any applicant for service because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran. Trellis shall, in all solicitations or advertisements, state that all qualified applicants will receive consideration for employment of service without regard to gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran.

ARTICLE VII **INDEMNIFICATION**

7.1 Liability and Indemnification. Trellis shall indemnify, defend, and hold harmless City, City Councilmembers, and the City's respective employees, agents, contractors, licensees or assignees (the "City Indemnified Parties") for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments, causes of action, including remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the City Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Trellis pertaining to this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or brought against any of the City Indemnified Parties by reason of any of the foregoing events, then Trellis, upon prompt written notice from the Indemnified Party will, at Trellis's sole cost and expense, resist or defend such claim, action or proceeding, in the City Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed.

ARTICLE VIII **DEFAULT; REMEDIES; TERMINATION**

8.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement for breach of any of the representations, warranties, or covenants described in Article IV above; such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance and such breach continues for a period of thirty (30) days after written notice thereof given by the non-defaulting party specifying in reasonable detail the nature of such breach.

8.2 Trellis's Remedies. If City is in breach under this Agreement and fails to cure any such breach within the time period required therefore as set forth in Section 8.1 above, then Trellis shall have the right to terminate this Agreement upon written notice delivered to the City. Within 60 days of such termination, the City shall reimburse Trellis for documented eligible costs incurred prior to the notice of termination and refund Trellis the Purchase Price for the Property. Trellis shall then convey to the City title to the Property and any Improvements constructed thereupon at the time of termination. The Parties agree to execute any and all documents necessary to evidence that title to the Property and Improvements are conveyed to the City and to extinguish and remove any cloud on the title to such Property and

Improvements. Trellis shall be entitled to its developer fees for any milestones completed as set forth in section 5.4 prior to its written notice of termination.

8.3 City's Remedies; Right to Foreclose. If Trellis is in breach under this Agreement by failing to develop the Property in accordance with the Schedule of Performance or failing to comply with the sale requirements set forth in herein, and Trellis thereafter fails to cure any such breach within the time period described in Section 8.1 above, then the City shall have the right to terminate this Agreement immediately upon written notice to Trellis and, if it so elects, initiate foreclosure proceedings within 180 days after notice of termination.

8.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Trellis shall have no further rights to develop the Property.

ARTICLE IX

CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

9.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, including A.R.S. § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Trellis, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Trellis or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE X

GENERAL PROVISIONS

10.1 Notices. All notices, demands and other communications to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given upon personal delivery or three business days after deposit in the United States mail, registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to the City: City of Avondale
 11465 West Civic Center Drive
 Avondale, Arizona 85323
 Attn: Ron Corbin, City Manager

With copy to: City of Avondale
 11465 West Civic Center Drive
 Avondale, Arizona 85323
 Attn: Nicholle Harris, City Attorney

If to Trellis: Trellis
 1405 E. McDowell Road
 Phoenix, Arizona 85005
 Attn: Glenn Karlson

With a copy to: Lotar Law Firm, PC
8687 E, Via de Ventura, Suite 115
Scottsdale, Arizona 85258
Attn: Mary Sue Lotzar

If to Escrow Agent: Pioneer Title Agency, Inc.
2152 S Vineyard #109
Mesa, AZ 85210
Attn: Michele Lucero

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. As used in this Agreement, “*business day*” shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government, the City or the State of Arizona.

10.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Trellis and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Trellis shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to residential property development. The cost of any such mediation shall be divided equally between the City and Trellis. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

10.3 Governing Law and Venue. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona

10.4 Successors and Assigns. This Agreement shall run with the Property and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Upon prior written notice to City, Trellis may assign its interest in this Agreement, in whole or in part, to any entity that it controls or is under common control with Trellis. Neither Trellis nor any permitted assignee of Trellis may otherwise assign its interest in this Agreement without prior written consent of City, which consent may be reasonably withheld by City.

10.5 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

10.6 Attorneys’ Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys’ fees, which shall be determined by the court and not by the jury.

10.7 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other

portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

10.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

10.9 Entire Agreement and Conflict. The LURA and this Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. In the event of conflict between the LURA and this Agreement, the documents shall govern in the order listed herein.

10.10 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

10.11 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

10.12 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

10.13 Performance Deadlines; City Manager's Power to Consent. The City authorizes and empowers the City Manager, or their designee, to consent to any and all requests of the Trellis requiring the consent of the City hereunder without further action of the City Council except for any actions requiring City approval as a matter of law including without limitation, any amendment or modification of this Agreement that is within the initial authority for these Projects granted by the City Council. Without limiting the foregoing, the Parties acknowledge that all aspects of the Projects' development have not been thoroughly addressed in this Agreement, and amendments to this Agreement are anticipated to reflect the Parties' intent concerning the Project.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Ron Corbin, City Manager

ATTEST:

Marcella Sarmiento, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2024,
by Ron Corbin, City Manager of the City of Avondale, an Arizona municipal corporation, on behalf of the
City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

“Trellis”

Trellis,
an Arizona nonprofit corporation

By: _____
Brenda Lopez, Interim President and CEO

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2024,
by Brenda Lopez, the Interim President and CEO of Trellis, an Arizona non-profit corporation, on behalf
of the corporation.

(affix notary seal here)

Notary Public

EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TRELLIS

[Legal Description of Property]

Lot 25, Block 3, RIVERVIEW PARK, according to Book 45 of Maps, Page 7, records of Maricopa County, Arizona.

EXHIBIT B
TO DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TRELLIS

[Scope of Work, Schedule of Performance, and Budget]

See following pages.

SCOPE OF WORK

The project is known as the Infill Housing Development-516 E. Dee Street. Trellis, acting in the capacity of a developer, will acquire the property located at 516 E. Dee Street from the City of Avondale and develop a single-family home. The site is in a Qualified Census Tract (QCT). The land is to be transferred to Trellis from the City. The new homes will be sold to a low-income qualifying homeowner per the Neighborhood Stabilization Program (NSP) regulations. Funds will be paid to Trellis on a reimbursement basis.

The individual or family acquiring the newly constructed housing must qualify as low-income, as defined in 24 C.F.R. § 5.609 earning 120% or less than the AMI, per the NSP regulations. The Period of Affordability shall be no less than twenty (20) years. All homebuyers must maintain the housing as their principal residence throughout the Period of Affordability.

Homebuyer Eligibility Criteria:

- Complete at least 8 hours of HUD-approved homebuyer counseling.
- Cannot be on the title of any residential property.
- Head of household must be a permanent legal U.S. resident.
- Occupy the home as the primary residence.
- Qualify as low-income, as defined above.

OBJECTIVES AND OUTCOMES: The objective of the project is to create decent, affordable housing. The outcome will be 1 newly constructed home sold to a low-income qualified individual or family.

LOGIC MODEL: PERFORMANCE INDICATORS

INPUTS/ RESOURCES	OUTPUTS		OUTCOMES	OBJECTIVES
	ACTIVITIES	PARTICIPATION		
Development staff, funding, contractors	Develop one single family housing unit	One household	Affordable housing for a low- to moderate-income household. Increased home ownership. Improved neighborhood through the development of an infill vacant lot.	Decent and affordable housing.

ACTIVITY BUDGET SUMMARY

ACTIVITY	BUDGET: SLFRF (ARPA)
Infrastructure: grading, drainage, water, sewer, sidewalks, lighting, etc.	\$30,000
Soft Costs: Architect and Engineering Fees, P & Z applications, Survey, Permit, Legal Fees, title and recording, insurance, reserves, Land Acquisition etc.	\$40,000

Construction Hard Costs: foundation, plumbing, flooring, roofing, kitchen, baths, doors, windows, etc.:	\$269,779
Sale of Units: appraisals, commissions, taxes, title and recording fees, down payment assistance, etc.	\$27,650
Developer Fees	\$46,359
Contingency	\$18,372
TOTAL DEVELOPMENT COST	\$432,160

CONVERSION TO RENTAL:

If the newly constructed home is not sold to an eligible homebuyer within nine (9) months after the receipt of a Certificate of Occupancy, the home must be converted to a rental unit that complies with a Period of Affordability of twenty (20) years. If the vacant property is not converted, then the SLFRF funds must be repaid to the City. Notwithstanding the foregoing, if the Unit has been converted to a rental unit, it may still be sold to an Eligible Household at any time within the Affordability Period without the SLFRF funds having to be repaid to the City.

DEVELOPMENT SCHEDULE

MILESTONES	COMPLETION DATE
Environmental Assessment approval	01/30/2025
Plans Approved-City of Avondale	4/15/2025
Submit complete application for construction permits	6/15/2025
RFP for construction activities	9/15/2025
Homeownership counseling/buyer preparation	12/15/2025
Construction of project	11/15/2025
Sale of Unit	2/15/2026
Homebuyer financing secured	3/15/2026
Certificate of Occupancy	5/1/2026
Final Close-out /Project Completion Form	5/15/2026

Any delay to the obtaining the HUD ERR, the AUGF will cause a similar delay to the construction of the Project without the fault of Trellis or its Affiliate.

EXHIBIT C
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TRELLIS

[Land Use Restriction Agreement]

When recorded return to:

City of Avondale
Office of the City Clerk
11465 West Civic Center Drive
Avondale, Arizona 85323
Attention: Marcella Sarmiento

Declaration of
Land Use Restriction Agreement

THIS DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANT, dated _____ (this “Declaration”), is made by the City of Avondale (the “City”), an Arizona municipal corporation, and is intended to affect and apply to that certain real property as set forth in the legal description in Exhibit A hereto, located at 516 Dee Street in Avondale, Arizona (the “Property”) as follows:

RECITALS:

- A. The City purchased the Property using Neighborhood Stabilization Program (“NSP”) funds issued to the City by the United States Department of Housing and Urban Development (“HUD”) pursuant to the Housing and Economic Recovery Act of 2008, as amended.
- B. The Property is developed using Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act of 2021 (“ARPA”).
- C. The City and Trellis, an Arizona nonprofit corporation, are parties to that certain Disposition and Development Agreement incorporated herein by reference (the “Disposition and Development Agreement”), and the City intends to convey to the Property to Declarant of its affiliate pursuant to the terms of the Disposition and Development Agreement.
- D. The funding provided by the City to Declarant consists of a portion the federal NSP and ARPA funding that were awarded to the City and were conditioned upon development and maintenance of affordable housing for a period of affordability, as set forth in the Disposition and Development Agreement.
- E. The use of NSP and ARPA funds are intended to promote affordable housing, subject to the restrictions of the NSP and ARPA requirements, in addition to any restrictions set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the conveyance of the Property by the City and of NSP and ARPA funding, Declarant does hereby grant to the City the following restrictions against the Property:

1. Use of Property. Declarant covenants that for the term of that certain Disposition and Development Agreement, which is 20 years from 90 days after the City issues a Certificate of Completion for the Improvements (the “Period of Affordability”), that the Property shall only be used to construct and maintain a single-family residence subject to the terms and conditions of the Disposition and Development Agreement.

2. Affordability Restriction. The Property shall be sold only to purchasers who are a first-time homebuyer or one who has not owned a home in the past three years, or is a single parent who has only owned a home with a former spouse while married, or is a displaced homemaker who has only owned a home with a spouse; and (b) having incomes of no more than 120% Area Median Income, as set forth by HUD annually (an “**Eligible Household**”).

3. Transfer Restrictions. The Unit constructed on the Property may only be transferred to another Eligible Household unless otherwise consented to by the City. All transactions shall be monitored for compliance by the City. Any purchaser shall be required to assume the obligations under this Declaration until the Period of Affordability expires. Any transfers in violation of this Declaration shall be void and of no effect.

4. Transfer to Heirs of Eligible Households: In the event of the homeowner’s demise, upon receipt of notice from the executor of the homeowner’s estate given within ninety (90) days of the death of the Homeowner (or the last surviving co-owner of the Property) the City shall, unless for good cause shown, consent to a transfer of the Property to and by one or more of the possible heirs of the homeowner listed below as provided that a Letter of Stipulation in a form to be provided by the City, setting forth the heirs’ review, understanding, and acceptance of the terms of the LURA, are obtained when the Property is transferred to the heirs:

a) the spouse of the homeowner; or

b) the child or children of the homeowner; or

c) member(s) of the Homeowner’s household who have resided in the Property with homeowner for at least one year immediately prior to the homeowner’s death; or

d) any joint owner of the Property if the Property was owned as joints tenants with right of survivorship.

5. Residency Restriction. Once sold to a Eligible Household, the Eligible Household shall occupy the Property as their principal residence.

6. Covenant Running with the Land. This LURA and agreements contained herein, shall run with the land component of the Property, but not the residential improvements on the Property, and shall be binding upon Declarant, its successors, heirs and assigns, and shall inure to the benefit of City, its successors and assigns.

7. Amendments. Except as stated in Section __below, this Declaration shall not be amended, modified, or terminated without the express written consent of both Declarant and the City.

8. Notice. All notices, demands and other communications to be given pursuant to this Declaration shall be in writing, and shall be deemed to have been given upon personal delivery or three business days after deposit in the United States mail, registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Housing Manager

With copy to:

Notary Public

EXHIBIT A
TO
DECLARATION OF LAND USE RESTRICTIONS

LEGAL DESCRIPTION OF PROPERTY

Lot 25, Block 3, RIVERVIEW PARK, according to Book 45 of Maps, Page 7, records of Maricopa County, Arizona.

EXHIBIT D
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TRELLIS

[Special Warranty Deed]

See following pages.

When recorded return to:

Trellis
1405 E. McDowell Road
Phoenix, Arizona 85006
Attn: Glenn Karlson

EXEMPT FROM AFFIDAVIT OF PROPERTY VALUE PURSUANT TO ARIZ. REV. STAT. § 11-1134(A)(3).

SPECIAL WARRANTY DEED

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The City of Avondale, an Arizona municipal corporation (“**Grantor**”), does hereby convey to _____, an _____ (“**Grantee**”), the following described property situated in the County of Maricopa, State of Arizona, together with all rights and privileges appurtenant thereto, to wit:

See Exhibit A attached hereto and incorporated herein by reference.

SUBJECT TO: Current taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

And the Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

[SIGNATURE AND NOTARY PAGE FOLLOWS]

This Special Warranty Deed is dated as of _____.

GRANTOR:

CITY OF AVONDALE, an Arizona
Municipal Corporation

By: _____
Ron Corbin, City Manager

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of
_____ 202__, by Ron Corbin, the City Manager of the City of Avondale, an Arizona
municipal corporation, on behalf of the corporation.

(Seal and Expiration Date)

Notary Public

EXHIBIT A
TO
SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF PROPERTY

Lot 25, Block 3, RIVERVIEW PARK, according to Book 45 of Maps, Page 7, records of Maricopa County, Arizona.

ITEM NUMBER: 4.f.

SUBJECT: Ordinance 2002-0125 – Disposition and Development Agreement-Habitat for Humanity Central Arizona and the City of Avondale for Maricopa County American Rescue Plan Act funds for Development of 320 East Hill Drive

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Chris Lopez, Director Neighborhood & Family Services

THROUGH: Tracy Stevens, (623) 333-1014

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

STRATEGIC PLAN:

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

PURPOSE:

City Council will consider a request to adopt Ordinance 2002-0125, approving a Development Agreement with Habitat for Humanity Central Arizona and an ordinance for the disposition of land located at 320 E. Hill Drive for the construction of affordable housing and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On October 3, 2023, the City and Maricopa County through its Human Services Department, executed an agreement allocating Maricopa County American Rescue Plan Act (ARPA) of 2021 State and Local Fiscal Recovery Funds (SLFRF) of \$1,000,000 for the development of two (2) City-owned lots -516 East Dee Street and 320 East Hill Drive. The lots were purchased by the City through U.S. Department of Housing and Urban Development (HUD) Neighborhood Stabilization Program (NSP) funds in 2014. The NSP regulations require the land to be developed for affordable housing.

The City will sell and convey the vacant lot at 320 East Hill Drive to Habitat for Humanity Central Arizona (Habitat) for \$10,000. The lot will be re-platted into two lots to accommodate two attached, single-family homes, as required by current zoning regulations. Acting in the capacity of a developer, Habitat will construct and sell the homes to income-qualifying first-time homebuyers earning 120% or less of the Area Median Income (AMI). Through a Land Use Restrictive Agreement (or LURA), Habitat will have a right of first refusal for any subsequent sale of the property in order to preserve the affordability of the homes in perpetuity. The buyer will be required to maintain the property as their principal residence for fifteen (15) years.

Total funding allocated to the project is \$567,840 in ARPA funds. All program income earned from the sale of the property will be returned to the City.

DISCUSSION:

Staff seek to enter into a Development and Disposition agreement with Habitat for Humanity Central Arizona (Habitat) that will provide funding for the development of 320 East Hill Drive. The funding will allow the City of Avondale Neighborhood and Family Services Department to develop city-owned land (purchased through the NSP funds) and create new affordable housing opportunities for low-moderate income households. The funding regulations for the project require the homes to be sold to low-moderate income homebuyers who earn up to 120% of the Area Median Income (AMI).

The County funding for development is on a reimbursement basis to the City.

BUDGET IMPACT:

There is no budgetary impact to the City associated with this request. All grant funds will be reimbursable directly to the City from Maricopa County.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance as the Disposition and Development Agreement with Habitat Central Arizona.

Contact person for document distribution: Christopher Lopez and Regina Maretté

ORDINANCE NO. 2002-0125

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF EAST HILL DRIVE BETWEEN NORTH 3RD STREET AND NORTH 5TH STREET AND APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY RELATING TO THE DEVELOPMENT OF AFFORDABLE HOUSING.

WHEREAS, the City of Avondale (the “City”) is the owner of real property, Maricopa County Assessor’s Parcel No. 500-17-100, locally known as 320 East Hill Drive in Avondale, Arizona (the “City Property”); and

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City to sell its acquired property as the City’s interest may require; and

WHEREAS, the Council of the City of Avondale desires to sell whatever right, title or interest it has in the City Property, except those interests specifically retained as set forth in the Disposition and Development Agreement attached hereto as Exhibit A and incorporated herein by reference.

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

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

SECTION 2. The sale of the City Property is hereby authorized.

SECTION 3. The Disposition and Development Agreement is hereby approved in substantially the form and substance attached hereto as Exhibit A.

SECTION 4. 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 5. The Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
January 6, 2025.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2002-0125

[Development and Disposition Agreement]

See following page.

DISPOSITION AND DEVELOPMENT AGREEMENT
(320 East Hill Drive)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into between the CITY OF AVONDALE, an Arizona municipal corporation ("CITY"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("HABITAT"), as of this day December 16, 2024 (the "Effective Date").

RECITALS

A. The City is authorized to enter into development agreements pursuant to A.R.S. § 9-500.05. This Agreement is a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such.

B. The City owns the vacant lot legally described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"), also known as 320 East Hill Drive, Avondale, Arizona.

C. The City purchased the Property using Neighborhood Stabilization Program ("NSP") funds received by the City pursuant the Housing and Economic Recovery Act of 2008, as amended.

D. The City has received Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act of 2021 ("ARPA"), which the City intends to use to fund development of the Property.

E. Pursuant to Avondale City Code § 25-18, the City conducted a request for proposals, RFP No. NFS 24-050 Development and Disposition of Lots for Construction of Residential Homes, and Habitat was selected as the contractor submitting a proposal that is most advantageous to the City.

F. The City intends to convey the Property to Habitat, subject to the extensive conditions and restrictions set forth herein, in further consideration of the development of sustainable affordable housing; maintaining the affordability of the housing for a minimum affordability period, as defined herein.

G. Pursuant to the terms and conditions hereafter set forth, the City grants Habitat exclusive development rights over the Property and Habitat agrees to develop the Property in accordance with this Agreement.

NOW, THEREFORE, in consideration of the premises, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

"Annual Income" means the anticipated total income from all sources, as defined in 24 C.F.R § 5.609, to be received by the family head and spouse or co-head and each additional member of the household during a twelve-month period.

"City" means the City of Avondale, an Arizona municipal corporation, and any successor public body or entity.

"Completion Certificate" means a written approval of final completion issued by the City certifying that all necessary title transfer requirements and construction work have been performed to the City's satisfaction; the Project complies with the NSP and ARPA program requirements; as those programs are defined herein, and the final drawdown for the Project has been disbursed. Upon issuance to Habitat, the Completion Certificate shall be attached to this Agreement, but no amendment shall be required.

"Development Plan" means all construction documentation upon which Habitat shall rely in building each and every part of the Improvements and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings"), site plans, subdivision plat, or other required plats, as modified by the planning and development review process.

"Eligible Household" means a homebuyer who wishes to purchase the Unit and (a) who is a first-time homebuyer or one who has not owned a home in the past three years, or is a single parent who has only owned a home with a former spouse while married, or is a displaced homemaker who has only owned a home with a spouse; and (b) has a gross income of no more than 120% Area Median Income, as defined by the U.S. Department of Housing and Urban Development ("HUD");

"Homeowner" means the owner of record of the Unit.

"Improvements" means all public and private improvements which may be constructed from time to time on any parcel comprising the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by Habitat, pursuant to the terms of this Agreement.

"Official Records" means the official records of the Maricopa County, Arizona Recorder.

"Permitted Encumbrances" means, as of any particular time, (i) liens for taxes and special assessments on the Project contested or not then delinquent; (ii) utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions encumbering or to encumber the Project; (iii) the Declaration of Affirmative Land Use Restrictive Covenants; (iv) any judgment lien against Habitat or the Project provided such lien is not released of record or bonded to the complete satisfaction of City within sixty days of the filing of such lien; (v) such items as are shown on Schedule B of the Title Commitment obtained for the Project and approved by Habitat; (vi) the liens of any Permitted Habitat Mortgagees, provided no such Mortgages may ever be able to subrogate or lien the City's interest in the Property; (vii) and such other liens or encumbrances as may be consented to in writing by City.

"Permitted Habitat Mortgages" means any and all loans (interim, permanent, "cash flow", "soft" or refinancing thereof) obtained by Habitat for the purpose of financing the construction of the Improvements and the development and operation of the Project, assignments of leases and rents, security agreements, and other collateral or security documents or instruments required by the lender or lenders providing such financing, and to all renewal, extensions, modifications or refinancing thereof.

"Preference" means that if the Unit is available for purchase by two equally creditworthy Eligible Households, if one of the households (1) currently resides in Avondale and that household (2) currently receives a rental subsidy from the City of Avondale or from a nonprofit agency through an affiliation with the City of Avondale, then the Avondale Eligible Household shall be preferred assuming that the Preference is in accordance with fair housing law and policy. Otherwise, the Unit shall be offered to

creditworthy Eligible Households on a "first come, first serve" basis. Habitat shall conduct an affirmative marketing campaign to actively recruit Eligible Households.

"Project" means the construction of 2 single-family homes in accordance with the Scope of Work, Schedule of Performance, and Budget attached as **Exhibit B** and incorporated herein by reference.

"Term" shall mean the term of this Agreement, which shall be the Period of Affordability.

"Unit" shall mean the Property with all Improvements constructed thereupon.

ARTICLE II **DEVELOPMENT AND USE**

2.1 Duration of Development Agreement The term of this Agreement shall commence on the Effective Date and continue through the Period of Affordability, as defined in Section 2.3.1, unless otherwise cancelled as provided in Sections 8.1 through 8.4 and 9.1 of this Agreement.

2.2 General Cooperation. The City agrees to use its reasonable best efforts to assist Habitat and its affiliates in the development of the Improvements, including any assistance with other governmental agencies as appropriate. To further the commitment of City and Habitat to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Habitat shall designate and appoint a representative to act on its behalf under this Agreement. Both the City Representative and the Habitat Representative shall be available at reasonable times to discuss and review the performance of the City and Habitat under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in Section 9.1.

2.3 Development of the Project and Restrictions on Use. In consideration of this Agreement, Habitat shall use the Property solely to construct and maintain the Improvements as follows:

2.3.1 Land Use Restriction Agreement. Prior to commencing construction, Habitat shall execute the Land Use Restriction Agreement, attached hereto as **Exhibit C** (the "LURA") encumbering the Property with covenants restricting ownership of the Unit (whether resulting from the initial sale or any subsequent resale) to an Eligible Household for a period not less than 15 years from closing and conveyance of title to an eligible Homeowner (the "Affordability Period.") The LURA shall be recorded on the Property as soon as feasible after the Property is conveyed to Habitat and before any development on the Property commences.

2.3.2 Affordability Restrictions. Habitat shall ensure that the Unit will be sold only to an Eligible Household, with a Preference for Avondale residents, having an income of no more than 120% AMI. Any purported transfer done in violation of this Agreement, as amended, shall be null and void. The sales price shall be calculated so that monthly housing expenses (including principal, interest, property taxes, and home insurance) do not exceed 35% of the buyer's gross monthly household income, unless there are documented compensating factors. In addition, the housing will have a purchase price for the type of a single unit of single-family housing that does not exceed 95% of the median purchase price for the area as described in 24 C.F.R. § 92.254 (a)(2).

Upon initial sale of the Unit to an Eligible Household, Habitat shall provide up to \$40,000 in downpayment assistance to the Eligible Household to be used for Downpayment Assistance in compliance with 24 C.F.R. Part 92. Prior to expending Downpayment Assistance funds, Habitat shall require the

Homebuyer to enter into the City of Avondale Homebuyer Assistance Agreement and Note, to be secured by a Deed of Trust, with the form of such documents to be provided to Habitat by the City.

2.3.3 Transfer Restrictions.

2.3.3.1 Transfer to Heirs of Eligible Households: In the event of the Homeowner's demise, upon receipt of notice from the executor of the Homeowner's estate given within ninety (90) days of the death of the Homeowner (or the last surviving co-owner of the Unit) the City shall, unless for good cause shown, consent to a transfer of the Unit to and by one or more of the possible heirs of the Homeowner listed below as provided that a Letter of Stipulation, setting forth the heirs' review, understanding, and acceptance of the terms of the LURA, are obtained when the Unit is transferred to the heirs:

- a) the spouse of the Homeowner; or
- b) the child or children of the Homeowner; or
- c) member(s) of the Homeowner's household who have resided in the Unit with Homeowner for at least one year immediately prior to the Homeowner's death.

2.3.3.2 Homeowner Intent to Sell: In the event that a Homeowner wishes to sell the Unit, the Homeowner shall notify the City and Habitat, in writing, of such wish (the Intent-to-Sell Notice). Upon receipt of an Intent to Sell Notice from the Homeowner, Habitat shall have the first right of refusal to purchase the Unit for resale to another Eligible Household (the "Purchase Option"). The Purchase Option shall expire sixty days after receipt of the Intent to Sell Notice by Habitat.

2.3.3.3 Recapture. Upon any transfer of the Unit, either voluntary or involuntary, any direct subsidy provided to the Homebuyer from funds subject to this Agreement that enabled the Homebuyer to purchase the Unit shall be recaptured by the City upon closing of such transfer. For the purposes of this section, direct subsidy means any financial assistance that reduces the purchase price from the fair market value to an affordable price, or otherwise directly subsidizes the purchase. This recapture provision will not be applicable if Habitat exercises its Purchase Option and the Unit is transferred to Habitat.

2.3.4 Reserved.

2.3.5 Program Income. No program income is anticipated at the time of this Agreement.

2.4 Approvals. The City hereby agrees that, in connection with all approval requests relating to the construction of any Improvements that only customary plan or review requirements will be imposed on Habitat, consistent with City's normal process, and that no extraordinary plan or review requirements will be imposed.

2.5 Development Plan. Habitat shall at its sole cost and expense, submit a Development Plan for City approval pursuant to the Schedule of Performance and develop the Property in general conformance with the Development Plan. Development of the Property shall be consistent with and governed by the provisions, requirements, and restrictions of the applicable zoning and land use laws and ordinances, including any Planned Area Development approved for all or any portion of the Property. The Development Plan will set forth the current plan for development of the Property and reflect Habitat's general intent regarding development of the Property. City reserves the right to review and approve, which

approval shall not be unreasonably withheld, any changes to the Development Plan, as well as the specific locations and design features of the Improvements to be constructed on the Property, separate and apart from any review or approval required as part of any re-zoning or other land use modifications or approvals Habitat may request.

2.6 Infrastructure Improvements and Site Preparation: Habitat shall, at its own cost, design, fund, and obtain all permits necessary to construct additional infrastructure to the Property.

2.7 Monitoring of Sales Transactions. During the term of this Agreement, staff from City's Neighborhood and Family Services Department (or the designated successor(s) thereof) shall monitor all sales transactions for compliance with income eligibility and programmatic requirements. Prior to consummation of any sale of the Unit, Habitat shall provide City with information regarding buyer's income for verification of compliance with this Agreement.

ARTICLE III **CONVEYANCE**

3.1 Price. The City has agreed to sell to Buyer fee title to the Property for \$10,000.00 (the "Purchase Price"). Such Purchase Price shall be payable as follows: (a) an initial deposit of \$1000.00 (the "Deposit") to be deposited in Escrow (as defined below) within three (3) days of the Opening Date (as defined below), and (b) the balance to be paid at Closing (as defined below) in cash, certified funds, wire or warrant as determined by Buyer.

3.2 Survey. Habitat may, at its expense, order an ALTA survey on the Property (the "Survey") within the Feasibility Period (as defined below). Habitat shall have a right to update the Survey of the Property to have the Survey certified to Habitat and the Title Company (as defined below), at Habitat's sole cost and expense. The legal description of the Property shown on the Survey (or as updated) shall be identical to the legal description used for purposes of the Deed (as defined below) and the Commitment (as defined below).

3.3 Commitment. Within five (5) days after the Opening Date, Escrow Agent (as defined below) shall deliver to Habitat and the City a current ALTA commitment (the "Commitment") for an extended owner's policy of title insurance, accompanied by a copy of all recorded and other documents affecting the Property (the "Title Report") issued by Escrow Agent on the Property. The Commitment shall be updated by the Escrow Agent as necessary, upon receipt of the completed Survey.

3.4 Environmental Reports. The City shall provide Habitat all documentation in the possession of or known to the City from the Arizona Department of Environmental Quality or United States Environmental Protection Agency pertaining to the Property. In addition, Maricopa County, Human Services Division and the City shall be completing an Environmental Assessment for the Project, in accordance with 24 C.F.R. Part 58, as further set forth in Section 4.1.16 – 4.1.19 below.

Notwithstanding the terms of this Agreement, Habitat may, at its own cost, order any additional Phase I Environmental Site Assessment Report for the Property (a "Phase I Report") within the Feasibility Period. Habitat may, at Habitat's sole cost and expense, update the Phase I Report and conduct or cause to be conducted, in addition to the Phase I Report, an environmental audit, archaeological and other studies of the Property, including a Phase II Environmental Report (collectively, the "Environmental Reports").

3.4 Feasibility Period.

3.4.1. Habitat shall have 180 days from the effective date of this Agreement (the "Feasibility Period") to determine the feasibility of Habitat's planned development of the Property. At any time prior to the end of the Feasibility Period, Habitat may, for any reason in its sole and absolute

discretion, cancel this Agreement. If Escrow Agent issues a supplemental or amended commitment showing additional exceptions to title (an "Amended Commitment"), Habitat shall have a period of time equal to ten (10) days or such lesser time as may be elected by Habitat in its sole discretion (a "Supplemental Feasibility Period") from the date of receipt of the Amended Commitment and a copy of each document referred to in the Amended Commitment in which to give notice of dissatisfaction as to any additional exceptions. All title matters approved by Habitat are referred to as the "Permitted Exceptions".

3.4.2 Upon a cancellation in accordance with the provisions of this Section, all documents deposited in Escrow by Habitat shall be returned to Habitat, all documents deposited in Escrow by the City shall be returned to the City, and this Agreement shall terminate, whereupon the parties shall have no further liability hereunder (except with respect to those provisions that specifically survive the termination of this Agreement);

3.4.3 Within five (5) days of the Opening Date, the City shall provide Habitat a copy of all existing reports, studies, surveys and any other information regarding the Property that is in the City's possession or control.

3.5 **Right of Entry and Inspection.** At any time prior to Closing, at Habitat's sole expense, Habitat or its authorized agents may, upon 24 hours prior written notice to the City and upon the City's consent, which shall not be unreasonably withheld, enter upon the Property for any lawful purpose, including making Inspections (as defined below) and erecting signs Habitat deems necessary. Habitat may select qualified professionals to make "Inspections" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Habitat shall order the Inspections within the Feasibility Period. Habitat shall keep the Property free of any liens, and repair any material physical damages to the Property arising from the Inspections. If any Inspections disclose matters unsatisfactory to Habitat, which the City is unable or unwilling to correct at the City's expense, Habitat may cancel this Agreement. All Inspections shall be carried out at Habitat's sole cost and expense and Habitat shall have no right to conduct any Phase II environmental assessment work or any invasive environmental testing at the Property without the City's prior written consent, which shall not be unreasonably withheld. Habitat shall, at no cost to the City, promptly provide the City with copies of any studies, reports, tests or other documents prepared in connection with Habitat's inspection or review. Habitat hereby agrees: (1) to indemnify the City against and hold the City harmless for, from and against any claim, damage (personal or property), liability, cost (including court costs and attorneys' fees), loss or injury arising from any such Inspections; and (2) to restore the Property to its original state after completion of any and all Inspections (the "Inspection Indemnity"). The Inspection Indemnity shall survive any cancellation or termination of this Agreement or the Closing.

3.6 **Deed.** At the Close of Escrow, the City shall convey title to the Property to Habitat by special warranty deed (the "Deed") in substantially the form attached hereto as **Exhibit D**, subject to no defects, exceptions, leases, rights of possession or occupancy, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except the Permitted Exceptions and any additional matters accepted in writing by Habitat.

3.7 **Title Policy.** At the Close of Escrow, and as a condition to Habitat's obligations to close this transaction, the City shall provide Habitat with an ALTA extended coverage owner's policy of title insurance issued through Escrow Agent by a title insurance company acceptable to Habitat (the "Title Company"), together with any endorsements reasonably required by Habitat (but always including a comprehensive, contiguity and patent endorsement, if applicable) and specifically insuring over any

mechanic's or materialmen's liens on the Property notwithstanding that work may have been performed on the Property, in the full amount of the Purchase Price, effective as of the Close of Escrow, insuring Habitat that fee simple title to the Property is vested in Habitat, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters approved by Habitat as provided in of this Agreement, and to any other matters approved in writing by Habitat. The City shall pay the cost of a standard coverage policy. Habitat shall pay the additional premium for extended coverage and the cost of any other endorsements requested by Habitat other than as required by the City to remove matters objected to.

3.8 Escrow. An escrow (the "Escrow") for the transaction from the City to Habitat shall be established with a title agency mutually acceptable to Habitat and the City. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, the Parties agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

3.9 Opening and Closing Dates.

3.9.1 Escrow shall be deemed open on the date (the "Opening Date") when a fully originally executed copy of this Agreement has been delivered to Escrow Agent. Escrow Agent shall advise both Parties in writing of the Opening Date.

3.9.2 The closing of this transaction and escrow (referred to in this Agreement as the "Closing" or the "Close of Escrow") shall occur on or before ten (10) days after the effective date of the expiration of the Feasibility Period, unless otherwise provided in this Agreement. Closing shall be deemed to occur upon the recording of the Deed with the County Recorder for Maricopa County, Arizona.

3.10 Escrow Cancellation Charges. If the Escrow fails to close because of the City's default, the City shall be liable for all customary escrow cancellation charges. If the Escrow fails to close because of Habitat's default, Habitat shall be liable for all customary escrow cancellation charges. If the Escrow fails to close for any other reason (including without limitation, a failure to satisfy contingencies), the City and Habitat shall each be liable for one-half of all customary Escrow cancellation charges.

3.11 Closing Costs.

3.11.1 the City agrees to pay the Escrow charges and the entire cost of the ALTA standard coverage owner's policy of title insurance;

3.11.2 Habitat agrees to pay the additional premium for extended coverage title insurance and for any endorsements to the title policy requested by Habitat unless otherwise provided in this Agreement;

3.11.3 The City agrees to pay all real property taxes due on the Property pro-rated to the date of Close of Escrow.

ARTICLE IV
OBLIGATIONS

4.1 Representations of Habitat. Habitat represents, warrants, and covenants to City as follows:

4.1.1 Subject to the terms of this Agreement and as a material consideration of City conveying the Property to Habitat, Habitat shall construct the Project and shall operate the Project in accordance with this Agreement. Habitat will ensure compliance with all Project requirements and use all normal and customary practices and procedures for the development of the Project and provide a level of service that is consistent with the level of service for similar programs administered by it in the community.

4.1.2 Maintain records pertaining to this Agreement and the Property for six (6) years..

4.1.3 Comply with the requirements and standards of Office of Management and Budget ("OMB") in accordance with 2 C.F.R. § 200 and the HUD implementing regulations in accordance therewith as such maybe amended or revised. Such compliance will be subject to monitoring from time to time by the City or by HUD.

4.1.4 Habitat shall construct the Project in compliance with the Development Plan, including applicable zoning for the Property, the City's design review approval, and the approved site plan and other City-approved plans or specifications for the Project.

4.1.5 After conveyance of the Property, Habitat shall or shall ensure the payment of all applicable taxes for the Project.

4.1.6 Habitat shall maintain records of all ethnic and racial statistics of persons and families benefited in the performance of its services on the Property, including, but not limited to, the number of moderate income persons (81%-120% of median income); low and moderate income persons (51%-80% of median income), the number of very low income persons (31%-50% of median income) and the number of extremely low income persons (0-30% of median income) and households assisted in accordance with federal income limits, the number of elderly (over 62 years of age) and individuals with disabilities, family size, and number of female heads of households.

4.1.7 Provide the City with written reports of its activities quarterly, or as otherwise requested by the City and a final report when this Agreement terminates, setting forth the demographic information stated in Section 4.1.6 (above), as well as the activities, program accomplishments, new program information and current statistics on expenditures and activities. The City and the United States Government and/or their representatives shall have access for purposes of monitoring, auditing, and examining performance to Project documents and papers, and the right to examine financial records.

4.1.8 Give all notices and comply with all laws, ordinances, rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If Habitat observes that any of the Agreement documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify City, in writing, and any necessary changes shall be accomplished by appropriate written modification as deemed necessary by City.

4.1.9 Habitat acknowledges that the funds, in part, utilized by City to acquire the Property were received by City pursuant to the Housing and Economic Recovery Act of 2008 and the American Rescue Plan Act of 2021 (the "Acts") and that expenditure of these funds must comply with these Acts and all other pertinent regulations issued by agencies of the federal government. Habitat agrees to comply fully with all federal, state, and local laws and court orders applicable to its operation, whether or not referred to in this Agreement.

4.1.10 Habitat and its subcontractors shall abide by all regulations pursuant to the Immigration and Naturalization Reform Act of 1986, specifically as it relates to employment and client services, and

such other provisions as may be applicable, including A.R.S. § 23-214(A). Should Habitat perform any work knowing it to be contrary to applicable laws, ordinances, rules building codes and/or regulations, it shall assume full responsibility therefore, and shall bear all costs incurred due to its negligence.

4.1.11 Habitat shall acknowledge the contributions of the City of Avondale in all published literature, brochures, programs, fliers, etc., during the term of the Agreement.

4.1.12 Habitat agrees to comply with Section 319 of Public Law 101-121, (31 U.S.C. § 1352).

4.1.13 Habitat agrees to afford Preference, as defined in Article I, to those Eligible Households who qualify for such Preference.

4.1.14 Habitat shall comply with the requirements of 24 C.F.R. 75, also known as Section 3 of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

4.1.15 Habitat shall comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as applied to recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

4.1.16 Maricopa County is assuming all responsibilities for environmental review, decision making, and action regarding the Project under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such activities as federal activities in accordance with 24 C.F.R. § 58 (environmental review procedures for entities assuming HUD environmental responsibilities). The County will also assume the responsibility for the Request for the Release of Funds. Habitat agrees not to commit or incur expenditures for activities until this environmental review process has been completed. Should it be determined that Habitat has incurred expenses in violation of the NEPA requirements, Habitat will be responsible for the full costs for such expenditures and repayment of any related reimbursements.

4.1.17 This Agreement does not constitute a commitment of funds or site approval until satisfactory completion of environmental review and receipt by Maricopa County of an approval of the Request for Release of Funds (RROF) and certification from the HUD under 24 CFR Part 58 with an Authority to Use Grant Funds (AUGF). The provision of any funds to the project is conditioned on Maricopa County's determination to proceed with, modify or cancel the project based on the results of the environmental review.

4.1.18 If remediation is indicated by any Phase I, Phase II or ERR for the Project or any part of the Property, the parties shall determine between them who is responsible for paying for the remediation costs indicated by any Environmental Report. If the parties agree that Habitat shall pay for the costs of any Phase II or for remediating the Property, Habitat shall determine, in its sole and absolute discretion, whether it has sufficient funds in its development budget and/or sufficient time in its construction schedule (given the constraints of this Agreement) to have a Phase II prepared and/or to remediate the Property or whether to terminate this Agreement. Habitat shall promptly notify the City in writing if it has elected to terminate this Agreement due to the need to remediate the Project. Habitat shall have no obligation to construct the Project until any remediation required by Habitat's financing and construction partners has been completed

to their financing and construction partners' complete satisfaction. Notwithstanding the foregoing, it is Habitat's responsibility to notify the City of any requests to extend the Project's completion date based upon environmental remediation activities.

4.1.19 If a Section 106 Review is indicated by any Phase I or ERR, then the parties shall determine who is responsible for engaging and overseeing the Section 106 Review and implementing any required findings of adverse effects. If the parties determine that Habitat is responsible for implementing, overseeing, and complying with any Section 106 Review findings of adverse effect, then Habitat shall determine, in its sole and absolute discretion, whether it has either sufficient funds in its development budget and/or sufficient time in its construction schedule (given the constraints of this Agreement) to comply with the Section 106 Review requirements and remediate any findings of adverse effects or whether to terminate this Agreement. Habitat shall promptly notify the City in writing if it has elected to terminate this Agreement pursuant to the terms of this Section. Habitat agrees to notify the City of any requirements to extend the Project's Completion Date based upon Section 106 Review activities.

4.1.20 Affirmative Marketing. Habitat shall adopt and follow affirmative marketing procedures pursuant to 24 C.F.R. 92.351 to provide information to otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. The affirmative marketing procedures and requirements must apply in the context of the preferred eligibility for the project as listed in this Agreement. The affirmative marketing requirements and procedures adopted must include:

- a) Methods for informing the public and potential buyers about Federal fair housing laws and Habitat's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations);
- b) Requirements and practices that will be adhered to in order to carry out the affirmative marketing procedures (e.g., use of media, Equal Housing Opportunity logotype or slogan, and display of Fair Housing posters);
- c) Procedures to be used to solicit applications from persons in the housing market area who are not likely to apply for the housing program without special outreach (e.g., through the use of community organizations, churches, employment centers);
- d) Records that will be kept describing actions taken by Habitat to affirmatively market the program and records to assess the results of these actions; and
- e) A description to assess the success of the affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

4.2 Representations of City. The City represents, warrants, and covenants to Habitat as follows:

4.2.1 The City owns fee simple title to the Property, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for the Permitted Encumbrances. To the City's actual knowledge, the Property is in compliance with all easements, restrictions and other matters of record affecting title and has received no notices asserting noncompliance.

4.2.2 The City has full right, power and authority to make, execute, deliver and perform its obligations under this Agreement. Subject to the City Council's approval of this Agreement, the City has

obtained and received all required and necessary consents and approvals to enter into this Agreement with Habitat. The entry by the City into this Agreement with Habitat and the performance of all of the terms, provisions, and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which City is a party or by which it is bound.

4.2.3 The City hereby agrees that, in connection with all approval requests relating to the construction of any Improvements that only customary plan or review requirements, which are to include the use of sustainable practices in the design and/or construction of the Project, will be imposed on Habitat, consistent with City's normal process, and that no extraordinary plan or review requirements will be imposed.

4.2.4 As of the Effective Date of this Agreement, there will be no tenants, lessees or other occupants of the Property having any right or claim to possession or use of the Property or a claimed preference for occupancy in the Property and City agrees to execute any affidavits required by the title company insuring title to this Project.

4.2.5 There are no unpaid special assessments of which City has received notice, or of which City is otherwise aware, for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Property.

4.2.6 City is not obligated under any contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Property except as previously disclosed to Habitat.

4.2.7 There is no action, suit, litigation or proceeding pending or, to City's knowledge, threatened against City and/or the Property which could prevent or impair City's obligations hereunder or materially and adversely impact Habitat's rights hereunder.

4.2.8 The person signing this Agreement on behalf of City is duly and validly authorized to do so.

4.2.9 There are no pending condemnation proceedings relating to any portion of the Property, and City has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Property or of any other proceedings against or any taking of all or any part of the Property.

4.2.10 There is no pending or threatened litigation, governmental proceeding, notice of action required to be taken, judgment or cause of action against or related to the Property, or any portion thereof, or against City or City's agents with respect to the Property or any portion thereof.

4.2.11 Except as may be referenced in any Phase I, Phase II, or ERR (collectively, an "Environmental Review Record") and to the City's actual knowledge, no part of the Property has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation, or disposal of any Hazardous Materials (as defined herein). Except as referenced in any Environmental Report, to the City's actual knowledge, no Hazardous Materials have been installed, used, stored, handled, or located on or beneath the Property, which Hazardous Materials, if found on or beneath the Property, or improperly disposed of off the Property, would subject the owner or occupant of the Property to damages, penalties, liability, or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation, or installation in or in connection with the Property ("Environmental Cleanup Work") in order to comply with any legal requirements applicable to the Hazardous Substances found. No notice from any governmental authorities or any person has been served

upon City, its agents or employees, claiming a violation of a legal requirement, or any liability thereunder, pertaining to Hazardous Materials, or requiring or calling attention to the need for Environmental Cleanup Work on or in connection with the Property, except as has been disclosed in writing by City to Habitat, and neither City, its agents or employees has any knowledge of any threatened or proposed serving of any such notice of violation or requirement of corrective work. Except as referenced in any Environmental Report, no part of the Property is affected by any "Hazardous Materials Contamination," which for the purposes hereof shall mean (i) the contamination of any improvements, facilities, soils, subsurface strata, groundwater, ambient air, biota, or other elements on or of the Property by Hazardous Materials; or (ii) the contamination of the buildings, facilities, soil subsurface strata, groundwater, ambient air, biota, or other elements on or of any other property as a result of Hazardous Materials emanating from the Property. For purposes of this Agreement, "Hazardous Materials" shall have the meaning ascribed in, and shall include those substances listed in Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and the regulations promulgated thereunder (as amended from time to time) and the Clean Air Act, 42 U.S.C. § 7401, et seq. and the regulations promulgated thereunder (as amended from time to time) and includes oil, petroleum distillates or byproducts, waste oil and used oil as those terms are defined in the Clean Air Act, 33 U.S.C. § 1251, et seq. and regulations promulgated thereunder (as amended from time to time) and the Resource, Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and regulations promulgated thereunder (as amended from time to time) and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. and regulations promulgated thereunder (as amended from time to time), and shall include any (A) groundwater contaminated by such Hazardous Substance(s) and (B) other pollutant or contaminated designated as a Hazardous Substance by Congress or the United States Environmental Protection Agency (EPA) or defined by any other federal or Arizona law, ordinance, code, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

4.2.12 The City will make the results of any Phase I, Phase II and the ERR immediately available to Habitat. Any Phase I, Phase II or ERR shall be addressed to Habitat, and City agrees to provide such reliance letters to any of Habitat's financing partners as they may require.

4.2.13 The City agrees to acknowledge any payment and performance bonds that will be required to be executed in connection with the construction of the Project.

4.2.14 The funds used by City to acquire and develop the Property were received pursuant to the Acts and expenditure of these funds must comply with the Acts and all pertinent regulations issued by agencies of the federal government. Accordingly, City hereby agrees to comply with all applicable laws, rules and regulations adopted by HUD and applicable to the acceptance and disposition of any funds for the Project.

4.2.15 The City shall provide technical assistance to Habitat in satisfying its obligation to comply with applicable federal guidelines governing the use of federal funds.

4.2.16 The Project is in compliance with both the City of Avondale's and Maricopa HOME Consortium's current Consolidated Plan/Action Plans which have been approved by HUD.

ARTICLE V **FUNDING**

5.1 The City shall provide Habitat with up to \$562,000 in ARPA funding to be used for development of the Project as set forth in the budget attached hereto as **Exhibit B**.

5.1.1 The Agreement is on a cost reimbursement basis. Habitat shall submit monthly invoices to the City for reimbursement and the City shall reimburse Habitat for approved expenses on a net-30 payments standard.

5.1.2 The City shall pay Habitat monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a description of the work performed in sufficient detail to justify payment.

Expenditures for pre-development activities conducted by Habitat prior to the Effective Date may be reimbursed upon approval by the City, which shall be at the City's sole discretion.

All invoices for reimbursement shall be submitted prior to November 1, 2026 to allow for approval and drawdown prior to December 31, 2026. Any invoice submitted after November 1, 2026 shall not be reimbursed.

5.1.3 Payment by the City is not to be construed as final in the event that the federal government, State, or Maricopa County disallows payment for the activity or any portion thereof. Funds not expended in implementing this Project or upon completion of the Project shall be returned to the City, or remitted to the County, as applicable.

5.1.4 The Parties' obligations under this Agreement shall become effective when funds assigned for the purpose of compensating Habitat are available to the City for disbursement. The City shall be the sole authority in determining the availability of funds under this Agreement, and the City shall keep Habitat fully informed as to the availability of funds. If any action is taken by any federal, state, local agency, or any other agency or instrumentality of competent jurisdiction other than the Parties to amend, suspend, or terminate its fiscal obligation under or provided in connection with this Agreement, then the Parties may amend, suspend, or terminate this Agreement. In the event of termination, the City shall be liable for payment only for costs incurred prior to the effective date of the termination, provided that such services were performed in accordance with the provisions of this Agreement. Furthermore, upon termination Habitat shall be released from all pending responsibilities and shall have no further obligation to perform under the Agreement unless it is expressly provided for herein as an obligation that survives termination. The Parties shall give written notice of their intent to suspend performance or intent to terminate this Agreement under this Section at least thirty (30) calendar days in advance.

5.1.5 If Habitat does not meet the expenditure or obligation dates, Habitat shall submit to the City, a written plan specifying the actions that will be taken to bring the Project into compliance, including anticipated obligation and expenditure dates. The City shall make the final decisions as to what action to take, including but not limited to granting an extension of time for completion of the work, cancellation of this Agreement, recapture of a portion or all funds provided under this Agreement.

5.2 2 C.F.R. Part 200 Compliance. By entering into this Agreement, Habitat agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, Part 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. §§ 200, *et seq.*

5.3 Disallowance.

5.3.1 The cost principles set forth in 2 C.F.R. Part 200 Subpart E shall be used to determine the allowability of incurred reimbursable costs under this Agreement. Habitat shall follow cost principles as outlined in the Office of Management and Budget (OMB) Uniform Guidance, 2 C.F.R. Part 200.

5.3.2 Those costs that are specifically defined as unallowable in 2 C.F.R. Part 200, Subpart E, shall not be submitted for reimbursement by Habitat and shall not be reimbursed.

5.4 Developer Fee. The Project is presumptively eligible as a use of ARPA funds as it meets the requirements of the HOME Program and is being held to the HOME eligible project cost requirements. Per HUD CPD Notice 15-11 Section VII(d), developers and owners may financially benefit from HOME-assisted projects, including via use of reasonable developer fees. Developer fees “are charged by the developer as part of the project cost to compensate for the risk, time, and effort to build and sell or lease the property.” As such, agreed upon developer fees are an eligible project cost, and may be included in a claim for reimbursement. The developer fees will be paid out based upon the amount of work completed or funds expended from the Project.

ARTICLE VI **NON-DISCRIMINATION**

6.1 Habitat shall not discriminate against any employee or applicant for employment because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran.

6.2 Habitat shall take affirmative action in employment to ensure that employees are treated during employment, without regard to their gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran. The scope of non-discrimination shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training.

6.3 Habitat agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of nondiscrimination as described in this Agreement.

6.4 Habitat shall not discriminate against any applicant for service because of gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability or status as a U.S. military veteran. Habitat shall, in all solicitations or advertisements, state that all qualified applicants will receive consideration for employment of service without regard to gender identity, sexual orientation, race, color, gender, religion, national origin, familial status, age, disability and status as a U.S. military veteran.

ARTICLE VII **INDEMNIFICATION**

7.1 Liability and Indemnification. Habitat shall indemnify, defend, and hold harmless City, City Councilmembers, and the City’s respective employees, agents, contractors, licensees or assignees (each an “Indemnified Party,” and collectively the “City Indemnified Parties”) for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, judgments, causes of action, including remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, attorneys’ fees and disbursements, which may be imposed upon or incurred by or asserted against any one or more of the City Indemnified Parties by reason of any statement, information, certificate or other official representation provided by Habitat pertaining to this Agreement that is false, inaccurate, misleading or incomplete in any material respect, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnity hereunder. In the case of any claim, action or proceeding is made or

brought against any of the City Indemnified Parties by reason of any of the foregoing events, then Habitat, upon prompt written notice from the Indemnified Party will, at Habitat's sole cost and expense, resist or defend such claim, action or proceeding, in the City Indemnified Party's name, if necessary, by counsel approved, in writing, by the Indemnified Party, such approval not be unreasonably withheld or delayed.

ARTICLE VIII

DEFAULT; REMEDIES; TERMINATION

8.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement for breach of any of the representations, warranties, or covenants described in Article IV above; such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance and such breach continues for a period of thirty (30) days after written notice thereof given by the non-defaulting party specifying in reasonable detail the nature of such breach.

8.2 Habitat's Remedies. If City is in breach under this Agreement and fails to cure any such breach within the time period required therefore as set forth in Section 8.1 above, then Habitat shall have the right to terminate this Agreement upon written notice delivered to the City.

8.3 City's Remedies; Right to Foreclose. If Habitat is in breach under this Agreement by failing to develop the Property in accordance with the Schedule of Performance or failing to comply with the sale requirements set forth in herein, and Habitat thereafter fails to cure any such breach within the time period described in Section 8.1 above, then the City shall have the right to terminate this Agreement immediately upon written notice to Habitat and, if it so elects, initiate foreclosure proceedings within 180 days after notice of termination.

8.4 Development Rights in the Event of Termination. Upon the termination of this Agreement as provided herein, Habitat shall have no further rights to develop the Property.

ARTICLE IX

CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

9.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, including A.R.S. § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Habitat, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Habitat or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE X

GENERAL PROVISIONS

10.1 Notices. All notices, demands and other communications to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given upon personal delivery or three business days after deposit in the United States mail, registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to the City:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: Ron Corbin, City Manager
With copy to:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: Nicholle Harris, City Attorney
If to Lessee:	Habitat for Humanity Central Arizona 2830 West Glendale Avenue Phoenix, Arizona 85051 Attn: Jason Barlow, President and CEO

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. As used in this Agreement, "*business day*" shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government, the City or the State of Arizona.

10.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Habitat and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Habitat shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to residential property development. The cost of any such mediation shall be divided equally between the City and Habitat. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

10.3 Governing Law and Venue. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona

10.4 Successors and Assigns. This Agreement shall run with the Property and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Upon prior written notice to City, Habitat may assign its interest in this Agreement, in whole or in part, to any entity that it controls or is under common control with Habitat. Neither Habitat nor any permitted assignee of Habitat may otherwise assign its interest in this Agreement without prior written consent of City, which consent may be reasonably withheld by City.

10.5 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

10.6 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

10.7 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

10.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

10.9 Entire Agreement and Conflict. The LURA and this Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. In the event of conflict between the LURA and this Agreement, the documents shall govern in the order listed herein.

10.10 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

10.11 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

10.12 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

10.13 Performance Deadlines; City Manager's Power to Consent. The City authorizes and empowers the City Manager, or their designee, to consent to any and all requests of the Habitat requiring the consent of the City hereunder without further action of the City Council except for any actions requiring City approval as a matter of law including without limitation, any amendment or modification of this Agreement that is within the initial authority for these Projects granted by the City Council. Without limiting the foregoing, the Parties acknowledge that all aspects of the Projects' development have not been thoroughly addressed in this Agreement, and amendments to this Agreement are anticipated to reflect the Parties' intent concerning the Project.

10.14 Opportunity to Consult. The Parties represent and agree that, prior to executing the Agreement, each has had the opportunity to consult with independent counsel concerning the terms of the Agreement.

10.15 Provisions Required by Law. Any and all provisions required by law to be in this Agreement are a part of this Agreement and fully incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Ron Corbin, City Manager

ATTEST:

Marcella Sarmiento, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2024,
by Ron Corbin, City Manager of the City of Avondale, an Arizona municipal corporation, on behalf of the
City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Habitat,
an Arizona non-profit corporation

Title: _____

STATE OF _____) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2024,
by _____, as _____ of Habitat for Humanity Central Arizona, an Arizona
non-profit corporation, on behalf of the corporation.

Notary Public

EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HABITAT FOR HUMANITY CENTRAL ARIZONA

[Legal Description of Property]

Lot 11, Block 2, HILL TRACT, according to Book 29 of Maps, Page 45, records of Maricopa County, Arizona.

EXHIBIT B
TO DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HABITAT FOR HUMANITY CENTRAL ARIZONA
[Scope of Work, Schedule of Performance, and Budget]

See following pages.

SCOPE OF WORK

The project is known as the Infill Housing Development-320 E. Hill Drive. Habitat for Humanity, acting in the capacity of a developer, will acquire the property located at 320 E. Hill Drive and develop two attached, single-family homes. The site is in a Qualified Census Tract (QCT). The land is to be transferred to Habitat for Humanity from the City. The new homes will be sold to low-income qualifying homeowners per the Neighborhood Stabilization Program (NSP) regulations. Funds will be paid to Habitat for Humanity on a reimbursement basis.

Individuals and families acquiring the newly constructed housing must qualify as low-income, as defined in 24 C.F.R. § 5.609 earning 120% or less than the AMI, per the NSP regulations. The Period of Affordability shall be no less than fifteen (15) years. All homebuyers must maintain the housing as their principal residence throughout the Period of Affordability.

Homebuyer Eligibility Criteria:

- Complete at least 8 hours of HUD-approved homebuyer counseling.
- Cannot be on the title of any residential property.
- Head of household must be a permanent legal U.S. resident.
- Occupy the home as the primary residence.
- Qualify as low-income, as defined above.

Upon sale to an eligible buyer, a Deed of Trust and Promissory Note will be executed to secure the Period of Affordability and require the housing to be used as the buyer's principal residence, as required by HUD. The Deed of Trust will include a due on sale clause to ensure that funds are recaptured if the property is sold during the Affordability Period if Habitat does not invoke their Right of First Refusal.

OBJECTIVES AND OUTCOMES: The objective of the project is to create decent, affordable housing. The outcome will be 2 newly constructed homes sold to low-income qualified families.

LOGIC MODEL: PERFORMANCE INDICATORS

INPUTS/ RESOURCES	<u>OUTPUTS</u>		OUTCOMES	OBJECTIVES
	ACTIVITIES	PARTICIPATION		
Development staff, funding, contractors	Develop 2 housing single family housing units	Two households	Affordable housing for low- to moderate-income families. Increased home ownership. Improved neighborhoods through the development of infill vacant lots.	Decent and affordable housing.

ACTIVITY BUDGET SUMMARY

ACTIVITY	HABITAT RESOURCES	SLFRF (ARPA)	TOTAL ACTIVITY BUDGET
Infrastructure: grading, drainage, water, sewer, sidewalks, lighting, etc.	\$0	\$102,000	\$102,000
Soft Costs: Architect and Engineering Fees, P&Z applications, Survey, Permit, Legal Fees, title and recording, insurance, reserves, etc.	\$0	\$60,000	\$60,000
Construction Hard Costs: foundation, plumbing, flooring, roofing, kitchen, baths, doors, windows, etc.:	\$0	\$360,000	\$360,000
Sale of Units: appraisals, commissions, taxes, title and recording fees, down payment assistance, etc.	\$0	\$40,000	\$40,000
Developer Fees	\$0	\$0	\$0
Contingency	\$60,000	\$0	\$60,000
TOTAL DEVELOPMENT COST	\$60,000	\$562,000	622,000

CONVERSION TO RENTAL:

If the newly constructed homes are not sold to an eligible homebuyer within nine (9) months after the receipt of a Certificate of Occupancy, the homes must be converted to rental units that complies with a Period of Affordability of twenty (20) years. If the vacant property is not converted, then the ARPA funds must be repaid to the City.

DEVELOPMENT SCHEDULE

<u>MILESTONES: Tasks to be Performed</u>	<u>COMPLETION DATE</u>
Plans Approved-City of Avondale	April 2025
Environmental Review approval	December 2024
Submit complete application for construction permits	June 2025
RFP for construction activities	June 2025
Homeownership counseling/buyer preparation	ongoing
Construction of project	February 2026
Sale of Unit	March 2026
Homebuyer financing secured	March 2026
Certificate of Occupancy	March 2026
Final Close-out /Project Completion Form	April 2026

EXHIBIT C
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HABITAT FOR HUMANITY CENTRAL ARIZONA

[Land Use Restriction Agreement]

When recorded return to:

City of Avondale
Office of the City Clerk
11465 West Civic Center Drive
Avondale, Arizona 85323
Attention: Marcella Sarmiento

Declaration of
Land Use Restriction Agreement

THIS DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE COVENANT, dated _____ (this “Declaration”), is made by Habitat for Humanity Central Arizona, an Arizona nonprofit corporation, (“Declarant”), for the benefit of the City of Avondale (the “City”), an Arizona municipal corporation, and is intended to affect and apply to that certain real property as set forth in the legal description in Exhibit A hereto, located at 320 East Hill Drive in Avondale, Arizona (the “Property”) as follows:

RECITALS:

- A. The City purchased the Property using Neighborhood Stabilization Program (“NSP”) funds issued to the City by the United States Department of Housing and Urban Development (“HUD”) pursuant to the Housing and Economic Recovery Act of 2008, as amended.
- B. The Property is developed using Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act of 2021 (“ARPA”).
- C. The City conveyed the Property to Declarant pursuant to that certain Disposition and Development Agreement with the City, dated contemporaneously herewith and incorporated herein by reference (the “Disposition and Development Agreement”).
- D. The funding provided by the City to Declarant consists of a portion the federal NSP and ARPA funding that were awarded to the City and were conditioned upon development and maintenance of affordable housing for a period of affordability, as set forth in the Disposition and Development Agreement.
- E. The use of NSP and ARPA funds are intended to promote affordable housing, subject to the restrictions of the NSP and ARPA requirements, in addition to any restrictions set forth herein.
- G. All capitalized terms not otherwise defined in this Agreement shall have the same meanings as set forth in the Development and Disposition Agreement, executed and recorded contemporaneously herewith.

AGREEMENT:

NOW, THEREFORE, in consideration of the conveyance of the Property by the City and of NSP and ARPA funding, Declarant does hereby grant to the City the following restrictions against the Property:

1. Use of Property. Declarant covenants that for the term of that certain Disposition and Development Agreement, which is 15 years from closing and conveyance of title to an eligible Homeowner (the “Period of Affordability”), that the Property shall only be used to construct and maintain a single-family residence subject to the terms and conditions of the Disposition and Development Agreement.

2. Affordability Restriction. The Property shall be sold only to Eligible Households, as defined in the Disposition and Development Agreement, having incomes of no more than 120% Area Median Income, as set forth by HUD annually.

3. Transfer Restrictions. The Units constructed on the Property may only be transferred to another Eligible Household unless otherwise consented to by the City. All transactions shall be monitored for compliance by the City. Any purchaser shall be required to assume the obligations under this Declaration until the Period of Affordability expires.

4. Residency Restriction. Once sold to a Eligible Household, the Eligible Household shall occupy the Property as their principal residence.

4. Other Provisions. The Property shall remain subject to any and all restrictions listed in this LURA and the Disposition and Development Agreement, even if not expressly mentioned herein. In the event of conflict between the Disposition and Development Agreement, this LURA, and any applicable polices or bylaws of Declarant, and these documents shall govern in the order listed herein

5. Compliance. Whether or not the affordability requirements set out in Section 2 above have been or are being met during the Affordability Period shall be determined by reference to the affordability requirements of the Disposition and Development Agreement, and if not contemplated by the Disposition and Development Agreement, 24 C.F.R. Part 92.

6. Covenant Running with the Land. This LURA and agreements contained herein, shall run with the land component of the Property, but not the residential improvements on the Property, and shall be binding upon Declarant, its successors, heirs and assigns, and shall inure to the benefit of City, its successors and assigns.

7. Amendments. Except as stated in Section 10 below, this Declaration shall not be amended, modified, or terminated without the express written consent of both Declarant and the City.

8. Termination. This Declaration, and covenants and agreements contained herein, shall automatically terminate at the end of the Affordability Period.

9. Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned has caused its names to be signed this _____ day of __, 2024.

HABITAT FOR HUMANITY CENTRAL ARIZONA,
an Arizona nonprofit corporation

By: _____

Its: Executive Director

STATE OF ARIZONA)

) ss.

County of Maricopa)

On this, the __ day of _____, 2024, before me, the undersigned, a Notary Public, personally appeared _____, who acknowledged themselves to be the _____ of Habitat, an Arizona nonprofit corporation, and that they, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the nonprofit corporation.

My Commission Expires:

Notary Public

EXHIBIT A
TO
DECLARATION OF LAND USE RESTRICTIONS

LEGAL DESCRIPTION OF PROPERTY

Lot 11, Block 2, HILL TRACT, according to Book 29 of Maps, Page 45, records of Maricopa County, Arizona.

EXHIBIT D
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HABITAT FOR HUMANITY CENTRAL ARIZONA

[Special Warranty Deed]

See following pages.

When recorded return to:

City of Avondale
Office of the City Clerk
11465 West Civic Center Drive
Avondale, Arizona 85323
Attention: Marcella Sarmiento

EXEMPT FROM AFFIDAVIT OF PROPERTY VALUE PURSUANT TO ARIZ. REV. STAT. § 11-1134(A)(3).

SPECIAL WARRANTY DEED

For the consideration of TEN THOUSAND AND NO/100 DOLLARS, and other valuable consideration, **THE CITY OF AVONDALE**, an Arizona municipal corporation, the Seller, does hereby convey to **HABITAT**, an Arizona non-profit corporation, the Buyer, the following described property situated in the County of Maricopa, State of Arizona, together with all rights and privileges appurtenant thereto, to wit:

See Exhibit A attached hereto and incorporated herein by reference.

Subject to:

- 1) that certain Disposition and Development Agreement between the City of Avondale and Habitat Development Corporation, dated _____, as amended;
- 2) that certain Land Use Restriction Agreement executed by Habitat in favor of the City of Avondale, dated _____ and recorded contemporaneously with this Special Warranty Deed; and,
- 3) any additional matters set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

And the Seller hereby binds itself and its successors to warrant and defend the title, as against all acts of the Seller herein and no other, subject to the matters above set forth.

[SIGNATURE AND NOTARY PAGE FOLLOWS]

DATED: _____, 202__.

CITY OF AVONDALE, an Arizona
Municipal Corporation

By: _____
Ron Corbin, City Manager

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of
_____ 202__, by Ron Corbin, the City Manager of the City of Avondale, an Arizona
municipal corporation, on behalf of the corporation.

(Seal and Expiration Date)

Notary Public

EXHIBIT A
TO
SPECIAL WARRANTY DEED

[LEGAL DESCRIPTION OF PROPERTY]

Lot 11, Block 2, HILL TRACT, according to Book 29 of Maps, Page 45, records of Maricopa County, Arizona.

EXHIBIT B
TO
SPECIAL WARRANTY DEED

[Title Exceptions]

ITEM NUMBER: 4.g.

SUBJECT: Ordinance 2003-0125 – Amending City Code Chapter 15, Article V - Relating to Shopping Carts

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Dale Nannenga, Deputy City Manager

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

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

- Innovative Program and Service Delivery – Improve internal and external customer service delivery through streamlined processes and data-based programming.
-

PURPOSE:

City Council will consider a request to adopt Ordinance 2003-0125, amending Avondale City Code, Chapter 15, Article V, relating to Shopping Carts and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Chapter 15, Article V of the Avondale City Code relating to Shopping Carts was adopted in June 2020 for the purpose of addressing abandoned shopping carts in the City of Avondale. The requested amendments would provide the City and retailers a streamlined process for certification and the City a streamlined process for abandoned shopping cart enforcement. Also, to update the department names.

DISCUSSION:

The purpose of the Shopping Cart Ordinance is to address retail businesses to take measures in preventing shopping carts being removed from their properties and being abandoned in City streets and neighborhoods. The proposed changes will streamline the process and remove sections that created an undue burden on staff and businesses. The changes will be:

- The City will no longer charge a fee for filing a certification to assist in streamlining the process for both retailers and staff.
- Update titles from Development and Engineering Services Director to Code Compliance Manager.
- Allow retailers the option of having a restrictive device or contract with a cart retrieval service.
- Amend the process of publishing a notice of impounded carts in a newspaper of general circulation to the City's Website, that still conforms to state law.

- Provide discretion in recovering costs from retailers for impounding a shopping cart that would assist in streamlining the process for City staff.

BUDGET IMPACT:

No Budget Impact

RECOMMENDATION:

Staff recommends City Council adopt an Ordinance amending Chapter 15, Article V of the Avondale City Code, relating to Shopping Carts and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

Contact person for document distribution: Josh Perez

ORDINANCE NO. 2003-0125

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE CITY CODE, CHAPTER 15 (MISCELLANEOUS PROVISIONS AND OFFENSES), ARTICLE V (SHOPPING CARTS), SECTION 15-47 (RESTRICTIVE DEVICES REQUIRED; VIOLATIONS; PENALTIES) AND SECTION 15-50 (IMPOUNDMENT OF SHOPPING CARTS BY THE CITY; CONDITIONS; EMERGENCIES; COSTS; FINES; DISPOSAL OF UNCLAIMED SHOPPING CARTS; APPLICABILITY) PERTAINING TO THE COLLECTION AND DISPOSITION OF SHOPPING CARTS.

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

SECTION 1. The Avondale City Code, Chapter 15 (Miscellaneous Provisions and Offenses), Article V (Shopping Carts), Section 15-47 (Restrictive devices required; violations; penalties) is amended as follows:

15-47 Restrictive devices required; violations; penalties.

(a) New retail establishments. On or after July 31, 2020, any person, partnership, corporation or other legal entity commencing operation of a retail establishment on any premises within the city shall have all shopping carts, owned, leased or which they are in lawful possession of, continuously equipped with a restrictive device that prevents their removal from the premises. The city shall not issue a business license, nor will the development and engineering services director or their designee shall issue a certificate of occupancy for the premises AND IT SHALL BE A VIOLATION OF THIS CHAPTER FOR THE OWNER OR ANY OTHER PERSON TO OCCUPY THE PREMISES without a certification from the owner that all shopping carts owned, leased or which they are in lawful possession of are so equipped. ~~The city shall charge a fee for the certification as provided in this Code.~~

(b) Existing retail establishments. On or after July 31, 2020, any person, partnership, corporation or other legal entity operating a retail establishment on any premises within the city shall have all shopping carts, owned, leased or which they are in lawful possession of, continuously equipped with a restrictive device that prevents their removal from the premises. Each person, partnership, corporation or other legal entity operating a retail establishment on July 31, 2022, shall file a certification with the ~~development and engineering services director~~ CODE COMPLIANCE MANAGER or their designee that all shopping carts owned, leased or which they are in lawful possession of are so equipped. ~~The city shall charge a fee for the certification as provided in this Code.~~ FAILURE TO FILE SUCH A CERTIFICATION SHALL BE A VIOLATION OF THIS CHAPTER.

(c) Failure to equip a shopping cart with a restrictive device or file the associated certification with the city as provided in this section shall be a civil infraction AND MAY RESULT

IN A NOTICE OF VIOLATION. The court shall impose a civil sanction for each shopping cart that is not equipped with a restrictive device. Each failure to equip a shopping cart with a restrictive device shall be deemed a separate violation of this section. It shall be presumed that all persons, partnerships, corporation or legal entities having control of shopping carts are subject to the provisions of this section. The burden of rebutting this presumption by compliance with the alternative contained in subsection (d) of this section shall be on the legal entity having control of shopping carts.

(d) As an alternative to subsections ~~(b) and (c)~~ (A) AND (B) of this section, any person, partnership, corporation or other legal entity operating a retail establishment within the city on or before July 31, 2020, or any entity that begins operating in an existing building or suite shall enter into a contract with a shopping cart retrieval service that complies with the provisions of section ~~15-41~~ 15-51 to recover shopping carts unlawfully removed from the premises of the retail establishment. In order to comply with this alternative, the contract shall meet all of the following:

...

~~(3) The retail establishment shall pay an annual fee as established by a city council resolution, which shall be used to cover the city's costs in administrating this provision and removing any carts under the control of the retail establishment from any place within the city.~~

(4)(3) The retailer shall continuously meet the requirements of section ~~15-38~~ 15-48 of this Code and have the name and phone number of the cart retrieval service attached to all the carts.

~~(5)~~(4) The retail establishment shall be required to file the annual certificate of compliance with the ~~development and engineering services director~~ CODE COMPLIANCE MANAGER or their designee and shall attach all required documents to indicate compliance with this subsection.

~~(6) In the event that one hundred fifty (150) shopping carts, under the control of a retail establishment contracted with a cart retrieval service pursuant to this subsection (d), were logged as being collected, deposited, and impounded with the city within one (1) calendar year within a two (2) consecutive year running period, the development and engineering services department or designee may prohibit use of this alternative and order the retail establishment to comply with the provisions of the applicable subsection (a) or (b) of this section.~~

SECTION 2. The Avondale City Code, Chapter 15 (Miscellaneous Provisions and Offenses), Article V (Shopping Carts), Section 15-50 (Impoundment of shopping carts by the city; conditions; emergencies; costs; fines; disposal of unclaimed shopping carts; applicability) is amended as follows:

15-50 Impoundment of shopping carts by the city; conditions; emergencies; costs; fines; disposal of unclaimed shopping carts; applicability.

(a) A shopping cart that does not have ~~any~~ identification affixed to in accordance with A.R.S. § 44-1799.32 or section ~~15-38~~ 15-48 of this Code is deemed a public nuisance and may be immediately and summarily abated by impoundment by the city. The city shall publish a notice one (1) time describing such carts ~~in a newspaper of general circulation in the city.~~ ON THE

CITY'S WEBSITE. A shopping cart that is not reclaimed from the city within ~~fifteen (15)~~ THIRTY (30) days following publication of the notice of impound may be sold or otherwise disposed of by the city in the city's sole discretion.

...

(f) The city ~~shall~~ MAY recover its costs for impounding a shopping cart in an amount established by a city council resolution.

(g) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, Aa shopping cart, with affixed identification in accordance with A.R.S. § 44-1799.32 or section ~~15-38~~ 15-48 of this Code, that is not reclaimed from the city within thirty (30) days after receipt of a notice of the impound by the owner of the shopping cart may be sold or otherwise disposed of by the city in the city's sole discretion.

...

(k) On or after July 31, 2020, any owner of a shopping cart or retailer who ~~has certified~~ CAN CERTIFY to the city that all of their shopping carts are equipped with a restrictive device to prevent removal from the premises of the owner or retailer shall be exempt from being charged any collection or impound fees for any carts collected by the city.

...

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall become effective in the manner provided by law.

SECTION 5. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, January 6, 2025.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

ITEM NUMBER: 4.h.

SUBJECT: Final Plat of Entrada - Phase 3 – Application PL-23-0154

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Kimberly Moon, Director, Engineering Department

THROUGH: Katie Gregory, 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.

The approval of this agenda item will maintain and expand quality infrastructure and improve connectivity to City amenities.

PURPOSE:

City Council will consider a request to: (a) approve Application PL-23-0154, a request by Daniel Auxier with EPS Group Inc., on behalf of Meritage Homes of Arizona Inc., for approval of the Final Plat of Entrada - Phase 3 located generally north of Broadway Road and west of 107th Avenue; and (b) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The subject property is approximately 28.9 acres in size and was annexed into the City's corporate limits on August 23, 2020, via Ordinance No. 2025-0820. The property is zoned as Entrada Planned Area Development (PAD) and is designated by the General Plan 2030 Land Use Map as Medium Density Residential.

DISCUSSION:

The proposed Final Plat subdivides 28.9 acres into 71 single family lots and open space tracts, and dedicates approximately 3.68 acres of right of way and associated public utility easements throughout the subdivision. The proposed Entrada Phase 3 Final Plat will offer a mix of three different residential lot sizes.

The proposed Final Plat has been reviewed by the City's contracted Registered Land Surveyor (R.L.S.) and the document has been confirmed as geometrically accurate and in conformance with Arizona Statutes governing the subdivision of real property.

Approval of the Final Plat conforms to the boundaries of the Final Plat certified by the R.L.S. dated December 3, 2024.

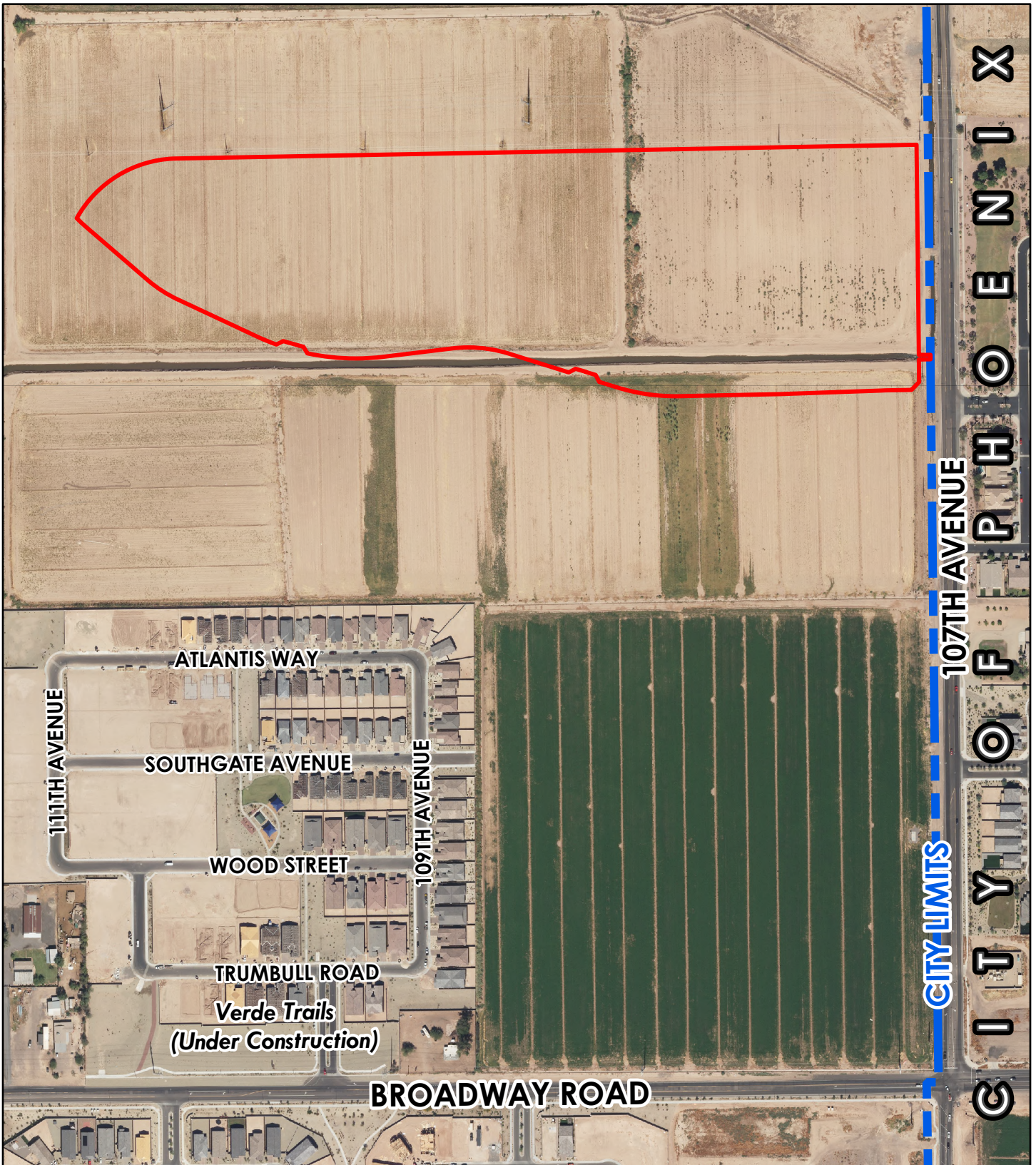
BUDGET IMPACT:

There is no impact to the budget for this action.

RECOMMENDATION:

Staff recommends City Council approve Application PL-23-0154, Final Plat of Entrada - Phase 3 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents.

Contact person for document distribution: Yulonda Moore, Terry Dorschied, Joshua Orton



Aerial Map



Subject Property



LEGAL DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 4" M.C. ENGINEERING BRASS CAP FLUSH AT THE SOUTHEAST CORNER OF SAID SECTION 19, FROM WHICH A 4" M.C. ENGINEERING BRASS CAP FLUSH AT THE SOUTH QUARTER CORNER OF SAID SECTION 19, BEARS SOUTH 89 DEGREES 26 MINUTES 07 SECONDS WEST (BASIS BEARING) 2,599.52 FEET;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, NORTH 0 DEGREES 37 MINUTES 32 SECONDS WEST, 1915.05 FEET;

THENCE DEPARTING FROM SAID EASE LINE, SOUTH 89 DEGREES 22 MINUTES 28 SECONDS WEST, 65.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 44 DEGREES 09 MINUTES 24 SECONDS WEST, 29.81 FEET;

THENCE SOUTH 88 DEGREES 56 MINUTES 20 SECONDS WEST, 68.90 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 915.50 FEET;

THENCE WESTERLY 13.09 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 0 DEGREES 49 MINUTES 08 SECONDS;

THENCE SOUTH 88 DEGREES 07 MINUTES 12 SECONDS WEST, 267.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 884.50 FEET;

THENCE WESTERLY 12.64 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 0 DEGREES 49 MINUTES 08 SECONDS;

THENCE SOUTH 88 DEGREES 56 MINUTES 20 SECONDS WEST, 273.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEAST, HAVING A RADIUS OF 540.00 FEET;

THENCE NORTHWESTERLY 174.38 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18 DEGREES 30 MINUTES 09 SECONDS;

THENCE NORTH 72 DEGREES 33 MINUTES 31 SECONDS WEST, 49.76 FEET;

THENCE NORTH 27 DEGREES 36 MINUTES 21 SECONDS WEST, 21.23 FEET;

THENCE NORTH 73 DEGREES 10 MINUTES 18 SECONDS WEST, 29.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWEST, FROM WHICH THE RADIUS POINT BEARS NORTH 73 DEGREES 10 MINUTES 18 SECONDS WEST A DISTANCE OF 400.00 FEET;

THENCE NORTHEASTERLY 0.67 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 0 DEGREES 05 MINUTES 45 SECONDS;

THENCE NORTH 73 DEGREES 16 MINUTES 03 SECONDS WEST, 29.09 FEET;

THENCE SOUTH 62 DEGREES 13 MINUTES 16 SECONDS WEST, 21.13 FEET;

THENCE NORTH 72 DEGREES 33 MINUTES 31 SECONDS WEST, 172.21 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWEST, HAVING A RADIUS OF 370.00 FEET;

THENCE NORTHWESTERLY 156.90 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24 DEGREES 17 MINUTES 45 SECONDS;

THENCE SOUTH 83 DEGREES 08 MINUTES 43 SECONDS WEST, 187.01 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 640.00 FEET;

THENCE WESTERLY 211.40 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18 DEGREES 55 MINUTES 31 SECONDS;

THENCE NORTH 30 DEGREES 37 MINUTES 23 SECONDS WEST, 20.60 FEET;

THENCE NORTH 73 DEGREES 59 MINUTES 22 SECONDS WEST, 58.00 FEET;

THENCE SOUTH 62 DEGREES 38 MINUTES 39 SECONDS WEST, 20.60 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEAST, FROM WHICH THE RADIUS POINT BEARS NORTH 19 DEGREES 57 MINUTES 02 SECONDS EAST A DISTANCE OF 640.00 FEET;

THENCE NORTHWESTERLY 58.41 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 5 DEGREES 13 MINUTES 45 SECONDS;

THENCE NORTH 64 DEGREES 49 MINUTES 13 SECONDS WEST, 238.64 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEAST, HAVING A RADIUS OF 360.00 FEET;

THENCE NORTHWESTERLY 98.66 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 15 DEGREES 42 MINUTES 07 SECONDS;

THENCE NORTH 49 DEGREES 07 MINUTES 06 SECONDS WEST, 221.27 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEAST, HAVING A RADIUS OF 510.00 FEET;

THENCE NORTHWESTERLY 36.31 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 4 DEGREES 04 MINUTES 46 SECONDS TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEAST, FROM WHICH THE RADIUS POINT BEARS SOUTH 61 DEGREES 06 MINUTES 21 SECONDS EAST A DISTANCE OF 308.00 FEET;

THENCE NORTHEASTERLY 322.78 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 60 DEGREES 02 MINUTES 41 SECONDS;

THENCE NORTH 88 DEGREES 56 MINUTES 20 SECONDS EAST, 2034.16 FEET;

THENCE ALONG THE WEST LINE OF THE EAST 65.00 FEET OF SAID SOUTHEAST QUARTER, SOUTH 0 DEGREES 37 MINUTES 32 SECONDS EAST, 575.32 FEET;

THENCE NORTH 89 DEGREES 09 MINUTES 36 SECONDS EAST, 32.00 FEET;

THENCE ALONG THE WEST LINE OF THE EAST 33.00 FEET OF SAID SOUTHEAST QUARTER, SOUTH 0 DEGREES 37 MINUTES 32 SECONDS EAST, 12.50 FEET;

THENCE SOUTH 89 DEGREES 09 MINUTES 36 SECONDS WEST, 32.00 FEET;

THENCE ALONG THE WEST LINE OF THE EAST 65.00 FEET OF SAID SOUTHEAST QUARTER, SOUTH 0 DEGREES 37 MINUTES 32 SECONDS EAST, 62.48 FEET TO THE POINT OF BEGINNING.

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	13.09'	915.50'	0°49'08"	13.09'	S88°31'46"W
C2	12.64'	884.50'	0°49'08"	12.64'	S88°31'46"W
C3	174.38'	540.00'	18°30'09"	173.62'	N81°48'36"W
C4	0.67'	400.00'	0°05'45"	0.67'	N16°46'50"E
C5	156.90'	370.00'	24°17'45"	155.72'	N84°42'24"W
C6	211.40'	640.00'	18°55'31"	210.44'	N87°23'31"W
C7	58.41'	640.00'	5°13'45"	58.39'	N67°26'05"W
C8	98.66'	360.00'	15°42'07"	98.35'	N56°58'09"W
C9	36.31'	510.00'	4°04'46"	36.30'	N47°04'43"W
C10	322.78'	308.00'	60°02'41"	308.21'	N58°54'59"E
C11	5.23'	510.00'	0°35'17"	5.23'	S48°49'27"E
C12	31.08'	510.00'	3°29'29"	31.07'	S46°47'04"E
C13	203.79'	178.00'	65°35'45"	192.84'	S56°08'28"W
C14	299.03'	278.00'	61°37'45"	284.82'	S58°07'28"W
C15	121.85'	400.00'	17°27'14"	121.38'	N08°06'05"E
C16	121.75'	429.00'	16°15'37"	121.34'	N08°41'54"E
C17	70.59'	371.00'	10°54'07"	70.48'	N10°33'32"E
C18	89.21'	891.50'	5°44'01"	89.17'	N02°14'28"E
C19	15.49'	50.00'	17°45'10"	15.43'	N82°11'05"W
C20	120.48'	55.00'	125°30'20"	97.79'	N43°56'20"E

LINE TABLE		
LINE	BEARING	LENGTH
L1	S44°09'24"W	29.81'
L2	S88°56'20"W	68.90'
L3	N72°33'31"W	49.76'
L4	N27°36'21"W	21.23'
L5	N73°10'18"W	29.00'
L6	N73°16'03"W	29.09'
L7	S62°13'16"W	21.13'
L8	N30°37'23"W	20.60'
L9	N73°59'22"W	58.00'
L10	S62°38'39"W	20.60'
L11	N89°09'36"E	32.00'
L12	S00°37'32"E	12.50'
L13	S89°09'36"W	32.00'
L14	S00°37'32"E	62.48'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C21	15.49'	50.00'	17°45'10"	15.43'	S09°56'15"E
C22	15.49'	50.00'	17°45'10"	15.43'	S07°48'55"W
C23	15.49'	50.00'	17°45'10"	15.43'	N80°03'45"E
C24	120.48'	55.00'	125°30'20"	97.79'	N46°03'40"W
C25	15.49'	50.00'	17°45'10"	15.43'	N09°30'07"W
C26	120.06'	55.00'	125°04'12"	97.60'	S44°08'24"W
C27	15.49'	50.00'	17°45'14"	15.43'	S82°11'07"E
C28	29.15'	545.00'	3°03'53"	29.15'	N07°10'32"E
C29	67.89'	545.00'	7°08'16"	67.85'	N02°04'28"E
C30	10.00'	545.00'	1°03'05"	10.00'	N02°01'13"W
C31	107.05'	545.00'	11°15'14"	106.88'	N03°04'52"E
C32	17.79'	50.00'	20°23'12"	17.70'	N08°13'17"W
C33	15.49'	50.00'	17°45'10"	15.43'	S82°11'05"E
C34	120.09'	55.00'	125°06'24"	97.62'	S44°08'18"W
C35	40.40'	375.00'	6°10'20"	40.38'	N05°03'29"E
C36	15.04'	108.50'	7°56'34"	15.03'	N12°02'21"E
C37	31.68'	228.50'	7°56'34"	31.65'	N12°02'21"E
C38	69.86'	425.00'	9°25'06"	69.78'	N04°05'01"E
C39	116.14'	400.00'	16°38'10"	115.74'	N07°41'33"E

LINE TABLE		
LINE	BEARING	LENGTH
L15	S45°50'36"E	21.13'
L16	N44°09'24"E	21.29'
L17	N44°53'30"W	28.17'
L18	N62°59'19"W	13.00'
L19	S43°56'20"W	21.21'
L20	N32°16'53"E	14.43'
L21	N46°03'40"W	21.21'
L22	N44°09'24"E	21.29'
L23	N08°04'04"E	31.30'
L24	N08°04'04"E	39.91'
L25	N00°37'32"W	2.35'
L26	S44°09'24"W	21.29'
L27	N00°37'32"W	42.16'
L28	N16°00'38"E	51.46'

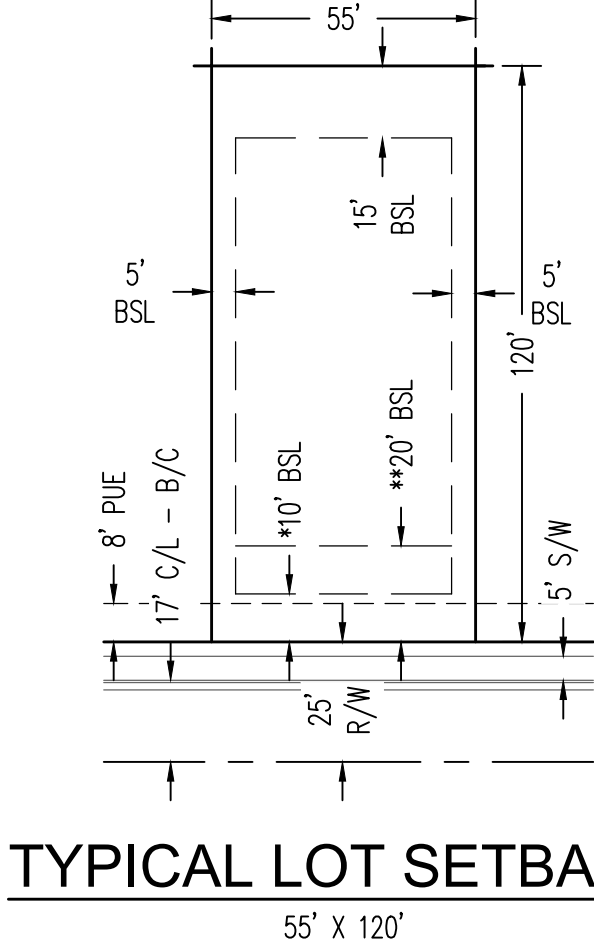
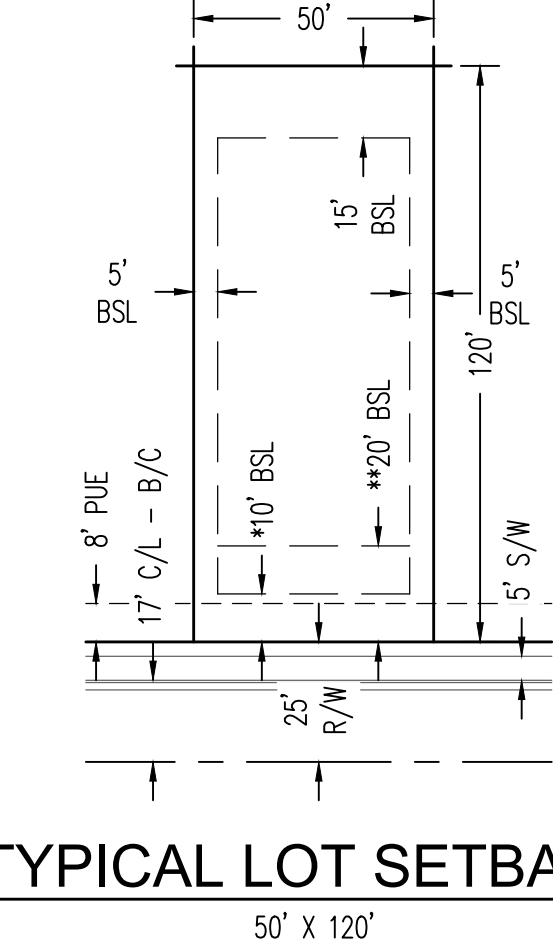
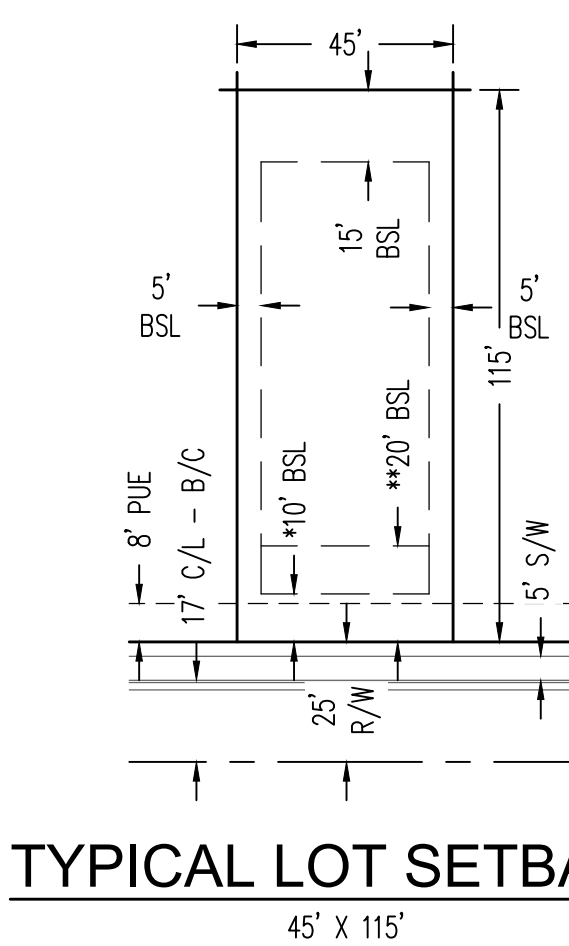
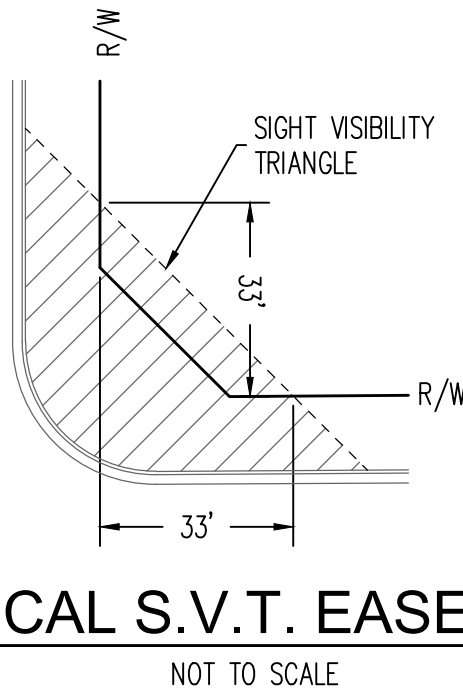
LINE TABLE		
LINE	BEARING	LENGTH
L29	N16°32'12"E	51.33'
L30	N16°00'38"E	24.39'
L31	N16°00'38"E	44.52'
L32	N08°04'04"E	45.79'
L33	N16°00'38"E	51.46'
L34	S23°20'35"W	12.19'
L35	N05°06'29"E	28.50'
L36	N44°20'07"E	21.36'
L37	S45°50'36"E	21.13'
L38	S00°37'32"E	12.50'
L39	N10°57'58"W	22.28'
L40	N00°37'32"W	21.12'
L41	N89°22'28"E	20.00'
L42	S00°37'32"E	13.60'

LOT AREA TABLE		
LOT #	AREA (SF)	AREA (AC)
222	6,913	0.1587
223	6,504	0.1493
224	6,600	0.1515
225	6,600	0.1515
226	6,598	0.1515
227	6,420	0.1474
228	6,608	0.1517
229	6,506	0.1494
230	6,600	0.1515
231	6,600	0.1515
232	6,600	0.1515
233	6,600	0.1515
234	6,600	0.1515
235	6,600	0.1515
236	6,600	0.1515
237	6,600	0.1515
238	6,600	0.1515
239	6,600	0.1515
240	6,600	0.1515
241	6,595	0.1514
242	6,600	0.1515
243	6,600	0.1515
244	6,600	0.1515
245	6,600	0.1515

LOT AREA TABLE		
LOT #	AREA (SF)	AREA (AC)
246	6,600	0.1515
247	6,600	0.1515
248	6,600	0.1515
249	6,600	0.1515
250	6,600	0.1515
251	6,600	0.1515
252	6,587	0.1512
253	6,588	0.1512
254	6,600	0.1515
255	6,600	0.1515
256	6,600	0.1515
257	6,600	0.1515
258	6,600	0.1515
259	6,600	0.1515
260	6,600	0.1515
261	6,600	0.1515
262	6,600	0.1515
263	6,600	0.1515
264	6,588	0.1512
265	6,897	0.1583
266	6,893	0.1582
267	6,893	0.1582
268	6,893	0.1582
269	6,893	0.1582

LOT AREA TABLE		
LOT #	AREA (SF)	AREA (AC)
270	6,893	0.1582
271	6,893	0.1582
272	6,893	0.1582
273	6,893	0.1582
274	6,893	0.1582
275	6,893	0.1582
276	6,600	0.1515
277	7,063	0.1621
278	7,092	0.1628
279	6,604	0.1516
280	6,611	0.1518
281	6,611	0.1518
282	6,611	0.1518
283	6,611	0.1518
284	6,611	0.1518
285	6,611	0.1518
286	6,611	0.1518
287	6,611	0.1518
288	6,611	0.1518
289	6,975	0.1601
290	7,292	0.1674
291	7,375	0.1693
292	6,958	0.1597

TRACT USE TABLE			
TRACT	USE	AREA (SF)	AREA (AC)
Tract A	LANDSCAPE, OPEN SPACE, PUBLIC UTILITY EASEMENT, SEWER EASEMENT, RETENTION AND AMENITY	157,910	3.6251
Tract B	LANDSCAPE, OPEN SPACE AND PUBLIC UTILITY EASEMENT	1,098	0.0252
Tract C	LANDSCAPE, OPEN SPACE, PUBLIC UTILITY EASEMENT AND RETENTION	69,177	1.5881
Tract D	LANDSCAPE, OPEN SPACE AND PUBLIC UTILITY EASEMENT	2,411	0.0554
Tract E	LANDSCAPE, OPEN SPACE AND PUBLIC UTILITY EASEMENT	2,200	0.0505
Tract F	LANDSCAPE, OPEN SPACE, PUBLIC UTILITY EASEMENT AND RETENTION	90,408	2.0755
Tract G	LANDSCAPE, OPEN SPACE, PUBLIC UTILITY EASEMENT, SEWER EASEMENT AND DRAINAGE CHANNEL	229,101	5.2594
Tract H	LANDSCAPE, OPEN SPACE, PUBLIC UTILITY EASEMENT AND IRRIGATION EASEMENT	70,353	1.6151



NOTE

- * FRONT SETBACK TO LIVABLE AND SIDE ENTRY GARAGE.
- ** FRONT SETBACK TO FRONT-FACING GARAGE.

Project:

"ENTRADA - PHASE 3"

AVONDALE ARIZONA

FINAL PLAT

Revisions:

Call at least two full working days before you begin excavation.

ARIZONA

State of Arizona - Professional Engineer Seal
No. 11171 - Exp. 12/31/2026
In Maricopa County: (602)263-1109

Drawn by: A.G.
Reviewed by: R.J.

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 37495
ROBERT A. JOHNSTON

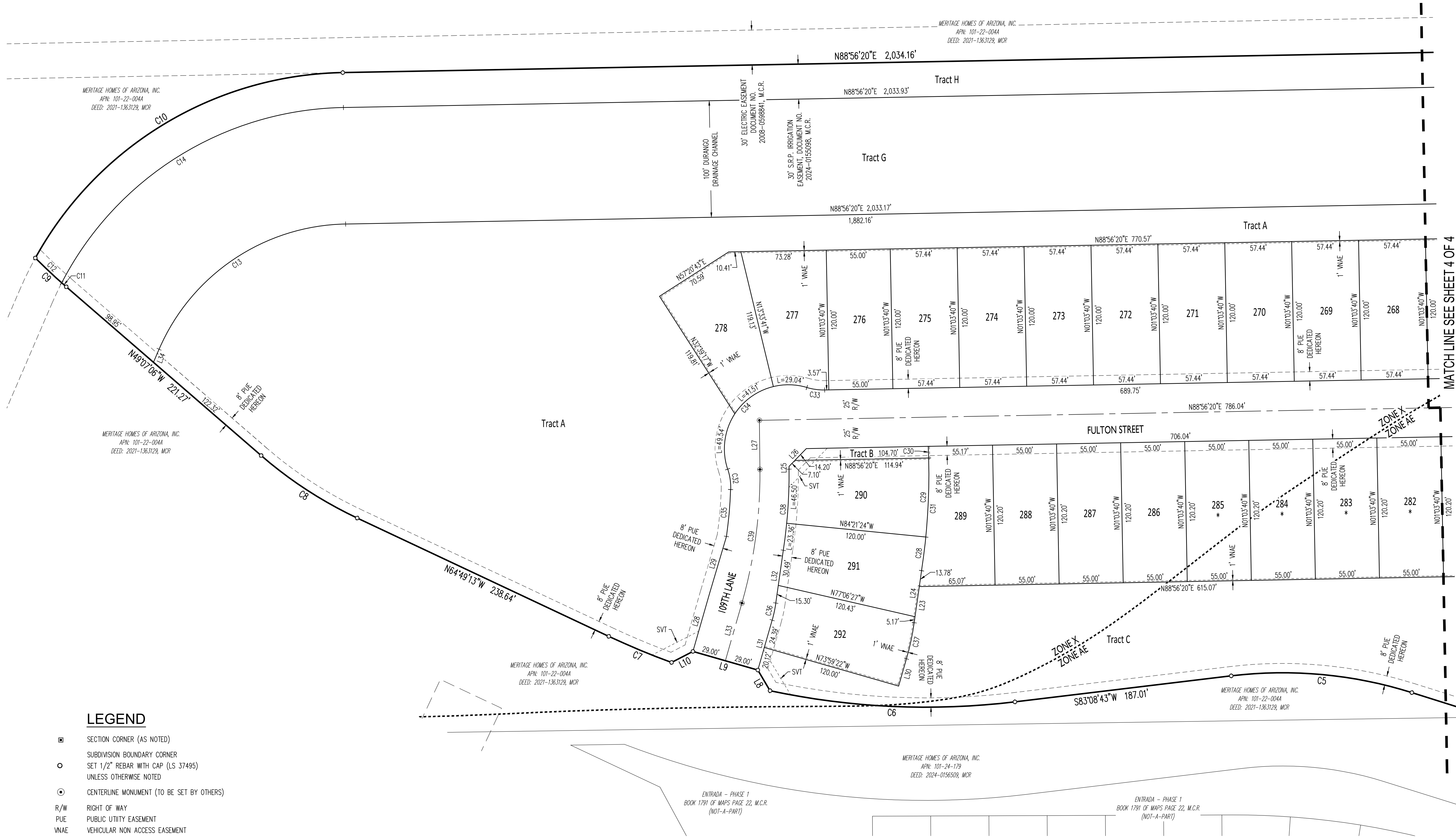
Job No.
21-0147

Sheet No.
2
of 4

1130 N. Alma School Rd, Suite 120
Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

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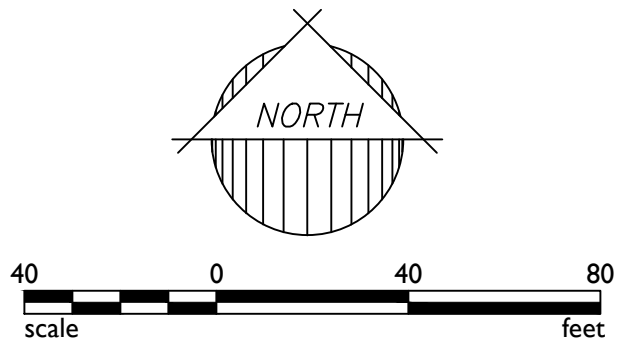


LEGEND

- SECTION CORNER (AS NOTED)
- SUBDIVISION BOUNDARY CORNER
- SET 1/2" REBAR WITH CAP (LS 37495)
- UNLESS OTHERWISE NOTED
- CENTERLINE MONUMENT (TO BE SET BY OTHERS)
- R/W RIGHT OF WAY
- PUE PUBLIC UTILITY EASEMENT
- VNAE VEHICULAR NON ACCESS EASEMENT
- SVT SIGHT VISIBILITY TRIANGLE (33' X 33')
- SRP SALT RIVER PROJECT
- M.C. MARICOPA COUNTY
- M.C.R. MARICOPA COUNTY RECORD
- BOUNDARY LINE
- LOT LINE
- RIGHT OF WAY LINE
- CENTER LINE
- PUBLIC UTILITY EASEMENT
- VEHICULAR NON ACCESS EASEMENT
- SECTION LINE
- RIGHT OF WAY LINE
- PARCEL LINE
- EASEMENT LINE
- ZONE LINE

NOTE

LOTS NOTED WITH A * ARE WITHIN AN EXISTING FLOODPLAIN. A CLOMR APPLICATION HAS BEEN FILED WITH FEMA TO REMOVE THE FLOODPLAIN AND A LOMR APPLICATION WILL BE FILED WITH FEMA AFTER THE DRAINAGE IMPROVEMENTS HAVE BEEN COMPLETED TO REMOVE THE FLOODPLAIN FROM THESE LOTS. CITY OF AVONDALE WILL ISSUE BUILDING PERMITS ON THESE LOTS BUT FLOOD INSURANCE WILL BE REQUIRED UNTIL THE LOMR IS APPROVED BY FEMA AND IS EFFECTIVE AND THE FLOODPLAIN IS REMOVED.



MATCH LINE SEE SHEET 4 OF 4

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Mesa, AZ 85201
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www.epsgroupinc.com

"ENTRADA - PHASE 3"

AVONDALE, ARIZONA

FINAL PLAT

Project:

Revisions:

Call at least two full working days before you begin excavation.

Dial 811 or 1-800-486-8111 (TDD) (800) 486-8111 in Maricopa County: (602)263-1109

Drawn by: A.G.
Reviewed by: R.J.

Job No.
21-0147

Sheet No.
3
of 4

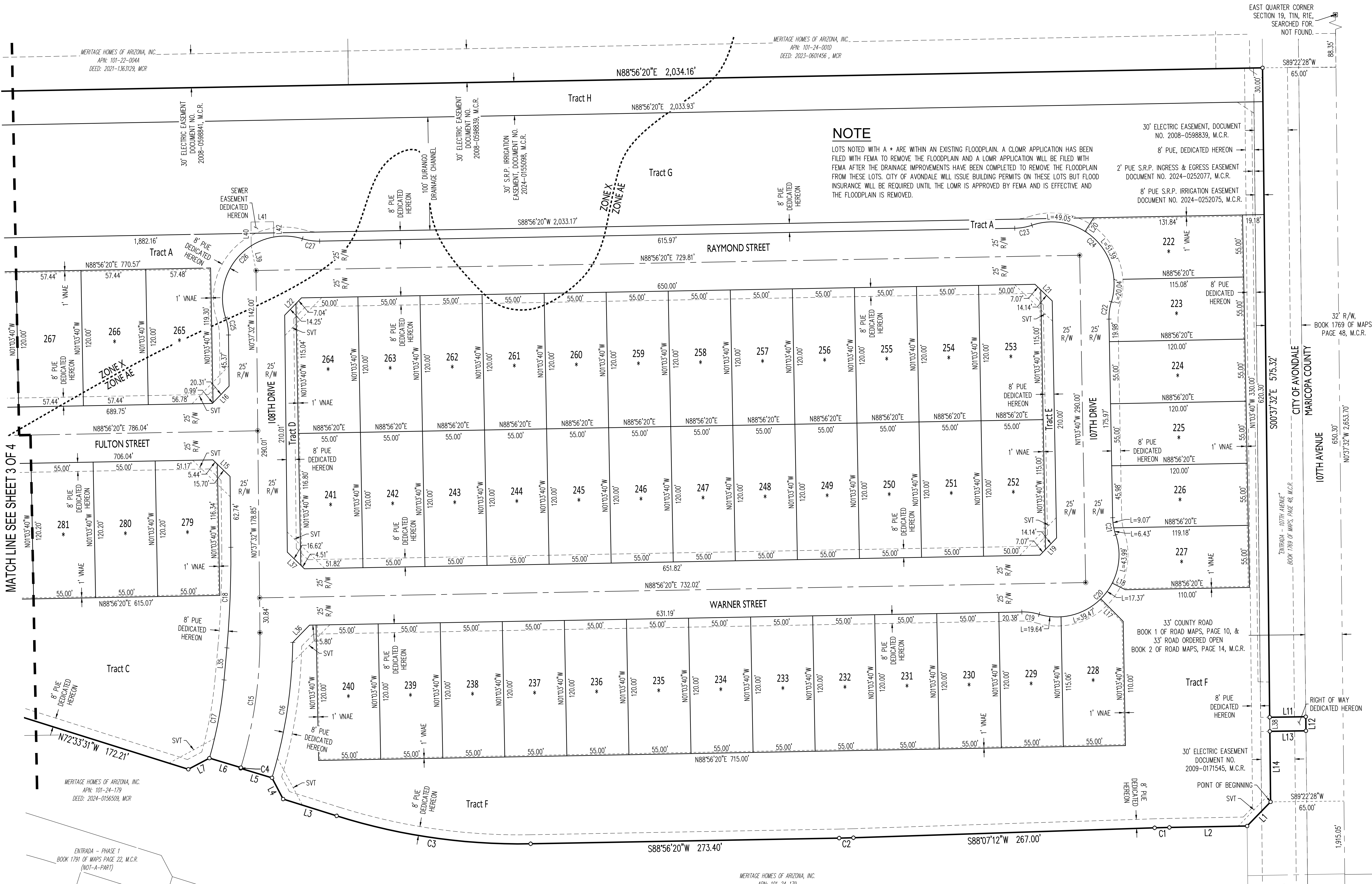
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LEGEND

- BOUNDARY LINE
- LOT LINE
- RIGHT OF WAY LINE
- CENTER LINE
- PUBLIC UTILITY EASEMENT
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- R/W
 - PUE
 - VNAE
 - SVT
 - SRP
 - M.C.
 - M.C.R.
- RIGHT OF WAY
PUBLIC UTILITY EASEMENT
VEHICULAR NON ACCESS EASEMENT
SIGHT VISIBILITY TRIANGLE (33' X 33')
SALT RIVER PROJECT
MARICOPA COUNTY
MARICOPA COUNTY RECORD

- SECTION CORNER (AS NOTED)
- SUBDIVISION BOUNDARY CORNER
- SET 1/2" REBAR WITH CAP (LS 37495)
- UNLESS OTHERWISE NOTED
- CENTERLINE MONUMENT (TO BE SET BY OTHERS)

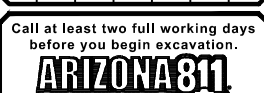


NOTE

LOTS NOTED WITH A * ARE WITHIN AN EXISTING FLOODPLAIN. A CLOMR APPLICATION HAS BEEN FILED WITH FEMA TO REMOVE THE FLOODPLAIN AND A LOMR APPLICATION WILL BE FILED WITH FEMA AFTER THE DRAINAGE IMPROVEMENTS HAVE BEEN COMPLETED TO REMOVE THE FLOODPLAIN FROM THESE LOTS. CITY OF AVONDALE WILL ISSUE BUILDING PERMITS ON THESE LOTS BUT FLOOD INSURANCE WILL BE REQUIRED UNTIL THE LOMR IS APPROVED BY FEMA AND IS EFFECTIVE AND THE FLOODPLAIN IS REMOVED.

Project:

Revisions:



Drawn by: A.G.
Reviewed by: R.J.



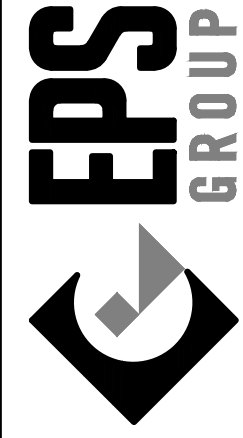
Job No.
21-0147

Sheet No.
4
of 4

"ENTRADA - PHASE 3"

AVONDALE, ARIZONA

FINAL PLAT



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Mesa, AZ 85201
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www.epsgroupinc.com

ITEM NUMBER: 5.a.

SUBJECT: Selection of Vice Mayor

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Marcella Sarmiento, City Clerk

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

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

STRATEGIC PLAN:

n/a

PURPOSE:

City Council will accept nominations and designate one of its members as Vice Mayor for a two-year term. The Council will take appropriate action.

BACKGROUND:

At the City Council meeting on October 21, 2024, Councilmember Curtis Nielson was appointed as Vice Mayor for a partial term.

DISCUSSION:

Pursuant to Article II, Section 9 of the Avondale City Charter, the City Council shall designate one of its members as Vice Mayor, who shall serve in such capacity for a two-year term at the pleasure of the Council.

The Vice Mayor shall perform the duties of the Mayor during his/her absence or disability.

BUDGET IMPACT:

This item does not have a direct impact to the City budget. The salary for the selected Vice Mayor will be adjusted accordingly.

RECOMMENDATION:

Staff recommends City Council accept nominations and designate one of its members as Vice Mayor for a two-year term.

Contact person for document distribution: n/a

ITEM NUMBER: 5.b.

SUBJECT: Council Appointments to Regional and Local Boards, Commissions, and Committees

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Liz Barker Alvarez, Intergovernmental Affairs Administrator

THROUGH: Katie Gregory, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:

This agenda item supports the following Avondale Strategic Outcome Area:

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

PURPOSE:

City Council will consider a request to appoint members of the City Council to various regional and local boards and committees. The Council will take appropriate action.

BACKGROUND:

Regional and local representation on behalf of the City Council is beneficial to the City in maintaining a strong presence valley-wide. Serving on committees within the Maricopa Association of Governments (MAG), WESTMARC, the Arizona Municipal Water Users Association (AMWUA) and other regional organizations is paramount to the City staying abreast of regional initiatives. This allows the City of Avondale to maintain a regional presence and assures that the City's best interests are represented. In addition to the regional and local committees, Council committees and subcommittees will be discussed and any vacancies will be addressed.

As mentioned above, the Council will determine the appropriate representation for each of the following:

- Maricopa Association of Governments (MAG)
- Arizona Municipal Water Users Association (AMWUA)
- Valley Metro Regional Public Transportation Authority (RPTA)
- Luke West Valley Council
- WESTMARC
- Greater Phoenix Economic Council (GPEC)
- Council Subcommittee for Boards and Commissions
- Council Subcommittee on Contributions Assistance Program
- Council Audit Committee

- Interfaith Council

DISCUSSION:

After each election, appointments are re-addressed on the various regional and local boards, commissions and committees. Staff will brief the Council regarding the current assignments and the current vacancies. Based on the information provided, the Council will determine the appropriate representative to fill each of the vacancies and may make changes to current assignments as they deem appropriate to ensure the City is adequately represented..

BUDGET IMPACT:

There is no budgetary impact.

RECOMMENDATION:

The Council will determine the appropriate representation for each of the boards and committees.

Contact person for document distribution: n/a

ITEM NUMBER: 5.c.

SUBJECT: Resolution 1002-0125 - 2025 Public Policy Priorities for the upcoming state and federal legislative sessions

MEETING DATE: 1/6/2025

TO: Mayor and Council

FROM: Liz Barker Alvarez, Intergovernmental Affairs Administrator

THROUGH: Katie Gregory, Assistant City Manager, (623) 333-1015

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

STRATEGIC PLAN:
Multiple Strategic Plan Areas

PURPOSE:

City Council will consider a request to: a) adopt Resolution 1002-0125, adopting the 2025 Public Policy Priorities for the upcoming state and federal legislative sessions, b) authorize the City Manager or his designee(s) to act on such items; and c) authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Policies enacted at the state and federal levels can have significant effects on the ability of municipal governments to serve their communities. Therefore, it is important to identify the City of Avondale's priorities regarding potential or pending public policy actions.

The recommended priorities were developed based on review of historical legislative proposals impacting municipal governments, as well as consultation with policy staff in other municipalities and regional policy partners, such as the League of Arizona Cities and Towns, the Maricopa Association of Governments, the Arizona Municipal Water Users Association, etc. The approved document and resolution will define the City's public policy priorities and guide staff's advocacy efforts. Updates will be provided to the Council during the legislative session, as necessary.

The first Regular Session of the Fifty-Seventh Legislature will convene on Monday, January 13, 2025. Governor Katie Hobbs will deliver her State of the State address on this same day.

DISCUSSION:

The attached document describes the proposed Public Policy Priorities and the types of issues within those priorities staff may address in the upcoming state and federal sessions. The Policy Priorities include:

- Preserve Local Funding
- Oppose Preemption of Local Authority

- Support Expanded Housing Opportunities
- Enhance Public Safety
- City-Managed Growth & Development
- Promote Economic Development & Prosperity
- Collaborate to Build a Robust Transportation Network
- Protect & Enhance Water Supply
- Protect the Mission of Luke Air Force Base

If additional legislative proposals outside of the priorities arise, staff will seek additional input and guidance from the Council and city management.

BUDGET IMPACT:

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

RECOMMENDATION:

Staff recommends approval of a Resolution adopting the 2025 Public Policy priorities and authorizing the City Manager or his designee(s) to take action.

Contact person for document distribution: Liz Barker Alvarez

RESOLUTION NO. 1002-0125

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, ADOPTING THE 2025 COUNCIL PUBLIC POLICY PRIORITIES
AND AUTHORIZING THE CITY MANAGER TO TAKE ACTION.

WHEREAS, the City Council of Avondale (the “City Council”) desires to adopt public policy priorities that allow staff to advocate for issues that (i) strengthen local government, (ii) promote the goals of the City of Avondale (the “City”), and (iii) defend the City against legislative action by state and federal governments that would weaken local governments and/or take away traditional revenue sources; and

WHEREAS, it is vital to the fiscal health and the self determination of the City to effectively communicate with state legislators and federal representatives in order to favorably influence state and federal legislation, regulations, and grant requests; and

WHEREAS, a key component of the City’s public policy advocacy is face to face meetings between City representatives and elected officials at the federal, state, and county levels, and coordination with similar efforts made by other regional and local entities such as Maricopa Association of Governments (MAG), Valley Metro, the Arizona Municipal Water Users Association (AMWUA), WESTMARC and Luke West Valley Partners; and

WHEREAS, the League of Arizona Cities and Towns (the “League”) annually conducts a legislative analysis and, through a resolutions process, establishes an advocacy program on behalf of cities and towns for state issues; and

WHEREAS, the City desires to be proactive and involved in governmental decision-making processes directly affecting the City’s public policy priorities identified in the League legislative priorities and other selected issues as may from time to time be recommended by the League.

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

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

SECTION 2. The 2025 Public Policy Priorities (the “Priorities”) attached hereto as Exhibit A are hereby adopted by the City Council.

SECTION 3. The Mayor, the City Manager and his authorized designee, 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 and the Priorities.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, January 6, 2025.

Mike Pineda, Mayor

ATTEST:

Marcella Sarmiento, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1002-0125

[2025 Public Policy Priorities]

See following pages.

2025 Public Policy Priorities

This document defines the City of Avondale's legislative priorities for the 2025 federal and state legislative sessions. Its purpose is to provide direction to Intergovernmental Affairs staff to ensure the City is actively engaging on issues in collaboration with regional partners and at the U.S. and State capitols that reflect the priorities and mission of the Avondale City Council.

Preserve Local Funding

Protect existing funding sources that bring revenue to the City of Avondale to support the quality of life for its residents. This includes, but is not limited to, state shared income tax (urban revenue sharing), state transaction privilege tax, food taxes, and Highway User Revenue Fund monies cities receive from the state. Any effort to reduce, sweep or eliminate any of these shared revenue sources will be opposed, as will unfunded mandates. Support proposals that replace previously reduced revenues or further expand current revenues.

Oppose Preemption of Local Authority

Support local decision-making authority. The community entrusts local elected officials to protect public health, safety and quality of life. Any efforts to weaken or eliminate local control and decision-making authority through preemption or mandates will be opposed.

Support Expanded Housing Opportunities

Support policies that encourage balanced housing growth and provide additional state or federal resources to develop housing or assist individuals in securing housing. Support additional flexibility and authority to effectively regulate short-term rental and sober living home properties. Oppose legislation that would preempt the city's zoning and design review authority.

Enhance Public Safety

Support initiatives to preserve and enhance the ability of local governments to strategically plan for and respond to emergencies. Support policies that enhance public safety services.

City-Managed Growth and Development

Support maintaining local authority in planning issues (including land use, zoning, plan review and permitting) and oppose efforts that impede growth management, including the preservation of local authority to set growth and development policies and support for citizen involvement in the planning and zoning process. Oppose legislation that would restrict redevelopment within municipalities.

Promote Economic Development & Prosperity

Maintain and enhance the caliber of economic development opportunities available to the City through supporting new and existing tools for private sector growth and revitalization. Support legislative changes that allow growth to pay for itself to attract new and reliable development opportunities, including incentives and other economic diversification mechanisms which contribute to high quality private sector growth and job creation.

Collaborate to Build a Robust Transportation Network

Support local and regional transportation initiatives and funding opportunities to improve the community's quality of life and economic viability. Encourage efforts to expand or enhance funding sources to ensure viability and maintenance of the transportation network. Support federal and state funding for regional and local transportation and infrastructure projects. Oppose efforts that weaken local control in the transportation decision-making process. Work collaboratively with our federal, state, regional, and other local delegations to secure grant funding for the region's important infrastructure needs.

Protect & Enhance Water Supply

Support legislation that facilitates the creation of new water supplies; encourages practical water efficiency and conservation measures; and invests in water supply and infrastructure. Protect surface water and uphold the principles of the Groundwater Management Act. Oppose measures that limit cities' ability to control their water resources. Ensure the City of Avondale can supply assured, safe and sustainable water to its residents.

Protect the Mission of Luke Air Force Base

Support efforts to sustain current missions and ensure the capability for future mission expansions. Support efforts to ensure compatible land uses and limit encroachment around the base. Oppose any legislation that would weaken existing statutes relating to Luke Airforce Base or other military installations.